

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No.388 of 2017

(Arising out of order dated 19.09.2017 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad in Company Application No.95/252/HDB/2017).

In the matter of:

**MJM Industries Pvt Ltd,
Through its Director,
Flat No.T201, 2nd floor,
MCH No.1-10-44/B, Technopolis
Begumpet, Hyderabad-500016**

Before NCLT

Before
NCLAT

Petitioner

Appellant

Versus

**The Registrar of Companies,
Andhra Pradesh & Telangana,
2nd floor, Corporate Bhavan,
GSI Post, Near Indu Aranya,
Thatti Annaram, Bandlaguda,
Hyderabad-500068**

Respondent Respondent

**Present: For appellant: Shri Arshdeep Singh and Mr. Akshat Gupta,
Advocates.**

For Respondent: Shri Sanjib Kumar Mohanty, Advocate.

JUDGMENT

BALVINDER SINGH, MEMBER (TECHNICAL)

1. The present appeal has been preferred under Section 421 of the Companies Act, 2013 by the appellant against the impugned order dated 19.09.2017 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad (hereinafter referred to as the 'Tribunal') in Company Application bearing CA No.95/252/HDB/2017.

2. The brief facts of the case are that the appellant is a private limited company registered under the Companies Act, 1956 having its registered office at Hyderabad. The appellant company is managed by three directors. The authorised, issued, subscribed and paid-up capital of the company is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each. The main objects of the company are given in its Memorandum of Association which are to carry on the business of manufacturers, assemblers, dealers, traders, exporters and importers, clearing and forwarding agents. Agents, wholesalers of all kinds and varieties of Industries used for production of all kinds and varieties of Goods and Commodities including iron boxes meant and used for pressing clothes by use of liquefied petroleum gas as fuel.
3. Appellant submits that the company could not carry on the business due to some operational issues and did not even file ROC Annual Filings within stipulated time. Now when the appellant company decided to go for regularising the company by filing all necessary ROC filings, it was found that the Registrar of Companies has struck off the name of appellant company from the Registrar of Companies and the company filed an application before the National Company Law Tribunal, Hyderabad Bench, Hyderabad to restore its status and then regularise the filings of the company accordingly. The Tribunal after hearing the petitioner rejected the application vide order dated 19.09.2017. The relevant portion of the impugned order is as under:

“5.In spite of the above facts available on record, the Petitioner Company has casually submitted that the ROC has struck off the name of the company on 28.07.2017

without any prior notice. In spite of publicising the information about the steps taken by the Government through various modes of communications including newspapers, notices from ROC, Gazette notification for striking off the names of Companies for various reasons, the Petitioner Company made such unwanted averments in the Petition which the Bench would like to view very seriously. 6.From the records made available by the Learned Counsel for the Petitioner, no record in support of their prayer is submitted by the Learned Counsel for making an appeal to NCLT, when the company itself is dissolved.

7.In the light of above facts and circumstances of the case, the Bench has no other option but to reject the Appeal dated 14.7.2017 filed through CA 95/252/HDB/2017.”

4. Being aggrieved by the said impugned order dated 19.09.2017 the appellant has preferred this appeal.
5. Learned counsel for the appellant submitted that the name of the appellant company has been struck off by the Respondent vide Notice dated 21.07.2017 without following the procedure laid down in Section 248 of the Act read with the Companies Removal of Names Rules. No notice was issued to the Directors of the appellant company nor any notice was received by the appellant company before the action of striking off was concluded. Learned counsel for the appellant submitted that due to the illegal action of Respondent, the operations of the appellant company has come to a halt causing severe prejudice and loss of livelihood for the appellant company as well as its directors and employees.
6. Learned counsel appearing on behalf of the appellant submitted that Section 248(1) of the Companies Act, 2013 mandates the ROC to send a notice to the company and to all the directors of the said company, of his intention to remove the name of the company from the register of

