

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 202 of 2019

IN THE MATTER OF:

**Rajneesh Ghei
S/o Late Shri Raghu Nath Ghei,
R/o M-1/1, DLF City Phase 2,
GF, Gurugram 122002; and
150, West End Avenue, # 23E,
New York, NY 10023.**

...Appellant

Versus

**Registrar of Companies,
Having office at
4th Floor, IFCI TOWER,
61, Nehru Place,
New Delhi-110019.**

...Respondent No. 1

**Sanjeev Ghei,
S/o Late Shri Raghu Nath Ghei,
R/o M-1/1, DLF City Phase 2,
GF, Gurugram 122002; and
4E/J, Jhandewalan Extension,
New Delhi-110055; and
66 Udyog Vihar Phase IV,
Gurugram-122015.**

...Respondent No. 2

**Indo Nucleoment Pvt. Ltd.
Having Office at :
4E/1, Jhandewalan Extension,
New Delhi-110055.**

...Respondent No. 3

Present:

For Appellants : Mr. Sanjeev Sahay, Mr. Gagan Kataria, Mr. Karan deep Singh, Advocates.
For Respondents : Mr. P.K. Sahu, Advocate for R2.

JUDGMENT
(Date: 2.6.2023)

[Per.: Dr. Alok Srivastava, Member (Technical)]

1. The Present Appeal is filed under Section 421(1) of the Companies Act, 2013 (in short “Act”) challenging the order dated 12.12.2018 passed by the National Company Law Tribunal, New Delhi (in short “Impugned Order”) in C.P. 325/2014 filed by the Appellant under Section 560 (6) of the Companies Act, 1956.
2. In brief, the case of the Appellant is that Respondent No.3 (“Indo Nucleoment Pvt. Ltd.”) was incorporated and registered with Registrar of Companies under the Companies Act, 1956 and Shri Raghu Nath Ghei, father of the Appellant and Respondent No.2 was a director and shareholder of the Respondent No.3 Company holding 3,680 shares out of total 8,003 shares issued in respect of the company. The Appellant has further stated that Shri Raghu Nath Ghei passed away on 15.10.2001, whereafter his wife Smt. Raj Ghei and Respondent No.2-Mr. Sanjeev Ghei remained the two directors of the Respondent No.3 Company. He has further stated that the last Balance Sheet and Annual Return of Respondent No.3 were filed in the year FY 2004-05, and thereafter no statutory compliance was done by the

Respondent No.3 Company. He has further stated that Respondent No.2- Mr. Sanjeev Ghei siphoned off a huge amount from the Company's account between the years 2006-2009 and in the year 2009 Smt. Raj Ghei Director and Shareholder, passed away intestate. He has further stated that Respondent No.2 continued to close bank accounts of the company and siphoned off the amounts therein to newly opened bank accounts, and on 19.08.2010 Respondent No.2 filed an application with Respondent No.1 – Registrar of Companies, New Delhi for removing the name of the Respondent No.3 Company from the Register of Companies taking advantage of the Easy Exit Scheme, 2010, and the application under the scheme was approved on 27.12.2010, and thereafter order was issued for striking off the name of the Respondent No.3 Company from the Register of Companies.

3. The Appellant has further stated that the Respondent No.2 Mr. Sanjeev Ghei filed a suit of partition in the Court of Civil Judge, Gurgaon with regard to the assets of the parents. He has further stated that in response to the order dated 27.12.2010 whereby the Respondent No.3 Company's name was struck off from the Register of Companies, a Company

Petition was filed before the Hon'ble Delhi High Court for setting aside of order dated 27.12.2010 and Gazette Notification dated 19.03.2011 among other reliefs. He has further stated that the Company Petition filed before the Hon'ble High Court of Delhi, was transferred to NCLT after its constitution and was assigned as Company Petition bearing CP No. 325 of 2014, which was dismissed by the impugned order dated 12.12.2018.

