

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**Company Appeal (AT) No. 121 of 2020****In the matter of:**

Mr. Pankaj Kumar Mishra
Through his Power of Attorney Holder,
Mr. Utkarsh Mishra

.....**Appellant**

Versus

1. Registrar of Companies, Mumbai
Everest Bldg., 100 Marine Drive,
Mumbai- 400002.
2. The Principal Commissioner of Income Tax-15,
Aayakar Bhavan, M.K. Road,
Mumbai- 400020

.....**Respondents**

Present:

For Appellant:- Mr. Saurabh Agarwal, Mr. Komal Mundhra and Mr. Shantanu Singh, Advocates.

For Respondent :- None

JUDGEMENT**Justice Jarat Kumar Jain.J**

The Appeal has been filed under Section 421 of the Companies Act, (In Brief 'The Act') against the Order dated 11.11.2019 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai (In Brief 'Tribunal') in C.P. No. 364/252/(MB)/2019, whereby allowed the Appeal filed by the Principal

Commissioner of Income Tax-15 Mumbai (Respondent No. 2 herein) and thereby restored the name of Viking Ship Managers Pvt. Ltd. in the Register of Companies.

2. Brief facts of this case are that the name of the Viking Ship Managers Pvt. Ltd. Company was struck off by ROC Mumbai from the Register of Companies. The Principal Commissioner of Income Tax-15, Mumbai (Respondent No. 2 herein) challenged the order of ROC before the Tribunal under Section 252 of the Act. It is stated before the Tribunal that the Company has certain Financial transactions that have been entered into by the Company for the Assessment year 2011-12 and information regarding this were received from the office of ITO Income Tax Officer 15 (3) (2) Mumbai. However, no return of income has been filed. Therefore, notice under Section 148 of the IT Act, 1961 has been issued for Assessment year 2011-12 proposing to assess/reassess the income. The Company has been struck off from the Register of Companies. Therefore, it is difficult to assess the defunct Company and it will cause huge loss of revenue of the Government of India. Hence, it was prayed that the name of the Company be restore in the Register of Companies.

3. The Authorized representative for the Registrar of Companies submitted before the Tribunal that they do not have any objection to restore the name of the Company in the Register of Companies. Ld. Tribunal by the Impugned Order allowed the Appeal and directed to restore the name of the Company in the

Register of Companies. Before passing of Impugned Order no notice has been served on the Company, however, the Company was arrayed as the Respondent.

4. Being Aggrieved with the order passed by the Tribunal, the Appellant Ex-Director and Majority Shareholder and Power of Attorney Holder of the Company has filed this Appeal.

5. Notice of this Appeal has been duly served on the Respondents i.e. Registrar of Companies and the Principal Commissioner of Income Tax-15, Mumbai through Speed Post, however, nobody appeared on behalf of the Respondents on date of hearing i.e. 04.09.2020 and 22.09.2020. Therefore, we proceed ex-parte against the Respondents.

6. Learned Counsel for the Appellant submitted that Section 252 (1) of the Act, provides that before passing any order under this Section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the Company and all the persons concerned. Rule, 37 of the National Company Law Appellate Tribunal also provides that the Tribunal shall issue notice to the Respondent to show cause against the Application or Petition on date of hearing to be specified in the notice. Admittedly, before the Tribunal Company was arrayed as Respondent, However, no notice has been served on the Respondent. Thus, the Impugned order is bad in law and deserves to be set aside on this ground alone.

7. Learned Counsel for the Appellant further submits that the Assessment for the year 2011-12 has already been completed. Therefore, there is no tenable

reasons to revive the strike of Company. It is further submitted that even after striking off the name from the Register of Companies under Section 248 (5) of the Act. As per Section 248 (6) the Assets of the Company shall be made available for the payment or discharge of all its liabilities and obligations, even after the date of order removing the name of the Company from the Register of Companies.

8. Learned Counsel for the Appellant also submits that there is no business activity carried out by the Company as on the date and also in the year 2018. There is no employee available to look out for the affairs of the Company and such restoration would lead to an unreasonable amount of burden and penalties on the Appellant as Company is no position to comply with any of the provisions under the Act. Thus, the Impugned Order deserves to be set aside.

9. After hearing the Learned Counsel for the parties, we have perused the record.

10. In the Impugned Order it is not mentioned that before passing the Impugned Order, Learned Tribunal has served the notice on the Company or its Directors. Learned Tribunal has passed the Impugned order under Section 252 of the Act, which reads as under:-

“252. Appeal to Tribunal- Any person aggrieved by an order of the Registrar, notifying a company as dissolved under Section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that he date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the

Registrar, if may order restoration of the name of the Company in the register of companies.

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned:

Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under Section 248, file an application before the Tribunal seeking restoration of name of such company.”

11. Rule, 37 of the National Company Law Tribunal Rules, 2016 also provides that the Tribunal shall issue notice to the Respondent to show cause against the Application or Petition on the date of hearing to be specified in the notice. Such notice shall be accompanied by a copy of the Application with supporting documents. The Tribunal has not issued such notice to the Appellant.

12. In such a situation, we are of the view that without giving any opportunity of hearing Learned Tribunal has passed the Impugned Order. The order is not sustainable in law. Thus, the Impugned order hereby set aside and the matter is remitted back to the Tribunal with the direction that after hearing the parties decided the Appeal under Section 252 of the Act, as per law without influence by its earlier Order.

13. The Appellant is directed to remain present before the National Company Law Tribunal, Mumbai Bench, Mumbai on 2nd November, 2020.

The Registrar is directed to transmit the copy of the order to the concerned Tribunal forthwith.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Balvinder Singh)
Member (Technical)

New Delhi
30th September, 2020.
SC