NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 27 of 2022

[Arising out of order dated 17.12.2021 passed by the National Company Law Tribunal (New Delhi Bench, Court-II) in Appeal No. 114/252(ND)/2021]

IN THE MATTER OF:

M/s Sanmati Agrizone Private Limited
CIN No: U01403DL2011PTC225294
PAN No: AAQCS5813C
B-649, G/F Guru Ram Dass Nagar,
Near Shiv Dairy, Delhi, East Delhi 110092 **....... Appellant.**

Versus

1. **Registrar of Companies,**
NCT of Delhi, 4th Floor, Floor, IFCI Tower,
Nehru Place, New Delhi-110019 **....... Respondent No. 1.**

2. **Assessing Officer,**
For PAN No. AAQCS5813C
Ward No/Circle 10(3) Delhi,
Income Tax Office, New Delhi. **....... Respondent No. 2.**

Present:

For Appellant: **Mr. Praveen Mahajan, Advocate.**

For Respondent:- **Mr. Kamal Kant Jha, Sr. Panel Counsel for R-1/RoC Delhi.**

Mr. S. Agarwal, Sr. Standing Counsel, Mr. Shivansh B. Pandya, Jr. Standing Counsel and Advocate Utkarsh Tiwari for R-2.

JUDGMENT

(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 17.12.2021 passed by the National Company Law Tribunal (New Delhi Bench, Court-II) in Appeal No. 114/252(ND)/2021 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 M/S Sanmati Agrizone Private Limited was incorporated on 20.09.2011 vide registration no. 225294 under the Companies Act, which is having its Registered Office at B-649, G/F Guru Ram Dass Nagar, Near Shiv Dairy, Delhi East Delhi 110092 is having CIN No U63040DL1975PTC007701 and as on date the appellant company is having two directors and two shareholders and entire business of the appellant company is being run/governed by those two directors.

ii) The main objects to be pursued by the company on its incorporation is that carry on the business of cultivators, growers, manufacturers, buyers, sellers, traders, importers, exporters, estate owners, planters, millers, storers, canners, preservers, processors, rollers, grinders and dealers of food grains and other agricultural products, horticulture, floriculture, farm housing, sericulture, pisciculture, dairy products, seafoods, concentrates, juices, protein health and instant foods of all kinds including baby and dietetic foods, cereals, beverages, cordials, tonics, restrative and aerative mineral waters and food stuffs and consumption and other products, meat and meat products, vegetarian and nonvegetarian, herbs, honey & ayurvedic medicines, produce the agri or horticultural products, development of farmhouses to be used for agri business, to establish poultry farms or goat farms or any kind of farms etc.

iii) Further, to carry on the business independently or as agents, representatives, collaborators and associates for the promotion and development of agriculture, plantation, floriculture, horticulture, tissue culture, aquiculture, aquaculture, pisciculture, sericulture and all other types of farming activities to cultivate, grow, produce, propagate, raise all kinds and types of crops, plants, trees, flowers, fruits, vegetables, seeds, herbs, fishes, poultry, cattle and to carry on all the activities as importers, exporters, manufacturers, processors, millers, grinders, canners, preservers of all kinds and types of goods in these business and to make extracts, by products, derivatives and substitutes of these goods or dispose of and deal either as wholesalers or retailers, in any such produce either in its raw, prepared and/or manufactured or any other forms. Further, to carry on the business of planters, cultivators, producers, sellers and dealers in timber, processed or not and such other products of every description and to manufacture, dispose of sell and deal in products of natural forest and forest plantations, agricultural, plantation and horticultural crops and medicinal and aromatic plants.

iv) The appellant company is carrying its business and is also maintaining its bank accounts and holding assets in the name of M/S Sanmati Agrizone Private Limited as shown in the master data of the appellant company on the website of Ministry of Corporate Affairs. The appellant company is regularly carrying on its business in the name and style of M/S Sanmati Agrizone Private Limited and the appellant company being the running company is regularly filing its Income Tax Returns with the income tax department for all the assessment years between 2012-2013 to 2019-2020. Due to the financial instability of the Appellant the management of the Appellant was not able to file its financial statements and annual returns with Respondent No. 1 after the financial year ending on 31.03.2016. However, the appellant company being the running company is having all the financial statements from the financial years 2011-2012 to 2019-2020 and the same is audited by the Statutory Auditor.

v) The board of meeting of the Appellant company was held on 27.11.2020 and in that meeting it came to the knowledge of management of the Appellant company that due to oversight and inadvertent reasons there has been a default in filing the necessary documents with the Respondent no.1 since the work of filing the necessary returns was entrusted to the part time accountant who to the reasons best known to him did not filed the necessary return and never apprised such default to the management of the appellant company, due to which directors of the appellant company for smooth running of its business decided to file all the necessary documents with Respondent No. 1but during the preparation of the documents the appellant company got to know that their name has been strike off by the Respondent no. 1 w.e.f. 08.08.2018 under section 248 of the Companies Act 2013.

vi) Due to the circumstances beyond the control and due to oversight the appellant as explained above the company was not able to file its financial statements with Respondent No. 1 after the period of financial year ending on 31.03.2016 to 31.03.2020 due to which the name of the appellant company has been strike off by the Respondent no. l w.e.f 08.08.2018 however the said decision taken by the Respondent no. l to strike off the name of Appellant company was also arbitrary and against the principles of natural justice as the Respondent no. l have not sent any notice under section 248 of The Companies Act 2013 by the Respondent no. l due to which the Appellant company was not able to defend itself before the Respondent No.1.

vii) The appellant Company has come to know about the fact of striking of the name on or around first week of Jul'2020 when the appellant Company was preparing the necessary documents which are needed to be filed with the Respondent no. l and on that time only it came to the knowledge of Appellant Company that they are no longer in existence and its name stands deleted w.e.f. 08.08.2018. Thereafter, The Appellant Company filed the appeal under Section 252(1) read with section 252(3) of the Companies Act, 2013 before the NCLT against this arbitrary action by the Respondent No. 1 i.e. striking off action taken by the Respondent No. 1 against the Appellant Company under Section 248(5) of the Companies Act, 2013 and after hearing the parties, the Tribunal passed the order impugned dated 17.12.2021 which led to filing of this Appeal.