4. We heard the arguments of Learned Counsels for both the parties in the appeals and perused the record.
5. The Learned Counsel for the Appellant has argued that the Respondent No.3 Company was set up with the financial assistance provided by him to his father but since he was living abroad his father and his mother along with his brother i.e. Respondent No.2 subscribed to 8003 issued shares of Respondent No.3 company, and after the demise of his father on 15.10.2001, in accordance with the law of succession, the Appellant should have inherited 1/3rd of Shri Raghu Nath Ghei's shares but these shares were not transferred in the Appellant's name but his father's shares were divided between his mother Smt. Raj Ghei and his brother Mr. Sanjeev Ghei

thereby causing prejudice to him. He has further argued that his mother Smt. Raj Ghei passed away on 22.05.2009 intestate, and since the Appellant and Respondent No.2 were the only Class-1 legal heirs, they should have inherited the share of Smt. Raj Ghei equally, but again the Appellant's brother Mr. Sanjeev Ghei usurped the entire shares of their deceased mother. He has claimed that the prejudicial transfer of shares was done by Respondent No.2 with the sole intention to misappropriate of funds of Respondent No.3 Company and in the pursuance of this nefarious objective, Respondent No.2 appointed Mr. Sanjay Mawkin as a director of Respondent No.3 Company w.e.f. 30.06.2009.

6. The Learned Counsel for the Appellant has further submitted that between the years 2006 and 2010, Mr. Sanjeev Ghei siphoned off Rs. 185 lakhs from Respondent No.3 Company and between 01.10.2009 to 18.08.2010, he further siphoned off Rs. 122 lakhs from the bank account of Respondent No.3 Company which is misappropriation of funds by the Respondent No.2. He has referred to details of the transfer of funds of Respondent No.3 company by Mr. Sanjeev Ghei which are provided in detail in the appeal memo. He has further argued that after misappropriating the funds and

assets of the Respondent No.3 Company, Mr. Sanjeev Ghei filed an application under the Easy Exit Scheme, 2010 with fabricated documents for striking off the name of the Respondent No.3 Company from the Register of Companies, which clearly shows his nefarious intention. He has further argued that Mr. Sanjeev Ghei also fabricated the books of account of Respondent No.3 company and evaded income tax, in which connection, the Income Tax department filed a Writ Petition against Mr. Sanjeev Ghei for reassessment of Income Tax Returns of Respondent No.3 Company. He has further argued that in the application filed by Respondent No.3 company for striking off under the Easy Exit Scheme, 2010, the Registrar of Companies (R1) did not carry out any due diligence in processing the application and, in a mechanical way, an order for striking off the name of Respondent No.3 company from the Registrar of Companies.

7. The Learned Counsel for Appellant has further argued that the Appellant is a rightful shareholder in Respondent No.3 company and is entitled to 1945 shares inherited by him from his deceased parents. He has further argued that the Respondent No.3 Company was operational when the application under Easy Exit Scheme, 2010 was filed but the

ROC did not look at the fact regarding the company being in operation and also that there were assets held by it while passing the order for striking off the company's name from the Register of Companies.

8. The Learned Counsel for Respondent No. 2 has argued that no appeal under Section 560(6) of the Companies Act, 1956 is maintainable since the name of the company was struck off on an application made voluntarily by the R3 Company itself and sub-sections 1 to 5 of Section 560 of the Companies Act, 1956 prescribe in detail the manner in which the RoC can take *suo motu* action for striking off the company's name after due enquiry and giving notice to the company. He has further argued that if the company, or any member or creditor of the company feels aggrieved by such action of the ROC, it can make an application to the NCLT for restoration of the Company's name in the Register of Companies.

9. The Learned Counsel for the Respondent No.2 has cited the judgment of the Hon'ble Gujarat High Court in **Promod Kumar Sharma Vs. Registrar of Companies, (2014) 47 Taxmann.com 408 (Gujarat)** wherein it is held that the provisions under sub-section (1) to (6) of Section 560 of the

Companies Act, 1956 are interconnected and intertwined and the action taken by the RoC is not on his own motion but as per provisions of Sub-Section (1) to (5) of Section 560 of the Companies Act, 1956> The Learned Counsel has pointed out that in case action is taken under Sub-Section (1) to (5) of Section 560 of the Companies Act, 1956, no application/petition for recalling or setting aside the action of the RoC would lie under Section 560 (6) of the Companies Act, 1956.

