

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI**

Company Appeal (AT) No. 145 of 2021

[Arising out of order dated 29.11.2019 passed by the National Company Law Tribunal (Mumbai Bench) in CP No. 1958/252(1)/MB/C-IV/2019]

IN THE MATTER OF:

Bharat Goyal, Director

of M/s Leading Age Properties Private Limited,
2, Sunflower, 27-B Carter Road,
Bandra (W), Mumbai-400050.

..... Appellant.

Versus

Registrar of Companies, Mumbai,

Evrest Building, 100,
Mumbai Drive-400002

Email id roc.mumbai@mca.gov.in

..... Respondent.

Present:

For Appellant: Ms. Aastha Shrestha, Mr. Kumar Anurag Singh, Mr. Shwetank Singh, Advocates.

For Respondent:- Mr. Kamal Kant Jha, Sr. Panel Counsel (GOI) for RoC, Mumbai.

J U D G M E N T

(01st June, 2023)

Justice Anant Bijay Singh;

The present Appeal under Section 421 of the Companies Act, 2013, has been filed by the Appellant being aggrieved and dissatisfied by the order dated 29.11.2019 passed by the National Company Law Tribunal (Mumbai Bench) in

CP No. 1958/252(1)/MB/C-IV/2019 whereby and whereunder appeal filed by the Appellant for restoration of the name of the Company in the Register maintained by the Registrar of Companies (RoC), Mumbai was dismissed by the Tribunal.

2. The facts giving rise to this Appeal are as follows:

i) The Appellant-Company was incorporated, under the Companies Act, 1956 on 21st October, 2005 vide CIN:U70100MH2005PTC156948, as a Private Limited Company and was registered with the ROC' Mumbai. Authorized share capital of the Company of Rs.1,00,000/- is divided into 10000 equity shares of Rs'10/- each. These shares were issued and were subscribed, as per the provisions of the Companies Act,1965. Paid Up Capital of the Company is Rs.1,00,000/-.

ii) The main object of the company are to carry on in India and abroad the business of acquiring, buying, developing, maintaining, selling, hiring, leasing' managing or otherwise dealing in lands, dwelling houses, shops, offices, industrial estates, farms, farm houses, holiday resorts, lease of lands, flats, commercial establishments and other immovable properties and to purchase, take on lease or otherwise acquire and hold any lands or buildings of any tenure or description wherever situated or rights or interests therein or construct, re-construct pull-down, renovate, alter, improve decorate and furnish and maintain flats, marionettes, dwelling houses, shops, offices, blocks, buildings, hotels, motels, farm houses, holiday resorts, club house, industrial estates works and conveniences and /or sell the same on ownership basis, instalments basis hire-purchase basis or lease basis, transfer such building to co-operative society, or

association of persons or individuals as the case may be, to lay out roads, pleasure gardens, recreation, grounds, auditoriums, theatres, health clubs, service canters and sports pavilion, to plant, drain or otherwise improve land building or any part thereof.

iii) The business of the Appellant company was going on smoothly and no legal omission or commission of was committed by the Appellant till the year in dispute. The main Director of the Appellant Company Shri Govind Lal Ganesh Lal Govil expired on 08.12.2017. As a result, the activities of the Appellant Company came to stand still for a short period. Thereafter, Secretary of the Appellant Company was hospitalized on 03.03.2018, because of certain health issue and she was discharged from the hospital on 10.03.2018, due to which filing of Annual Returns for the Financial Years 2015-16 and 2016-17 was due.

iv) Further, case is that the company was not defunct and was carrying of its business regularly. The annual general meeting was conducted on 30.09.2016. The Director given report to the members for the year ended on 31.03.2016 dated 02.09.2016. The Independent Auditor's Report was given to the members for the period ended on 31.03.2016 dated 22.08.2016. The balance sheet for the period ended on 31.03.2016 enclosed to the annual general meeting held on 30.09.2016 and also enclosed notes on account for the year ended March 31, 2016. The statement of profit and loss account for the period ended 31.03.2016 and 31.03.2017 are also available. The assessee paid income Tax of Rs. 1,28,438/- vide income tax report receipt dated 30.03.2018.

v) The Registrar of Companies issued its letter dated 03.07.2018 to the Appellant Company informing it that it was not carrying on any business

operations for the last two preceding financial years and that it had not made any application within stipulated period for obtaining the status of a dormant company, as per the provisions of Section 455 of the Companies Act. On 19.07.2018, the ROC, Mumbai further issued a notice to the Appellant for striking off its name from the Register of the Companies. Accordingly, vide publication, dated 11.09.2018, the ROC, Mumbai published the names of the Corporate Entities, whose names were struck off from the list of Active Companies. The name of the appellant company appeared at Sl. No. 5217 of the list issued by the ROC, Mumbai. Thereafter, the Appellant filed appeal against the order of Registrar of Companies for restoration of name of the Company under Section 252 of the Companies Act, 2013 and after hearing the parties, the Tribunal passed the order impugned dated 29.11.2019 which led to filing of this Appeal.