3. The Learned Counsel for the Appellant during the course of argument and grounds taken in the memo of Appeal submitted that the Registrar of Companies acted arbitrary and against the principles of natural justice by strike off the name of the Appellant Company as the Respondent No. l have not sent any notice under section 248 of the Companies Act 2013 due to which the Appellant company was not able to defend itself before the Respondent No. 1. The Registrar of Companies strike off the name of the company chiefly on account of non-filing of annual accounts and not on the basis of reasons that the company is not having the "income from operation" hence the objection of Registrar of Companies taken in report is beyond the reasons for striking off the company and the Tribunal have not considered the said ground at all while deciding the appeal as there is no finding in the order why there was delay in filing the annual accounts it is obligatory on the part of the NCLT to provide the reasons for the same while dismissing the appeal.

4. It is further submitted that there is no bar under the companies act and/ or income tax to earn the income from "other than operation" thus not having "income from operation" itself cannot be grounds to disallow the appeal. The annual accounts of the appellant company were not qualified by the auditors that the company is not working and/or otherwise defunct. Further, the NCLT failed to appreciate that the company was regularly filing the Income Tax Returns with Income Tax Department hence the company was always interested in carrying out the business and striking off only account of reasons for not filing the annual accounts cannot be sole reasons to dismiss the appeal, the company was incurring the cost on employee which itself shows that the company was working company.

5. It is further submitted that the judgment relied upon by the NCLT i.e *Alliance Commodities Private Limited Vs. Office of Registrar of Companies, West Bengal, Company Appeal (AT) No. 20 of 2019* as quoted in the order is not applicable to the fact of the present case and the principles stated therein is not applicable, since there is no allegation on the part of ROC and/or finding by the NCLT that company has not been carrying on business in consonance with objects of the Company. It is not observed anywhere in the order that company was a Shell Company or a Company having assets but advancing loans to sister concerns or corporate persons for siphoning of the funds, evading tax or indulging in unlawful business or not abiding by the statutory compliances, the aforesaid findings are totally missing in the order passed by the NCLT, hence the order cannot be sustained.

6. It is further submitted that once name of the Appellant Company is restored, the Appellant Company would be able to continue the work which would, inter-alia, benefit the State and Union Governments in terms of Income Tax and other taxes. Therefore, restoration of the name of the Appellant Company would not only be beneficial to the Shareholders of the Appellant Company but also to the State and Union Governments and otherwise it is in public interest. It is further submitted that State Government will also be benefitted through ROC fees plus additional fees for filing of all pending documents till date with the Registrar of Companies. Based on above submissions, the impugned order is fit to be set aside and the Appeal be allowed.

7. On the other hand, the Learned Counsel for the Respondent No. 1/Registrar of Companies during the course of argument submitted that the action of striking off of the present Company was legal and justified and was the result of the operation of the law, as the company was not carrying on any operations for a period of two immediately preceding financial years (as indicated by non-filing of the financial statements of the Company for two or more years).

8. The Learned Counsel for the Respondent No. 2 during the course of argument and in his reply affidavit submitted that as per the record M/s Sanmati Agrizone Private Limited has no outstanding Income Tax Demand and there are no pending assessment or penalty proceedings against the present Company. The office of the Income Tax Department has no objection if the name of the present Company is restored by this Tribunal.

9. We have considered the submissions made on behalf of the parties and perused the record.

10. Learned Counsel for the Appellant in support of the submissions has placed the copies of the Audited Balance Sheets for the following Financial Years from 2011-12 to 2019-20. The Audited Balance Sheets of the two immediately preceding financial years i.e. 2015-16 and 2016-17 and onwards reflect 'NIL' Revenue from Operations which is hereunder:

Balance Sheet for the Financial Year	Revenue From Operations
2015-16	'NIL'
2016-17	'NIL'
2017-18	'NIL'
2018-19	'NIL'

11. The impugned order dated 17.12.2021, the NCLT has rightly held that the Audited Financial Statements of the two immediately preceding Financial Years i.e., 2015-16 and 2016-17 filed by the Appellant Company reflected "Zero revenue" from its operations and have come to the conclusion that the Appellant Company was neither in operation nor carrying out its business at the time of its name was struck off from the register of Registrar of Companies.

12. Keeping in view the aforenoted facts, we do not find any merit in the instant Appeal to interfere with the order impugned passed by the NCLT. The impugned order dated 17.12.2021 passed by the National Company Law Tribunal (New Delhi Bench, Court-II) in Appeal No. 114/252(ND)/2021 is hereby affirmed. The instant Appeal is hereby dismissed. No order as to costs.

13. 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 (New Delhi Bench, Court-II), forthwith.

[Justice Anant Bijay Singh]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

New Delhi
01st June, 2023
Ram Nath.