10. The Learned Counsel for Respondent No.2 has further argued that the Appellant is not a member of the R-3 company nor a creditor and, therefore, he is not entitled to file any appeal under Section 560(6) of the Companies Act, 1956. He has further referred to Section 41 of the Companies Act, 1956 to bring to our attention the definition of a “Member” of the company to emphasise that since the Appellant is not a member of the company it is not entitled to maintain the appeal.

11. The Learned Counsel for Respondent No.2 has further referred to the judgments of the Hon’ble Bombay High Court rendered in **Killick Nixon Ltd. Vs. Bank of India, 1982 SCC**

Online Bom 57, and of the Hon'ble Supreme Court *in Howrah Trading Co. Vs. I.T Commissioner, A.I.R 1959 S.C 775* and in **Balkrishan Gupta Vs. Swadeshi Polytex Ltd., (1985) 2 SCC 167**, wherein it is held that the member is a shareholder, whose name is recorded in the company's register and only such a person can claim privileges of a member and exercise his rights relating to such privileges. He has argued that the Appellant is neither a member of the company whose name is entered in the Register of Companies as a shareholder, nor a creditor and therefore, he does not have any legal right to maintain appeal under Section 560 (6) of the Companies Act, 1956.

12. The Learned Counsel for Respondent No.2 has also rebutted the argument of the Appellant that he is the rightful owner of the shares held by his parents in proportion, since the transmission of shares happens by operation of law, which is covered under the second proviso to Section 108(1) and mere death and insolvency of a shareholder does not automatically conclude the procedure of transmission. He has referred to the judgment of Hon'ble Madras High Court in the matter of **Thenappa Chettiar Vs. Indian Overseas Bank Ltd (1943) 13 Com Cases 202 (Mad.)** wherein the Hon'ble

Madras High Court has held that *“where a person or persons to whom any shares have been transmitted by operation of law, do not get the shares registered in their own names as shareholders, they will not be entitled to exercise voting or other rights nor receive dividends on the shares.”* He has lastly pointed out that various allegations of siphoning off funds, misappropriation and embezzlement are allegations made without any basis and they are not relevant for adjudication of the present appeal.

13. The Learned Counsel for Respondent No.1/RoC in his reply has stated that the Company had filed its Financial Statements only till 31.03.2005 and the application for striking off the name of the Respondent No.3 Company was filed under the Easy Exit Scheme, 2010 which was a voluntary action of the Company and, therefore, the Impugned Order has correctly held that Section 560(6) of the Companies Act, 1956 would not come to the rescue of the Appellant as he has been unable to show that he has any right to file an appeal before the NCLT and this Tribunal under Section 560 of the Companies Act, 1956.

14. Admittedly, only three persons, namely, Mr. Raghu Nath Ghei, his wife Mrs. Raj Ghei, and son- Mr. Sanjeev Ghei held shares in Respondent No.3 Company and the Appellant did not, from the beginning, hold any shares in the R-3 Company. After the demise of Mr. Raghu Nath Ghei in the year 2001, the shares held by him were apparently distributed between Smt. Raj Ghei and Respondent No.2 Mr. Sanjeev Ghei, who were the existing shareholders and directors in the company. Later, after the demise of Smt. Raj Ghei, the mother, on 22.05.2009, the shares did not get transmitted to the Appellant, as he has claimed they should have happened. There is no evidence produced by the Appellant that he made any effort for the transfer of shares which were ostensibly inherited by him, in his name. Later, admittedly an application was filed by Mr. Sanjeev Ghei with the ROC for striking off the name of the Company under the Easy Exit Scheme, 2010 which was approved by the RoC with the order No. 506 dated 27.12.2010 and later, the Gazette Notification of this order was published in the Official Gazette on 19.03.2011. It is also noted that a suit of partition was filed in the year 2011 before the Court of Civil Judge, Gurgaon and there is no final order in the partition suit yet. In the light of

these facts we are of the view that the Appellant is not a 'Member' or 'Creditor' of Respondent No.3 Company.

