

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 202 of 2017

IN THE MATTER OF:

Delhite Niphko (India) Pvt. Ltd. & Anr.

... Appellants

Versus

**Registrar of Companies,
Delhi and Haryana**

... Respondent

**Present: For Appellant: - Shri Naresh Kumar and Shri Rajan
Khanna, Advocates**

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

ORDER

19.07.2017 Appellants namely, Delhite Niphko (India) Pvt. Ltd. and one Mr. Inder Dev Sharma, filed a petition under the erstwhile provisions of sub-section (6) of Section 560 of the Companies Act, 1956 before the High Court of Delhi. The said petition was subsequently transferred to the National Company Law Tribunal (hereinafter referred to as 'Tribunal'), Principal Bench, New Delhi under Section 434(c) of the Companies Act, 2013. The Principal Bench of the Tribunal by impugned order dated 1st May, 2017 having rejected the petition, the present appeal has been preferred.

2. Learned Tribunal has noticed the stand taken by the respondents, not denied by the appellants, as quoted below :

“5. The Respondent has filed detailed reply and a perusal of which discloses that the Petitioner Company has not filed the statutory documents in the form of balance sheet and annual accounts made upto 31.3.2006 and as per the relevant provisions of the Companies Act, 1956 they are liable for punishment/penalty. It is further stated in the objections filed by the Respondents that the 1st Petitioner itself had under the SES, 2003 had opted to have its name struck off from the Register of the Respondents and in pursuant to the same the name of the First Petitioner was struck off from the Register. A Notification under Section 560(5) was also issued and published in the Official Gazette of India on 8.9.2006, as evident by Annexure-I of the reply.

6. Learned Counsel for the Respondent also strenuously stated that the First Petitioner had exercised the option voluntarily to have its name struck off from the Register being maintained by the Respondents and it was not an act done suo moto by the Respondents. In the above circumstances the option of sub-Section (6) of Section 560 of the Companies Act, 1956 to have its name restored to the Register of the Respondents shall not be available to

it as it has been done on its own volition and in the circumstances the Judgement of the Hon'ble High Court of Madras rendered in the case of Dasaprakash Private Limited v. Registrar of Companies (being in CP No. 31/2012 decided on 3.8.2012 a copy of which was filed before this Tribunal) will apply."

3. Taking into consideration the stand taken by the appellants/petitioners and the submissions as were made on behalf of the respondents, the Tribunal held as follows :

"7. We have carefully considered the rival submissions of the parties before us. It is evident from the fact as narrated above that the First Petitioner Company has on its own volition submitted an application under the relevant Scheme of 2003 for having its name struck off from the Register maintained by the Respondents. Under similar circumstances the Scheme being of 2011 titled as Fast Track Exit Scheme, 2011 instead of SES,2003, this Tribunal after detailed discussions has already held in the case of Rahul Rice Mills Private Limited v. Registrar of Companies (CP No. 171/2016 decided on 21.4.2017) that subsequent petition under Section 560(b) will not be maintainable."

4. Learned counsel appearing on behalf of the appellants submitted that the appellants have recently come to know that the name of the 1st Appellant Company has been struck-down and that the letter to ROC for withdrawal of the application made under SES, 2003, which was given in the year 2006, has not been acted upon and in view of the same, the Board of Directors of the 1st Appellant Company on 4th July, 2015 has decided to apply for revival of the Company. However, such submission cannot be accepted in view of the fact that the 1st Appellant Company itself under Simplified Exit Scheme (SES), 2003 had opted to have its name struck-off from the register of the Registrar of Companies (ROC), N.C.T. of Delhi and Haryana. Learned counsel appearing on behalf of ROC also submits that it was on the application preferred by the appellants, the name of the Company was struck-down as back as in 2006, and it was notified in the Official Gazette on 8th September, 2006. This apart, if the argument of the learned counsel for the appellants is accepted that the name of the Company was not struck-down by the ROC, there was no occasion for the appellants to file a petition under sub-Section (6) of Section 560 of the Companies Act, 1956.

5. We find no merit in this appeal and it is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)