companies. Learned counsel for the appellant further submitted that as per Rule 3(2) of Companies (Removal of Names) Rules, 2016 the Registrar is required to give a notice in writing in Form STK 1 which shall be sent to all the directors of the company at the addresses available on record, by registered post with acknowledgement due or by speed post. Learned counsel further submitted that the notices in Form STK-1 have only been issued to two directors and not to the third director namely Shri Venkata Raja Rajeshwara Sharma Sivanoori, who was appointed as an Additional Director on 1.3.2017 and the Respondent was intimated about the same vide Form DIR-12 on 14.3.2017. Learned counsel appearing on behalf of the appellant in support of this has placed reliance on judgements namely ***Ascot Shoes Pvt Ltd Vs ROC (2016) SCC Online Del 4180, Pancham Hotels Pvt Ltd Vs ROC (2015) SCC Online Del 9501, Badal Industries Pvt Ltd Vs ROC 1010 (117) DRJ 512, Newage Commercial P Ltd Vs ROC (2010) SCC Online Cal 1908, Tufail Ahmed Khan Constructions Pvt Ltd Vs UOI & Anr, MANU/BH/0577/2009, M/s Gill Heavens Farms Pvt Ltd Vs ROC, Co.P.No.121/2007, R.A.P. Garments Pvt Ltd Vs ROC, Co.P.No.461/2014.***

7. Learned counsel appearing on behalf of the appellants submitted that Section 248(1) of the Act read with Rule 3(2) of Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 prescribes the specific modes of service/delivery of notice i.e. registered post with acknowledgement due or speed post but no proof of service/delivery has been furnished by the Respondent.

8. Learned counsel for the appellant stated that as per Section 27 of the General Clauses Act, 1897 service is only deemed to be effected upon showing proof of properly addressing, pre-paying and posting by post the relevant document which could have been shown by furnishing the speed post receipts and the same has not been done in the present case.
9. Learned counsel for the appellant submitted that the purported documents evidencing speed post expenditure is wholly misplaced and the said documents in no way show that any notice in Form STK-1 was in fact issued and thereafter served/delivered to the appellant company or its two directors. Learned counsel further submitted that the speed post expenditure receipt is dated 11.1.2018 and is in relation to articles booked for the month of December, 2017 whereas the said notices were issued in March, 2017.
10. Learned counsel for the appellants submitted that the notice in Form STK-1 dated 17.3.2017 issued to appellant company is unsigned; notices issued to the two directors has been digitally signed on a date different from the date of the notice; no ground/reason has been given by the respondent for issuing the notices in contravention of the prescribed format of Form STK-1 in the Rules.
11. Learned counsel for the appellants further submitted that the respondent have no valid ground for striking off the name of the company under section 248(1) of the Act. Learned counsel further submitted that failure to file statutory returns is not a valid ground or reason contemplated under Section 248(1) of the Act for striking off.

12. Learned counsel for the appellant submitted that the appellant company has been a running concern since its incorporation and have invested huge sums of money towards the Research and Development of the Iron Boxes and had also purchased two parcels of land in 2015. Both the facts are evident from Independent Auditor's Report for FY 2013-14 and Income Tax Returns alongwith relevant Audited Balance Sheets showing computation of income and expenditure for the FY 2015-16, 2016-17 and 2017-18. Learned counsel next submitted that the appellant company is yet to file the abovementioned audited balance sheets with the Ministry of Corporate Affairs and is willing to do so, subject to restoration of the appellant to active status and subject to outcome of the appeal.

13. Reply has been filed on behalf of the Respondent. Learned counsel for the respondent submitted that the allegations made in the appeal that the respondent office in a completely illegal, arbitrary and malafide manner struck off the name of the appellant company by publishing notice in STK-7 under Section 248(5) of the Act, is denied.

14. Learned counsel for the respondent submitted that the appellant is a private limited company registered under the Companies Act and is required to file their Annual Financial Statements under Section 137 of the Act and Annual Returns under Section 92 of the Act every year. The appellant has not filed the above statutory returns since incorporation.

15. Learned counsel for the Respondent submitted that Ministry of Corporate Affairs vide letter F.No.3/53/2017-CL II dated 17.2.2017

advised all Registrar of Companies to identify companies which are not filing their Statutory returns and initiate action under Section 248(1) of the Act against companies which are not in operation. Learned counsel submitted that the respondent identified the companies which have not filed their statutory returns for the FY 2014-2015 and 2015-2016 and issued notice under Section 248(1) in STK I to those company and their directors. Learned counsel further submitted that the notices depicting the names of those companies have been published in the web portal of the Ministry of Corporate Affairs namely www.nca.gov.in and in the official Gazette in STK-5 and a public notice in STK-5A showing the web link to verify the name of the identified companies have been published in newspapers of English and Telugu languages. Name of these companies were also communicated to other regulators authorities like Income Tax, Central Excise, Service Tax and Reserve Bank of India. Learned counsel for the respondent submitted that after thorough verification of the filings done by these companies and after examining the replies received from the companies and their directors for the notice in STK-1, STK-5, STK-5A and after analysing the objections received from other Regulatory Authorities, 20082 companies have been struck off by the Respondent and STK-7 notices has been issued on 21.7.2017 and the same has been published in the official Gazette of India dated 19.8.2017.

