

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

COMPANY APPEAL(AT) NO.137 OF 2018

(ARISING OUT OF IMPUGNED ORDER AND JUDGEMENT DATED 15.3.2018 PASSED BY NATIONAL COMPANY LAW TRIBUNAL, PRINCIPAL BENCH, NEW DELHI IN CP NO.CP-44(ND)/2017).

IN THE MATTER OF:

	<u>Before NCLT</u>	<u>Before NCLAT</u>
1. Shri Balaji Cycle Pvt Ltd 22/3/1, Chah Indara, Near Jubilee Cinema, Chandni chowk, Delhi-110006	1 st applicant	1 st appellant
2. Shri Suresh Kumar Sharma, S/o Sh Kedarnath Sharma, R/o 790, Sector-14, Sonapat (Haryana) 131001.	2 nd applicant	2 nd appellant

Versus

The Registrar of Companies,

NCT of Delhi and Haryana,
4th Floor,
IFCI Towers,
Nehru Place, New Delhi-110019.

1st respondent 1st respondent.

For Appellant:- Mr S.P. Singh Chawla, Advocate.

For Respondents: - Mr. Sanjib K Mohanty, Advocate.

JUDGEMENT

MR. BALVINDER SINGH, MEMBER (TECHNICAL)

The present appeal has been filed by the appellant under Section 421 of the Companies Act, 2013 against impugned final order and judgement dated 15.03.2018 passed by the National Company Law Tribunal Principal

Bench, New Delhi in No.CP-44(ND)/2017 whereby the company petition has been dismissed.

2. The brief facts of the case are that the appellant company was incorporated on 30.4.1997 under the provisions of Companies Act, 1956. The authorised share capital of the company was Rs. 5,00,000/- divided into 50,000/- equity share of Rs. 10/- each. The issued, subscribed and paid up capital of the company was Rs.1,00,000/- divided into 10,000/- equity shares of Rs. 10/- each.

3. The ROC-respondent struck off its name from the register on account of the company being not carrying on any business or in operation under Section 560 of the Companies Act, 1956. The name of the appellant –company was struck off vide Official Gazette Notification dated 23.06.2007. The claim of the appellant is that the appellant is active since its inception and has prepared its Balance Sheet and Profit and Loss Account and also holding its board meetings and general meetings.

4. The ROC has filed its reply and has disclosed that the company has not filed any statutory documents i.e. Balance Sheet and Annual Returns since its incorporation which contravene the provisions of section 159/220 of the Companies Act, 1956 compelling the ROC to believe that the appellant Company was not carrying on any business or was not in operation.

6. The reason for striking off the name of the appellant company is non-filing of Balance Sheet and Annual Returns since its incorporation which resulted in the belief that the appellant was not carrying out any business. Notice for striking off was published in the Official Gazette on 23.6.2007. In

reply, the ROC has further submitted that appellant company may be put to strict proof as to it carrying out business operations since incorporation including submitting of income tax returns, viability of running the company, composition of Board of Directors, shareholders, creditors and their consents thereof for the present application for restoration. The appellant company did not produce any Income Tax Returns and has placed on record the true copy of the audited Balance Sheet and Profit & Loss Account only for the financial year ending on 31.03.2016. The name of the appellant company has been struck off by following the procedure laid down by Section 560 of the Companies Act, 1956 and the record is not traceable in the office of ROC. The notice issued under section 560(5) has been placed on record.

7. Learned NCLT after hearing the parties passed the impugned order dated 15.3.2018, the relevant portion is as under:-

“ROC has raised the serious objections that petitioner company may be put strict proof as to it carrying out business operations since incorporation including submitting of income tax returns, viability of running the company, composition of Board of Directors, shareholders, creditors and their consents thereof for the present application for restoration. Despite opportunity Petitioner Company did not produced Income Tax Returns and has placed on record the true copy of the audited Balance Sheet and Profit & Loss Account only for the financial year ending on 31.3.2016. Therefore, adverse inference has to be drawn against petitioner. In the factual

background it would fortify the view that the company has no business transaction and was not in operation since its inception.

12. As a sequel to the above discussions this petition fails and the same is dismissed.”

8. Being aggrieved by the impugned order dated 15.3.2018 the appellant have filed the present appeal.

9. The appellant has stated that the appellant has been carrying on the Cycle manufacturing business since its incorporation. The appellant further stated that the company did not receive any show cause notice issued by the respondent and also stated that the property adjacent to the appellant had somehow colluded with the postman to prevent any correspondence from reaching the appellant.

10. The appellant further stated that the due to various factors, such as the illness of its directors, paucity of funds, severe recession, as well as a general slump in the market, the appellant business was not very successful after incorporation and, therefore, it was unable to file the necessary statutory documents with the respondent since accounting year 2000-2001. The appellant further stated that the appellant only came to know about the name of the appellant being struck off only in 2017 but the company continued to operate and carry on its business in its usual course.

11. The appellant stated that due to inadvertence the appellant company has not had the opportunity to justify to the respondents that the name of company should not be struck off. Further the company stated that the ample time has not been provided to the company to present that the company is carrying on business or is in operation. The appellant stated that the company has been

regular in preparing annual accounts and also holding its board meetings, general meetings of the shareholders as and when required, maintain proper records, register. The appellant stated that the company has two shareholders and three creditors and they have consented to the restoration of the name of the appellant company in the Register of Companies maintained by the ROC. The appellant further stated that during the pendency of the application, the appellant has also paid lease rentals to HSID for the land allotted to the appellant situated at Industrial shed No.39 in the Industrial Estate, Murthal, Sonipat.

12. Learned counsel for the appellant stated that the learned NCLT had directed the company to furnish certificate from HSIDC in relation to the allotment of plot that it still stands in the name of the company and all the dues have been paid. The appellant stated that they have paid the dues.

