

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) No. 414 of 2018

[Arising out of Order dated 1st August, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench in CP-52/2015]

IN THE MATTER OF:

Shri Madan Lal Food Products Pvt. Ltd.

....Appellant

Vs

**Union of India,
Through Ministry of Corporate Affairs,
New Delhi & Anr.**

....Respondents

Present:

Mr. Himanshu Harbola and Mr. Ketan Madan, Advocates for Appellant.

Ms. Prema Priyadarshini, Advocate for Respondents.

J U D G M E N T

[13th January, 2020]

JARAT KUMAR JAIN, J.

This appeal has been preferred by M/s Shri Madan Lal Food Products Pvt. Ltd. against the order dated 01.08.2018 passed by National Company Law Tribunal, Allahabad Bench by which dismissed the appeal and affirmed the order passed by Respondent No.2 -Registrar of Companies, Uttarakhand & U.P. (in brief **ROC**) striking the name of the appellant company from the Register of Companies.

2. The appellant company was incorporated under the Companies Act, 1956 on 18.10.1995 with the ROC, having registered office at 3/124, Maanpara, Agra. ROC initiated the proceedings under Section 560 of the Companies Act 1956 as the appellant company has not filed the annual return and balance sheet since 2006 onwards. ROC has issued notice to the appellant company. The appellant company didn't reply to the notice. After complying due procedure, the name of the company was struck off from the Register of Companies due to non-filing of returns on the MCA Portal from the year 2006 onwards.

3. The appellant company has challenged the order of ROC before the Hon'ble High Court of Allahabad. The Hon'ble High Court, as per the provision of Section 434 (1) Clause 'C' of Companies Act, 2013, transferred the petition to National Company Law Tribunal. The National Company Law Tribunal, after hearing the parties, noticed that the company has submitted its annual return from the year 2006 to 2017 before the Tribunal and from the perusal of these statutory documents, it is apparent that the appellant company has not carrying out any business since its incorporation. Hence, dismissed the appeal and affirmed the order of ROC.

4. Being aggrieved, the appellant has filed this appeal and also filed the Affidavit of Director, Laxmi Narayan along with documents.

5. Learned counsel for the Appellant submits that Mr. Laxmi Narayan and his brother Mr. Vinod Kumar incorporated the company to start the business

of milling, processing, manufacturing, producing, food grains, pulses, rice, cereals and other grains. It is further submitted that the Company owned a property bearing Khasra No. 164, Village Ajijpur, Tehsil Chhata, Mathura, Uttar Pradesh. In the year 1996 Directors of the company intended to set up the rice factory/ food processing unit. For the same District Magistrate, Mathura, has granted permission to construct building over the above mentioned land, pursuance to the permission boundary wall and building was constructed over the land. But thereafter, Directors of company were in great difficulty as Mr. Vinod Kumar's wife suffered from brain tumor and Mr. Laxmi Narayan Maheshwari's son has to undergone three major surgeries for Globlastoma between the year 2004 to 2012 and lot of money was spent in their treatment. Therefore, the Directors could not devote much time to establish any business activity. The Directors had filed the annual returns and statements upto financial year 2004-2005. Thereafter, due to lack of professional guidance they cannot file the annual returns and financial statements.

6. It is also submitted that some portion of the aforesaid land was acquired by National Highway of India vide order dated 17.01.2013 and for the same in the month of July, 2014, the compensation Rs. 30 lakhs has been paid to the appellant company. The amount has been deposited in the company's bank account, but the name of the company has been struck off, therefore, the bank account is lying freeze. Presently, the remaining land of the company is valued Rs. 3,63,94,800/-. In such circumstance, the finding of the National Company

Law Tribunal that the company is not carrying any business or operation is not correct, the companies is having substantial assets. The order is prejudicial to the shareholders of the company. Hence, the order be set aside and ROC be direct to restore the company's name in its Register.

7. Learned counsel of the Respondents submits that the appellant company had not filed financial statements and annual returns since 2006. Following procedure viz in Section 248 of the Companies Act, 2013 and Rule 9 of the Companies Act (Removable of names of Companies Act from the Registrar of Companies) Rules, 2016 the name of the Company was struck off. National Company Law Tribunal after considering of documents on record has rightly affirmed the order passed by ROC. Hence, the appeal may be dismissed.

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

9. Having note that the company owned property bearing Khasra No. 164, Village Ajijpur, Tehsil Chhata, Mathura, Uttar Pradesh, the Directors were intent to set up the rice factory/ food grains processing unit in the said land. Competent Authority vide order dated 21.01.1996 granted permission for construction over the land and pursuance to the permission boundary wall and building was constructed. We also found that some portion of the aforesaid land was acquired by the National Highway Authority of India vide order dated 17.01.2013 and for the same the appellant company had received approximately 30 lakhs from the Government which is deposited in the bank

account of the Company. Present valuation of this remaining land of the company is Rs. 3,63,94,800/-. Thus, the appellant company is having assets as described above.

10. Undisputedly the appellant company has not filed the financial statements and returns since 2006 onwards. Therefore, ROC after serving the notice on appellant company has struck off the name of the company assuming that the company is not carrying on any business or operation.

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 annual returns for the year 2006 onwards till 2017.

12. The appellant company is having asset and due to personal difficulties of the Directors they could not start business. In such circumstance, we are of the view that the order passed by National Company Law Tribunal is not sustainable in law.

13. 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.

- (i) Impugned order is set aside. The name of the appellant company be restored to the Register of Companies subject to the following compliances

- (ii) Appellant shall pay costs of Rs. 1,00,000/- (Rupees One Lac) to the Registrar of Companies, Allahabad within 30 days.
- (iii) After restoration of the appellant company's name in the register, the company shall file annual returns and balance sheets for the period 2006 onwards. The company shall also pay requisite charges/fee as well as late fee/ charges as applicable.
- (iv) ROC will be free to take 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)

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