16. Learned counsel for the respondent submitted that the respondent has issued notice in STK-1 by speed post to the Company and its directors on 17.3.2017 bearing letter

No.ROCH/248(1)/Removal/86579/2017, who were directors of the Company as per MCA Portal records at the time of identification of the defaulting companies. Learned counsel further submitted that a notice has been issued in STK-5 on 5.5.2017 to 24,338 companies seeking objections within 30 days of its publication on the proposed removal/strike off names. Learned counsel further submitted that notice have also been published in STK-5A on the proposed action of strike off the name of such companies, giving web link namely <http://www.mca.gov.in/Ministry/pdf/rocHyderabad-08052017.pdf> in Andhra Jyothi in Telugu language and New Indian Express newspaper in English language on 15.5.2017.

17. Learned counsel for the respondent submitted that after following the due process of law and after verification of replies received from the Companies and their directors, objection from other regulatory authorities and general public and after verifying the filing positions of all the Companies to which the notice have been issued and published, 20082 companies have been struck off and a notice in STK-7 was issued on 21.7.2017, which has been published in the official Gazette dated 19.8.2017.
18. Learned counsel for the respondent submitted that the Tribunal has rejected the application of the appellant for want of proof that the respondent has not followed due process of law and not an application under section 252(3) of the Act, if the appellant was a working company and aggrieved by the action of the Respondent in striking the name off

the Register, the appellant ought to have filed an application under Section 252(3) of the Act, since specific remedy is provided therein.

19. Learned counsel for the respondent stated that the appellant have nowhere stated the reasons for non-filing of statutory returns with ROC due to which the name of the company has been struck off. Learned counsel further stated that non filing of statutory returns tantamount to denial of right to information to the public authorities and stake holders at large and is serious in nature.

20. Learned counsel for the respondent stated that it was an appeal filed under section 252(1) of the Act which was rejected by the Tribunal and not an application under Section 252(3) of the Act. Learned counsel further stated that the Tribunal has allowed many applications filed under Section 252(3) of the Act for revival of the struck off companies. Learned counsel further submitted that they generated notice to all such identified companies and its directors as available in MCA Port and issued more than one lakh notices in STK-1 and spent an amount of about Rs.33 lakhs for payment towards speed post expenditure and proof of payment is filed with the reply.

21. Learned counsel for the respondent submitted that they have issued notices in all three modes in respect of the 20082 companies including name of the appellant company. Learned counsel further submitted that Rule 7 quoted in the appeal was amended and it is STK-5A without the names of the companies but with web link to the website, which was published in respect of all such companies including the appellant and the publication STK-5A in newspapers was

in due compliances of law and was in order. Learned counsel for the respondent next stated that composite Form STK-7 notice in respect of 20082 companies was published in Gazette with the names of 20082 companies. The same was done as per practice and there is nothing in Section 248 of the Companies Act or Companies (Removal of Names from the Register of Companies) Rules, 2016 prohibiting such composite publication and also stated that this practice has been followed across the country and in respect of all similarly placed companies.

22. Learned counsel for respondent submitted that all actions such as issue of notice in STK-1, publication of notice of STK-5 and STK-5A, issue of letter to regulatory authorities and publication notice in STK-7 was done after the section 248 and rules are made effective. Learned counsel submitted that it was the duty of the appellant to file statutory returns with Registrar for verification of the status of the companies by regulators and by the public.

23. Learned counsel for the respondent stated that had the appellant filed the financial statements in time the respondent should have verified the financial position. Learned counsel for the respondent submitted that the appellant had not moved any application before the Tribunal to correct the appeal or to file an application under Section 252(3) of the Act.

24. Lastly the Respondent prayed that the appeal filed by the appellant may be dismissed in view of the reply submitted by the respondent.