13. Reply has been filed on behalf of the ROC, Delhi. 1st respondent stated that the appellant had not filed any statutory documents i.e. Balance Sheet and Annual Returns since its incorporation which was in contravention of Section 159/220 of the Companies Act, 1956 which compelled 1st Respondent to believe that appellant company was not carrying on any business or in operation, 1st respondent considered it fit to strike off the name of the company.

14. 1st respondent stated that the name of the appellant was struck off from the register of Registrar of Companies under Section 560 of the Companies Act, 1956 and finally notification under Section 560(5) was issued and published in the Official Gazette of India on 23.6.2007. The name of the appellant was struck off due to non-filing of the Balance Sheet and Annual Return since its incorporation which compelled 1st respondent to believe that appellant was not carrying out any business.

15. 1st respondent stated that the notices under Section 560 of the Companies Act, 1956 were issued but are not readily traceable as the records of ROC, Delhi and Haryana have been shifted to Manesar but 1st respondent stressed that the notices under Section 560(5) was issued and published in the official gazette vide dated 23.6.2007.

16. We have heard the learned counsel for the parties and perused the record.

17. Learned counsel for the appellant argued that the appellant has been carrying on the Cycle manufacturing business since its incorporation. The appellant further argued that the company did not receive any show cause notice issued by the respondent and also argued that the occupier of the property adjacent to the appellant had somehow colluded with the postman to prevent any correspondence from reaching the appellant.

18. Learned counsel for the 1st respondent argued that the appellant had not filed any statutory documents i.e. Balance Sheet and Annual Returns since its incorporation which was in contravention of Section 159/220 of the Companies Act, 1956 which compelled 1st Respondent to believe that appellant company was not carrying on any business or in operation, 1st respondent considered it fit to strike off the name of the company. 1st respondent further argued that the name of the appellant was struck off from the register of Registrar of Companies under Section 560 of the Companies Act, 1956 and finally notification under Section 560(5) was issued and published in the Official Gazette of India on 23.6.2007. 1st respondent also argued that the notices under Section 560 of the Companies Act, 1956 were issued but are not readily traceable as the records of ROC, Delhi and Haryana was shifted to Manesar but 1st respondent stressed

that the notices under Section 560(5) was issued and published in the official gazette vide dated 23.6.2007.

19. After hearing both the parties we observe that the appellant has not produced any document to satisfy us that the appellant is carrying on business and is in operation. The documents show the names of the companies whose names were struck off was published in Official Gazette of India on 23.6.2007 was placed before us. Even the appellant has also annexed a copy of the same. Further we have noted that it is the practice of the ROC to issue show cause notice to the companies giving them 30 days' time to submit their reply. No reply was submitted by the appellant nor assertion by the appellant has been made for the same. Further we are unable to accept the argument of the appellant that the occupier of the property adjacent to the appellant had somehow colluded with the postman to prevent any correspondence from reaching the appellant. On this point we are of the opinion if there was such things happening and the appellant had some doubt then the appellant should have complained to the Police as well as Postal Authorities. We observe this is an afterthought argument. It also gives an impression that while all this is being done the company which argues that we are carrying on business or in operation is negligent that it can allow non-communication to it which itself would be detrimental to running its business or operation. It only strengthens that the company is not carrying on any business or in operation.

20. The appellant further argued that the due to various factors, such as the illness of its directors, paucity of funds, severe recession, as well as a general slump in the market, the appellant business was not very successful after

incorporation and, therefore, it was unable to file the necessary statutory documents with the respondent since accounting year 2000-2001. The appellant further stated that the appellant only came to know about the name of the appellant being struck off only in 2017 but the company continued to operate and carry on its business in its usual course. The appellant further argued that due to inadvertence the appellant company has not had the opportunity to justify to the respondents that the name of company should not be struck off. Further the company argued that the ample time has not been provided to the company to present that the company is carrying on business or is in operation. The appellant argued that the company has been regular in preparing annual accounts and also holding its board meetings, general meetings of the shareholders as and when required, maintain proper records, register. The appellant argued that the company has two shareholders and three creditors and they have consented to the restoration of the name of the appellant company in the Register of Companies maintained by the ROC. The appellant further argued that during the pendency of the application, the appellant has also paid lease rentals to HSID for the land owned by the appellant situated at Industrial shed No.39 in the Industrial Estate, Murthal, Sonipat and the property is still in the name of the appellant.

21. 1st respondent argued that the appellant had not filed any statutory documents i.e. Balance Sheet and Annual Returns since its incorporation which was in contravention of Section 159/220 of the Companies Act, 1956 which compelled 1st Respondent to believe that appellant company was not carrying on any business or in operation, 1st respondent considered it fit to strike off the

name of the company. Ample opportunity has been given to the appellant to reply to show cause but the appellant did not care to file the same.

22. We have heard the parties on this issue. We observe that the appellant has not filed the statutory returns and financial statement as required under Companies Act, 1956. We noted that the consent of the shareholders and the creditors have been filed by the appellant. We noted that the shareholders and creditors are all family members. As regards the plea taken by the appellant that the appellant has deposited lease rentals with the HSIDC, we further observe that the lease rentals have been deposited only after when the NCLT asked for proof in its order dated 19.5.2017 (Page 94). We are not sure what course of action the company would have taken either to deposit or otherwise of the lease rentals if the NCLT has not asked for proof. Subsequent event to deposit the lease rental after the proof has been asked for cannot be taken a good ground to assert that the company has already been in business or in operation.

23. In view of the above observations and discussions, the appeal has no merit and deserves to be dismissed. Accordingly, the appeal is dismissed. No orders as to costs.

(Justice A.I.S. Cheema)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

New Delhi:

Dated:10-4-2019

BM