3. The Learned Counsel for the Appellant during the course of argument and grounds taken in her memo of Appeal submitted that the Company has failed to file its Financial Statements and Annual Returns for the Financial Years 2015-16 and 2016-17 i.e. two years. Therefore, the Registrar of Companies, Mumbai, formed an opinion that the basis for striking off the name of the Company was the continuous non-filing of the statutory returns and the Company is not carrying on any business or operation for a period for two immediately preceding financial years and has not applied to declare itself as Dormant Company under Section 455 of the Companies Act, 2013. On such presumption that the Company is inactive and non-operational, the ROC struck off the name of the

Company from the Register of Companies under Section 248(1) of the Companies Act, 2013.

4. It is further submitted that the reason for non-filing of Annual Returns for the Financial Years 2015-16 and 2016-17 was due to inadvertence. Further, submitted that the company is active and carrying on day-to-day business from its incorporation. She further submitted that she has enclosed the audited accounts for the Financial Years 2016-17 and 2017-18.

5. It is further submitted that the NCLT erred in rejecting the appeal on the misleading facts submitted by the ROC, Mumbai. The NCLT directed the ROC to file report on the appeal but the ROC did not comment on reasonableness of non-filing of statutory returns. The Appellant Company had filed the returns, but the ROC, Mumbai suppressed this vital fact before the NCLT. Based on above submissions, the impugned order is fit to be set aside and the Appeal be allowed.

6. On the other hand, the Ld. Counsel for the Respondent No. 1/Registrar of Companies in his Reply it is stated that the Company-Leading Age Properties Private Limited was incorporated with the office of the Registrar of Companies, Mumbai on 21.10.2005, but due to failure in filing of its statutory returns, the name of the company has been considered for striking off by the Registrar of Companies, Mumbai in a suo moto action under the provisions of Section 248 of the Companies Act, 2013 and also in pursuance of the circulars issued by the ministry of Corporate Affairs, Govt. Of India, New Delhi from time to time. The basis for striking off the name of the company was the continuous non-filing of the statutory returns (which are required to be filed under the Act.) and company is not carrying on any business or operation for a period of two immediately

preceding financial years and has not made any application within such period for obtaining the status of a dormant company under Section 455, prior to it struck off. The aforesaid situation has arisen due to inaction on the part of the Appellant Company and its Directors/officers. The appropriate action taken by Respondent to strike off the company, which is duly prescribed under Section 248 of the Companies Act, 2013.

7. After hearing the parties and going through the pleadings made on behalf of the parties, we observe that the Appellant Company has failed to file its Financial Statements and Annual Returns for the Financial Years 2015-16 and 2016-17 due to change of circumstances. Further, we also observe that the audited accounts for the Financial Years 2016-17 and 2017-18 shows that the company is in active and carrying on day-to-day business. Keeping in view of the above facts, the Appellant Company is having substantial movable as well as immovable assets, therefore, it cannot be said that the Appellant Company is not carrying on any business or operations. Hence, we are of the view that the order passed by the National Company Law Tribunal (Mumbai Bench) as well as Registrar of Companies, Mumbai is not sustainable in law.

8. In view of the aforementioned, we set aside the impugned order dated 29.11.2019 passed by the National Company Law Tribunal (Mumbai Bench) in CP No. 1958/252(1)/MB/C-IV/2019. The name of the Company be restored to the Register of Companies subject to the following compliances.

- i) Appellant Company shall pay costs of Rs. 1,00,000/- (Rupees One Lakh) to the Registrar of Companies, Mumbai within eight (8) weeks from the passing of this Judgment.

- ii) After restoration of the Company's name in the Register maintained by the Registrar of Companies, the Company shall file all their Annual Returns and Balance Sheets. The Company shall also pay requisite charges/fee as well as late fee/charges as applicable.
- iii) In spite of present orders, Registrar of Companies will be free to take any other steps punitive or otherwise under the Companies Act, 2013 for non-filing/late filing of statutory returns/documents against the Company and Directors.

The instant Appeal is allowed to the above extent. I.A, if any, stands disposed of.

9. Registry to upload the Judgment on the website of this Appellate Tribunal and send the copy of this Judgment to the National Company Law Tribunal (Mumbai Bench), forthwith.

[Justice Anant Bijay Singh]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi

01st June, 2023

Ram Nath.