NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 26 of 2022

[Arising out of order dated 01.03.2021 passed by the National Company Law Tribunal (New Delhi Bench, Court-II) in Appeal No. 504/252(ND)/2020]

IN THE MATTER OF:

1. Sirsa Jute Mills Private Limited
1242/2, 2nd Floor, Jain Bhawan,
Rangmahal, Delhi-110006 .... Appellant No. 1.

2. ACME Consultants Pvt. Ltd.
21 A Shakespeare Sarani,
Kolkata 700017. .... Appellant No. 2.

Versus

1. The Registrar of Companies
NCT of Delhi and Haryana
4th Floor, IFCI Tower,
Nehru Place, New Delhi-110019. .... Respondent.

Present:

For Appellant: **Ms. Sadapurna Mukherjee, Advocate.**

For Respondent:- **None.**

J U D G M E N T

(16th February, 2023)

Justice Anant Bijay Singh;

The present Appeal under Section 421 of the Companies Act, 2013, has been filed by the Appellants being aggrieved and dissatisfied by the order dated

01.03.2021 passed by the National Company Law Tribunal (New Delhi Bench, Court-II) in Appeal No. 504/252(ND)/2020 whereby and whereunder appeal filed by the Appellant company through its Shareholder M/s Acme Consultants Private Limited for restoration of the name of the Appellant Company in the register maintained by the Registrar of Companies (RoC), NCT of Delhi and Haryana was dismissed by the Tribunal.

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

i) Since incorporation in the year 1995, the Appellant company has duly complied with all the regulatory compliances and had filed its Income Tax Returns and TDS Returns under the Income Tax Act, 1961 with the Income Tax department, Government of India. The Memorandum and Articles of Association of the company was also filed before the Income Tax Department. The accounts of the Appellant Company have been audited for the period ended 31.03.2008.

ii) There are three Directors of the company and there are 10 shareholders of the company holding 10200 equity shares of Rs. 10/- each which is evident in the Annual Return for 2007-08 showing list of shareholders *(Annexure-F of the Appeal).* The Appellant No. 1 is having an immovable property situated at Sirsa which is evident from the Balance Sheet. The Appellant No. 1 was actively doing its business activities and was also clear from the fact that the Appellant Company is maintaining a Current Accounts with the Oriental Bank of Commerce & Indian Overseas Bank *(Annexure-G, Colly of the Appeal).*

iii) Further case is that after filing of Statutory records of the company in the year 2008, the Appellant company could not able to file its further records as there were some internal disputes among the shareholders and management of the company and further the Income Tax Department had also taken illegal action against the company which further defaults the company in filing the statutory records before the ROC. When the disputes of the company were resolved, the shareholder of the company before nation lockdown due to Covid-19 had tried to check from the MCA-21 website, the status of the company with regard to the filing of the records before the ROC and while checking the same, the Appellant No. 2, one of the shareholders came to know that the name of the Appellant company had been struck off from the register of the companies showing as “Strike Off”.

iv) Thereafter, the shareholder of the company had engaged a Company Secretary in whole time practice to advice for the aforesaid issue with regard to struck off of the company. The Company Secretary informed that the name of the Appellant company has been struck off from the register maintained by the Registrar of Companies, Delhi and the only way to restore the name of the company is to file an Appeal before the NCLT for restoration of the name of the Appellant company into the register of the Companies maintained by the Registrar of Companies. Thereafter, being aggrieved by the notice of the Respondent of “Striking Off”, the Appellant Company approached the Tribunal under Section 252 of the Companies Act, 2013 for revival of the Appellant Company and after hearing both the parties, the Tribunal passed the order impugned which led to filing of this Appeal.

3. The Ld. Counsel for the Appellant during the course of argument and grounds mentioned in the memo of appeal, submitted that the Tribunal erred in dismissing the Appeal and the same has been done mechanically without appreciating the provisions of law in its entirety. Further, the Tribunal also failed to consider that the act of the Respondent while striking off the name of the company from its register was unjust and unreasonable and such action of the Respondent impose unreasonable restrictions on the Appellant's fundamental right to carry on trade, business, occupation and or profession guaranteed by the Article 19(1)(g) of the Constitution of India on the ground that it wasn't a going concern whereas it has an immovable property in Sirsa which can be rented and furnish good rentals.

4. It is further submitted that if the Appellant company is restored, the Appellant company would be able to continue the work and generate rent which would, inter-alia, benefit the Central/State Government in terms of Income Tax, Goods & Service Tax (GST) and other taxes. The Appellant company could not be filed statutory records before the Registrar of Companies after 2008, due to the aforesaid circumstances and after resolution of the disputes among the shareholders and the management of the company, the company is now in the position to file all its statutory records in accordance with the prescribed procedure prescribed under the Act since the shareholders have resolved differences. The delay is filing the Balance sheets and Annual Returns were not intentional but were inadvertent. As per Companies Act, if there is delay in filing of the Balance sheets and Annual Returns certain formalities has to be complied with the company and the company shall comply with the formalities as required under the Act once the name of the company is restored to the Register of the Companies.

5. It is further submitted that the Appellant Company is losing its legal status/entity to run or deal the day-to-day operations/business activities which is contrary to the interest of all shareholders and directors.

In view of the above submissions, the impugned order is fit to be set aside and the instant Appeal may be allowed.

6. On the other hand, the Respondent/Registrar of Companies in his reply stated that as per available records on MCA-21 Portal, the signatories associated with the Appellant company were found namely Ghanshyam Sarda, Preet Sarda and Sunanda Sarda. The Company was incorporated on 31.07.1995 and the Appellant Company has filed Annual Returns and Balance Sheet only uptil the financial year that ended on 31.03.2008. Moreover, no subsequent documents had been filed by the Company with this office to obtain the status of a "Dormant Company" under Section 455 of the Companies Act, 1956. Hence this office had reasonable cause to believe that the company was not in operation and therefore, the name of the company was considered for striking off from the Register of Companies.

7. It is further stated that the Office of the Registrar of Companies issued the notice in the form of STK-1 in March, 2017 intimating the company and the directors of the company at their registered office about the aforesaid defaults, providing them a fair opportunity to respond. Subsequently, this office also issued public notice for the same in the form of STK-5 dated 28.04.2017. Thereafter, the name of the company was struck off as per the provision of Section 248(1)(c) of the Companies Act, 2013 read with Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 vide Notice in the form of STK-7 dated 07.06.2017.

8. After hearing the parties and going through the pleadings made on behalf of the parties, we observed that the Appellant Company was in some internal disputes among the shareholders and management of the Company. Further, the Income Tax Department had also taken action against the Company which further defaults the Company in filing the statutory records before the Registrar of Companies. The Balance Sheet shows that the Appellant Company is having an immovable property situated at Sirsa. Hence, we are of the view that the order passed by the National Company Law Tribunal (New Delhi Bench, Court-II) as well as Registrar of Companies, NCT of Delhi & Haryana is not sustainable in law.

9. In view of the aforenoted, we set aside the impugned order dated 01.03.2021 passed by the National Company Law Tribunal (New Delhi Bench, Court-II) in Appeal No. 504/252(ND)/2020. The name of the Appellant 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, NCT of Delhi & Haryana 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 Balances Sheets. The Company shall also pay requisite charges/fee as well as late fee/charges as applicable.

iii) Inspite 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.

10. 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)

[Mr. Kanthi Narahari]
Member (Technical)

New Delhi
16th February, 2023
R. Nath.