

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**NEW DELHI****COMPANY APPEAL(AT) NO.177 OF 2019**

(ARISING OUT OF IMPUGNED JUDGEMENT DATED 4.6.2019 PASSED BY NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI IN APPEAL NO.48/252/ND/2018)

IN THE MATTER OF:

1. Calcutta Rubber Factory Pvt Ltd
A-21, Maya Puri Industrial Area,
Phase II, New Delhi.
2. Ranbir Singh
S/o Sh Hukum Singh,
J-9/18C, Rajouri Garden,
New Delhi.
3. Charanjeet Singh
S/o Shri Ranbir Singh,
J-9/18C Rajouri Garden,
New Delhi.

Appellants

Vs.

Registrar of Companies,
Delhi and Haryana,
4th Floor, IFCI Tower,
Nehru Place,
New Delhi.

Respondent

For Appellant:- Mr. Ashish Middha, Advocate**For Respondents:-** Mr. P.S. Singh, Sr. Central Govt Counsel for ROC.**JUDGEMENT**
(6th December, 2019)**JUSTICE JARAT KUMAR JAIN, MEMBER (JUDICIAL)**

This appeal is preferred by Calcutta Rubber Factory Pvt Ltd and its directors/shareholders against the order passed by NCLT, New Delhi on

4.6.2019 by which dismissed the appeal and affirmed the order of Respondent ROC striking the name of the company from the register of companies.

2 Appellant No.1 company was incorporated under the provisions of Companies Act, 1956 on 06.05.1980 and its registered office is at A-21 Mayapuri Industrial Area, Phase II, New Delhi. Appellant No.2 and 3 are erstwhile directors and shareholders of the company. The company is into the business of manufacturers, distributors, dealers, stockists, repairers, importers and exporters of all kind of tyres, tubes, flaps, moulded rubber parts, valve body, cast iron wheels, retreading materials, rubber gums etc. The appellant company had applied for the allotment of industrial land to HUDA and on 03.03.2014 HUDA allotted 300 sq meters land bearing Plot No.327H, Sector 37 II, Gurgaon and for the same directors had paid money from their bank account. Though the company had not filed its annual returns and financial reports after the period ending on 31st March, 2013 but such reports and returns are ready with the appellants.

3. Respondent, ROC served the notice under Section 248 of the Companies Act, 2013 on 27.3.2017 to the appellant company. However, the notice returned undelivered with postal remark "Left". Thereafter, a public notice was issued and with effect from 3.06.2017 the company's name was struck off from the register of the companies.

4. The order was challenged in the appeal before the NCLT, New Delhi. NCLT has called the report from Income Tax Department about the income tax returns of appellant company. Department has submitted the report. NCLT after perusal of the record found that the appellant company was a non-

functional company at the time of strike off its name. Since the company is having immovable property which is only reflected in the Balance Sheet for the year ending 31.03.2018 i.e. after striking off. Hence NCLT has dismissed the appeal by the impugned order dated 04.06.2019.

5. Learned counsel for the appellants submits that ROC has not complied the mandatory provisions of Section 248(1) of Companies Act, 2013 which provides that before passing any order under Section 248(1) ROC shall send a notice to the company and all the directors of the company of his intention to remove the name of the company from the register of the companies and requesting them to send a representation within a period of 30 days from the date of notice. Sub-rule (2) of Rule 3 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 provides that the Registrar shall give a notice in writing in form No.STK-1 to all the directors of the company at the address available on record, by registered post with acknowledgement due or by speed post. It reflects from the notice STK1 dated 17.03.2017 that the address of director Ranbir Singh and Charanjit Singh was available on record. However, the notices were not served with them. Thus the respondent has not complied the mandatory prescribed procedure. It is also submitted that the NCLT failed to appreciate that before passing the order the Respondent has not recorded his satisfaction as per Section 248(6) of the Companies Act, 2013.

6. Learned counsel for the appellant further submitted that the appellant company has a plot of 300 sq Meters allotted by HUDA. The company is paying the property tax of the plot, receipts are annexed with the appeal. The

company was not doing well and was running into losses which accumulated to Rs.630589/- for the year ending 31st March, 2013. It is true that the annual returns and financial reports after the period ending on 31st March, 2013 have not been filed but such reports and returns are ready with the appellant. NCLT has not considered the documents placed on record. Hence the order striking off the name of the company be set aside.

7. Learned counsel Shri P.S. Singh, Sr. Central Govt Counsel support the impugned order and submitted that the appellant company was incorporated in the year 1980 and on 3.3.2014 land was allotted to company by HUDA even though the company is not doing any business and had not filed the Income Tax returns for the assessment year 2012-13 to 2015-16. The company has not filed the audited annual accounts since 2013 onwards. Thus the appellant company is not carrying on any business and ROC has rightly struck off the name of the company from the register.

8. Having heard learned counsel for the parties, we have carefully examined the documents.

9. Sub-section (1) of Section 248 of Companies Act, 2013 provides that where the Registrar has reasonable cause to believe that a company is not carrying on any business of operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of dormant company under Section 455 then he shall send a notice to the company and all the directors of the company of his intention to remove the name of the company from the register of companies and requesting them to send their representation alongwith the

copies of relevant documents within 30 days from the date of notice. Admittedly ROC has served notice dated 17.3.2017 to company's registered address which returned unserved. In the notice name of company's directors i.e. Appellant No.2 and 3 and their address are mentioned, however, no notice have been sent to them by the ROC. It is true that in the notice No.ROC/DEL/248(1)/STK1 dated 17.3.2017 which was sent to company it is mentioned "that the notice is also treated as having been served on the directors of the company in terms of the provisions of Section 20 of the Companies Act, 2013". We are of the view that this is not the compliance of mandatory provisions under sub-section (1) of Section 248 of Companies Act, 2013 and the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

10. Due to non-compliance of this provisions the appellants could not send their representations alongwith relevant documents before the ROC. Before passing the order ROC has not recorded his satisfaction as per provisions under sub-section (6) of Section 248 of Companies Act, 2013.

11. The company is having a lease hold plot allotted by HUDA and the appellant company undertakes to file the returns and the financial statements after the period 2012-13. The company was carrying on business but was running into losses which accumulated to Rs.630589/- from the year ending 31st March, 2013 and loss of Rs.3500/- and Rs.3500/- from the year ending as on 2016-17, 2017-18. From these facts it cannot be said that the company is not carrying on any business.

12. From the above discussions and observations we have come to the conclusion that it would be just that the name of the company is directed to be restored. The following orders/directions are passed:-

i) Impugned order is quashed and set aside. The name of the appellant No.1 company shall be restored to the Register of Companies subject to the following compliances:

ii) Appellants shall pay costs of Rs.1,00,000/- (Rupees One lac only) to the Registrar of Companies, New Delhi within 30 days.

iii) Within 30 days' of restoration of the company's name in the register maintained by the ROC, the company will file all their annual returns and balance sheets due for the period ending 2012-13 to date. The company will also pay requisite charges/fee as well as late fee/charges as applicable.

iv) In spite of present orders, ROC 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 appeal is accordingly allowed.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

New Delhi
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