15. We note that Section 41 of the Companies act, 1956 defines member of a Company as follows:

“Section 41 in The Companies Act, 1956

Definition of "member".

(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration, shall be entered as members in its register of members.

(2) Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members, shall be a member of the company.

(3) Every person holding equity share capital or company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a members of the concerned company.”

16. We also note that in the matter of **Killick Nixon Ltd (Supra)**, **Howrah Trading (supra)** and **Balkrishan Gupta (Supra)**, the privileges and entitlements available to a member can only be exercised by a person whose name is entered in the Register of the Companies. In the present case, admittedly, the Appellant's name does not appear in the Register of Members of R-3 company.

17. Section 560 of the erstwhile Companies Act, 1956 is as follows:

“560. POWER OF REGISTRAR TO STRIKE DEFUNCT COMPANY OFF REGISTER

(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter to receive any answer thereto, he shall, within fourteen days after the expiry of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Official Gazette, and send to the company by registered post, a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein

will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company have been completely wound up, and any returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Official Gazette and send to the company or the liquidator, if any, a like notice as is provided in sub-section (3).

*(5) At the expiry of the time mentioned in the notice referred to in sub-section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette ; and on the publication in the Official Gazette of this notice, the company shall stand dissolved : Provided that - (a) the liability, if any, of every director, 1 [***] manager or other officer who was exercising any power or management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved ; and (b) nothing in this sub-section shall affect the power of the 2 [Tribunal] to wind up a company the name of which has been struck off the register.*

(6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck

off the register, the 2 [Tribunal], on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register ; and the 2 [Tribunal] may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) Upon a certified copy of the order under subsection (6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

*(8) A letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or if no office has been registered, to the care of some director, 1 [***] manager or other officer of the company, or if there is no director, 1 [***] manager or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at his last known place of business”*

18. Notably, if the name of the Company has been struck off following the procedure prescribed in sub-section (1) to (5) of Section 560 of the Companies Act, 1956, when the Company had itself voluntarily applied for striking off its name by filing an application under the Easy Exit Scheme, 2010, no appeal shall lie under Section 560(6) of the Companies Act, 1956.

19. We also follow the judgment of Hon'ble Gujarat High court in the matter of **Pramod Kumar Sharma (Supra)** where the scope of Section 560(6) has been expounded which is as follows:

“8.2. The sub-section (6) of Section 560 of the act is part of Section 560 as a whole i.e. Section 560(1) to Section 560(9) and it is connected and intertwined with all other sub-sections i.e. sub-section (1) to sub-section (5) and sub-section (7) to (9) and it is not an independent provision.

8.6. Looking to the facts of the present case, it cannot be said that in present case the ROC had, on his own motion, taken the action in question for any reason/s under Section 560 (1) to (5) of the Act.

9. According to the provision i.e. Section 560 (6) of the act when the action is not taken by RoC on his own motion and for any reason and/or circumstances mentioned under Section 560 (1) to (5) of the Act then any application/petition for recalling or setting aside the action whereby the company got struck –off (at its own request) from the register, would not lie under Section 560(6).”

20. On the basis of the above discussion, it is quite clear that the Appellant is not a member of the R-3 company. Further we have not been shown any evidence by the Appellant that he made any sincere and diligent effort to get a succession certificate in his favour with regard to the shares held by his deceased parents and therefore, he is not entitled to the privileges and other facilities that are available to the member of a company under Companies Act. In this connection we note that an appeal under the Companies Act, 2013 would be available to a ‘person’ who is either a ‘Member’ of the Company or a ‘Creditor’ or a ‘Director’ and quite clearly the Appellant is none of these. On this basis we hold that the Appellant is not entitled to maintain an appeal before the NCLT.

21. We, therefore, come to the conclusion that there is no error in the Impugned Order, and therefore it does not require any interference. The appeal lacks merit, and it is accordingly dismissed.

22. There is no order as to costs.

[Justice Rakesh Kumar]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

New Delhi
2nd June, 2023