

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 197 of 2017

IN THE MATTER OF:

Rahul Rice Mills Pvt. Ltd.

... Appellant

Versus

Registrar of Companies, New Delhi

... Respondent

**Present: For Appellant: - Shri Sarwar Raza and Ms. Ojaswee
Gupta, Advocates**

**For Respondent : Shri Nawal Kishore Jha, Senior
Panel Counsel for Union of India/
ROC, NCT of Delhi and Haryana**

ORDER

18.07.2017 This appeal has been preferred by appellant-Rahul Rice Mills Pvt. Ltd. against the Judgement dated 21st April, 2017 passed by the Principal Bench, National Company Law Tribunal (hereinafter referred to as 'Tribunal'), New Delhi in Company Petition No. 171 of 2016, whereby and whereunder the application preferred by the appellant under sub-section (6) of Section 560 of the Companies Act, 1956 with a prayer for issuance of direction to the Registrar of Company (hereinafter referred to as 'ROC') to restore the appellant company on its register has been rejected.

2. Learned counsel appearing for the appellant submits that the company was facing financial crisis and due to uncertain financial position during the years 2008-09, 2009-10 and 2010-11, in order to

overcome the atmosphere of uncertainty in the business of rice milling and as huge investment was required, the Board of Directors of the company decided to apply for 'Fast Track Exit Scheme, 2011' in its meeting held on 22nd September, 2011. The application was allowed by ROC, who struck-off the name of the appellant company from the register. He further submits that as the financial position of the promoters is better and they are in a position to run the business of the company and with a view to take advantage of the goodwill of the company, appellant wants restoration of the company in terms of sub-section (6) of Section 560 of the Companies Act, 1956. He further submits that ROC has also not objected to the same.

3. Learned counsel appearing on behalf of ROC, N.C.T. of Delhi and Haryana opposed the submission made by learned counsel for the appellant and submits that ROC never gave any clearance for restoration of the company itself.

4. We have heard learned counsel for the parties and perused the impugned order.

5. Admittedly, the appellant company was in uncertainty and was not in a position to promote the business of rice milling and as financial condition during the years 2008-09, 2009-10 and 2010-11 was not such, so they applied for 'Fast Track Exit Scheme, 2011'. This was allowed taking into consideration all the facts including the Annual Returns for the year 2009-10 and Balance Sheet as on 31st March, 2010. Learned Tribunal, having noticed the provisions of Section 560 of the Companies

Act, 1956, while held that the company could be revived within a period of 20 years from the date of publication of the order in the Official Gazette, did not find any ground to restore the company itself on the following grounds :

“8. A perusal of Section 560 of the Act would show that Registrar of Companies is required to comply with comprehensive procedural obligations before passing a final order of striking off the name of a Company from its Register. In the reply filed by the Registrar, it has been clarified that a copy of an application dated 18.10.2011 was received in the Office of the ROC under Section 560 in accordance with the Fast Track Exit Scheme, which was duly supported by affidavit. It was also accompanied by an indemnity bond from the Directors of the Company. A Resolution of the Board of Directors for striking off the name of the Company was also placed on record. Accordingly, the name was struck off from the Register of the Registrar of Companies under Section 560. Learned counsel for the Petitioner has argued that it is just and proper to restore the name of the Company on the Register of the Registrar of Companies. According to the learned counsel the company has passed through a financial crisis which the directors can now overcome. Learned counsel has also filed consent letters of Mr. Rajan

Mehta, Mr. Rahul Mehta and Ms. Poonam Mehta. The aforesaid three Directors were also the directors in the year, 2011 when the Company was struck off by deleting its name from the Register of the ROC. All the three are party to a Resolution passed by them on 27.11.2015 where a decision has been taken to restore the Company. Learned counsel for the Petitioner also emphasised that all the three Directors are prepared to infuse funds in order to restore the Company.

9. *Having heard learned counsel at a considerable length and after perusal of the record we have reached the conclusion that no case is made out for restoring the name of the petitioner company on the register of the Registrar. Firstly, the petitioner company has no locus standi to file the instant Petition as no company of such name exists on the register of the ROC. Secondly, the Directors themselves voluntarily passed a Resolution on 22.9.2011 to seek exit of the company under Fast Track Exit Scheme, 2011. Once the discretion to exit the company has been exercised, we find no reasonable cause to conclude that the revival of the company is supported any of the grounds specified under Section 560 of the Companies Act. Moreover,*

there is nothing on record to show that the company has been transacting any business after its dissolution or it has any property. Merely because the Directors are now in a position to infuse funds would not constitute a sufficient ground for us to accept the prayer for restoration of the name of the company on the register of the ROC. It is not the discretion of the erstwhile Directors of the company to get the company struck off or revive the company at any time they like especially when they have exercised the discretion for getting its name struck off under the Fast Track Exit Scheme, 2011.”

6. We are satisfied with the grounds shown by the Tribunal and find no reason to differ with such finding. In this background, while we are not inclined to interfere with the impugned Judgement, dismiss the appeal. However, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)