

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**NEW DELHI****COMPANY APPEAL (AT) NO.203 OF 2019****In the matter of:**

M/s Insuflex Ind Prviate Ltd,
HSG Society,
1214 Nagar Road,
Pune
Maharashtra

Appellant

Vs

1. Registrar of Companies,
Block A, 1st and 2nd Floor,
Pimpri Chinchwad,
New Town Development Authority,
Near Akurdi Railway Station,
Akurdi, Pune 411044
Maharashtra.

2. Income Tax Department,
Office of Asstt. Commissioner of Income Tax,
Circle 11, 4th Floor, B Wing,
PMT Building,
Snargate, Pune 411037

3. State of Maharashtra,
Through Ministry of Finance,
5th Floor, Main Building Mantralaya,
Mumbai 400032

Respondents

Mr. Abhinav Trehan and Mr. Anuj Kapoor, Advocates for Appellant.
Mr. Kamal Kant Jha, Sr. Panel Counsel for ROC.
Ms Lakshmi Gurung, Sr. Standing Counsel for Incomes Tax.
Mr Prashant S Kenjde, Advocate for R3.

JUDGEMENT
(12th DECEMBER, 2019)**JUSTICE JARAT KUMAR JAIN, MEMBER (JUDICIAL)**

This appeal is preferred by Insuflex Ind Private Ltd against the order passed by NCLT Mumbai on 24.06.2019 by which dismissed the appeal and

affirmed the order of Respondent/ROC striking the name of the appellant company from the register of companies.

2. Income Tax Department and State of Maharashtra through Ministry of Finance were impleaded as Respondent No.2 and 3 in the appeal as there is tax liability against the appellant company.

3. The appellant company was incorporated under the Companies Act, 1956 on 02.03.2004 as a Private Company having its registered office at 5, Mahindra HSG Society, 121, Nagar Road, Pune, Maharashtra. The authorised share capital of the company is Rs.5 lakhs divided into 50000 equity shares of Rs.10/- each. Registrar of Companies,(in brief ROC) Pune initiated the proceedings under Section 248 of the Companies Act for the purpose of striking off the name of the company from the register of companies, as the company had failed to submit annual returns and financial statement for the period 2011-12 to 2015-16. The ROC has issued STK-1 notice on 11.3.2017 to appellant company. The Appellant company did not reply to the notice. Thereafter the notice was published on 27.4.2017 and on 11.7.2017 the STK 7 public notice was issued whereby the name of the company has been struck off from the register of companies.

4. Appellant company has challenged this order in Company Appeal No.1296/252/NCLT/MAH/2019 before NCLT Mumbai. NCLT Mumbai found that the appellant company did not generate any income/revenue since incorporation. The company currently exists on paper, not carrying on any business or operation. Thus affirmed the order of the ROC, Pune and dismissed the appeal on 24.06.2019. Being aggrieved the appellant company has filed this appeal.

5. Learned counsel for the appellant submits that there are two directors in the company. First director and majority shareholder Mr. Prakash Chablani is Non-Resident Indian and is presently based in Dubai. Second director Mr. Mohamad Ansari who resides in India has been taking care of all day to day requirement of the company. The balance sheet of the company was filed till 2012 with the Income Tax Department, but Director Mr. Mohamad Ansari was not agreeing to sign the balance sheet of the company, hence the balance sheet and the financial statement could not be filed before

ROC. It is further submitted the NCLT has not considered that the company has assets and liabilities. The company is holding the land at Village Karde Sub-District Taluka Shirur, Distt. Pune which was purchased vide Sale deed dated 16.7.2010. Now its value is about Rs. 2 crores. The appellant company has to pay income tax Rs.62,070/- and sales tax amounting to Rs.88336/-. Director Prakash Chablani has filed the affidavit and undertaking that if the name of company is restored to the register of companies then he will pay the government dues. It is also submitted that the directors of the company want to go for voluntary winding up of the company after clearing all creditors for which revival of the company is necessary. Financial statements and annual returns since 2011-12 are prepared and they are filed before the NCLT as well as before this Tribunal. In such circumstances the impugned order be set aside.

6. Learned counsel appearing on behalf of ROC filed written submissions. In sum of substance is that the appellant company had failed to file financial statements and annual returns since 2011-12, therefore, after giving reasonable opportunity and following the procedure envisaged in Section 248 of Companies Act, 2013 and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 the name of the appellant company was struck off. NCLT after considering all the documents on record has rightly affirmed the order passed by ROC. Hence the appeal may be dismissed. 7. Learned counsel for Respondent No.2 and 3 submitted that there is recovery from the appellant company.

8. Having heard the learned counsel for the parties, we have considered the submissions.

9. We note that the company had purchased land on 16.7.2010 for a consideration of Rs.25 lakh and the company had a liability to pay income tax amounting to Rs.62070/- plus interest and sales tax Rs.88336/-.

10. Undisputedly the appellant company has not filed financial statements and returns since 2011-12 onwards. ROC has served the STK-1 notice on 11.3.2017 on appellant company. Thereafter STK-5 notice dated 27.4.2017 was served and when he has not received any response then as per STK-7

notice dated 11.7.2017 the name of the appellant company was struck off from the register of companies.

11. Except the failure to file the financial statements and returns there is no complaint against the appellant company. Appellant has placed on record the report and financial statements from 2011-12 before the NCLT as well as before this Tribunal. We have gone through these reports and statements. From these it cannot be said that the appellant company is not carrying on any business since 2011-12. The appellant company is having assets and liabilities. In such circumstances we are of the view that the order passed by the NCLT is not sustainable in law.

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 order/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/- to the Registrar of Companies, Pune within 30 days.

iii) Appellants will also deposit the income tax liability and sales tax liability plus applicable interest with the concerned Department and produce the proof of the same before ROC, Pune.

iv) 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 2011-12 to date. The company will also pay requisite charges/fee as well as late fee/charges as applicable.

v) 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)

Bm/nn