25. Rejoinder has been filed on behalf of the appellant.
26. Learned counsel for the appellant submitted that the respondents' contention that the appellant company ought to have filed an application under section 252(3) of the Act instead of Section 252(1) is completely misplaced and untenable. Learned counsel submitted that the remedies provided under section 252(1) and 252(3) of the Act are mutually exclusive remedies and any person, including the company whose name has been struck off, can approach the Tribunal seeking restoration of its name.
27. Learned counsel for the appellant stated that the averment of the Respondent that many applications under Section 252(3) of the Act have been allowed by the Tribunal and that the aggrieved company merely has to show that it is a working company and not that the respondent has not followed the process of law, is a tacit admission on the part of the respondent that the appellant company is a working company and that it has no objection if the name of the appellant company is restored.
28. Learned counsel for the appellant submitted that the appellant is a working company and that the name of the appellant company ought to be restored.
29. We have heard the learned counsel for the parties and perused the entire record.
30. Learned counsel appearing on behalf of the appellant mainly argued that Section 248(1) of the Companies Act, 2013 mandates the Registrar of Companies to send a notice to the company as well as all

the directors of the said company about its intention to remove the name of the company from the register of companies. Learned counsel for the appellant further argued that as per Rule 3(2) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 the said notice is required to be given in Form STK-1 to all the directors of the company at the addresses available on record, by registered post with acknowledgement due or by speed post. No notice has been issued to third director. No proof of service has been shown.

31. Learned counsel appearing on behalf of the respondent argued that the notice in Form No.STK 1 have been issued to the appellant company and two of its directors, who were the directors of the company as per MCA Portal records at the time of identification of defaulting companies, by speed post and copies of the notices issued to them are annexed with the reply. The learned counsel for the respondent has also argued that the ROC has issued more than one lakh notices in STK-1 and spent an amount of about Rs.33 lakhs for payment towards speed post expenditure and proof of payment to BNPL Office has annexed.
32. We have perused the documents duly attested by the Registrar of Companies annexed with the reply by the respondent and hold that the notices were issued to the appellant and two of its directors by speed post and sufficient proof has been submitted. As regards the argument of the learned counsel for the appellant that no notice was served on 3rd director who was appointed on 1.3.2017 and duly intimated to ROC on 14.3.2017 is concerned, it is established that the notices has been issued on

17.3.2017 to the appellant company and on 30.3.2017 to two of its directors. The appellant who has appointed third director on 1.3.2017 and intimated ROC on 14.3.2017 that even if the company and its two directors having received the notices did not bother to respond to the notice so as to save the company rather than taking a plea that the third director who has been appointed only on 1.3.2017 and notified on 14.3.2017 had not been given a notice. When company has been served it is Notice to the Directors. Additionally, 2 of the 3 Directors had been served. It is substantial compliance and knowledge can be assumed.

33. We further observe that a notice on STK-5 under Section 248(1) of Companies Act, 2013 has been issued to 24338 companies including the appellant company intimating them the reasons for striking off/removal of their name from the register of companies and dissolve them unless a cause is shown to the contrary, within thirty days from the date of notice. Appellant company was given thirty days' time to file their objection from the date of publication of notice. No objection has been filed by the company.

34. We further observe that a Public Notice in Form No.STK-5A was published in the English and Telugu newspapers for the information of the general public and concerned companies including the appellant company intimating them the reasons for striking off/removal of their name from the register of companies and dissolve them unless a cause is shown to the contrary, within thirty days from the date of notice. Appellant company was given thirty days' time to file their objection from the date of publication of notice. Even if it is assumed for the purpose of logic that

Board of Directors or the company may not have received the notice dated 30.3.2017 and 17.3.2017 and there may be some other mitigating factors, the company failed to respond even to the notice published in the newspapers on 15.5.2017 within thirty days. Public Notice would also be Notice to the Directors. The company having failed to respond to the opportunity which is in the public domain, therefore, the ROC in absence of any explanation received from the company or its directors had no alternative except to take consequent action i.e. to strike off the name of the company from the register of the companies. We find there was substantial and actual Notice. There is no reason to interfere.

35. In view of the foregoing discussions the appeal filed by the appellant is hereby rejected and the impugned order dated 19.9.2017 passed by the Tribunal is upheld. No order as to costs.

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

(Mr. Balvinder Singh)
Member (Technical)

New Delhi

Dated:25-4-2018

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