

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI
COMPANY APPEAL(AT) NO.382 OF 2018

IN THE MATTER OF:

1. Aman Kumar Jain
S/o Suresh Kumar Jain,
446/14, Ashok Nagar,
Distt. Sonapat, Ganaur,
Haryana 131101

2. Mohit Jain,
S/o Mukesh Jain,
10/32, Road No.32,
East Punjabi Bagh,
New Delhi-110026

Appellants

Vs

1. Registrar of Companies
NCT of Delhi and Haryana,
4th Floor, IFCI Tower,
61 Nehru Place,
New Delhi-110019.

2. Additional Commissioner of Income Tax,
Range-23, New Delhi
Room No.248, C.R. Building,
I.P. Estate, New Delhi-110002.

Respondents

For Appellant:-Mr. Daniel George, Advocate.

For Respondents: - Mr. Zoheb Hossain, Advocate for R-2.

ORAL JUDGEMENT
(1ST FEBRUARY, 2019)

Per: A.I.S. Cheema, J: - Heard Counsel for the Appellant and the Counsel for Respondent No.2. Counsel for Respondent No.2, Additional Commissioner of Income Tax Department, has tendered at Bar affidavit in reply. Court Master to receive the same and take on record.

2. Both sides agree to argue the matter. The same is take up for final hearing.

3. National Company Law Tribunal, Bench III at New Delhi (NCLT) has dismissed the appeal No.128/ND/2018 of Appellants, under Section 252 of the Companies Act, 2013 (Act in short), to restore name of Company “Shaila Real Estate Developers Pvt Ltd” to Register of Companies. The Learned Counsel for Appellants is heard with regard to the merit of the appeal. It appears that the company “Shaila Real Estate Developers Private Ltd” (Company) was incorporated on 4.4.2007. It is stated that the company filed its statutory returns as are required to be filed under Act till 2011 and thereafter there was default in filing the financial statements and statutory returns. The appellant claims that due to inadvertence and lack of competent professional in the company the returns remained to be filed and there was no motive behind the non-filing of the e-forms with the Registrar of Companies. The appellant claimed in National Company Law Tribunal (NCLT) in the appeal filed that the appellant had short term borrowing and tangible assets and thus the company was required to be restored in the record of the ROC. The appellant also tendered in NCLT copy of provisional balance sheet and profit and loss account for the period 1.4.2017 to 31.10.2017. The learned counsel for the appellant has submitted before us that in the appeal filed before us he has pointed out judgements of NCLAT which show that when the company has immovable property it is just that the name of the company should be restored under Section 252(3) of the Companies Act, 2013. The counsel claims that the returns remained to be filed since 2011 due to the company not getting proper advice.

4. The learned counsel for the Respondent No.2 has referred to the affidavit filed by the Income Tax Department which shows that the company did not file income tax returns from 2013-14 till 2015-16. The income tax returns have been filed for 2016-17 to 2018-19. The company was already struck off on 30th June, 2017 by STK-7 (Page 75). The learned counsel for the Respondent No.2 has pointed out that the company has showed Nil income for the years 2016-17 and 2017-18 and showed an income of Rs.2410/- for the assessment year 2018-19.

5. We have gone through the impugned order passed by NCLT in appeal No.128/ND/2018 which was passed on 10.7.2018 and which is impugned in this appeal. The NCLT took note of the appeal which was filed before it and the NCLT observed that ROC has not made any adverse observations or objections except praying that the statutory required documents need to be complied with. NCLT took notice the statements of the Income Tax Department also. NCLT referred to the evidences placed before it in the form of (1) Income tax Returns for AY 2016-17 and 2017-18, (2) bank statements of the company since 2010 to 2018 and audited financial statements for the years ended 31.3.2015, 31.3.2016 and 31.3.2017 and in para 5 and 6 of the judgement observed as under:-

“5. We have perused the documents filed by the Appellants. It is pertinent from the financial statements filed by the Company that there was no revenue generation in the Company for the years ended 31.3.2015, 31.3.2016 and 31.3.2017. The provisional statement for the period ending 31.10.2017 shows some revenue, however, this statement is irrelevant for the present matter as it relates to the period after striking off of the company’s name. Further, the bank account statements do not show any transactions which would demonstrate that the business operations are ongoing. An agreement for purchase of an immovable property has been attached to the appeal, however, the agreement was entered into in 2010 and here is nothing to show that any work has been carried out over the said land or is being carried out. The company has also failed to file income tax returns as seen by the report filed by the Income Tax Department.

6. In view of the fact that the Appellants have failed to show that the Company has been unable to show that it was carrying on business or operations in the two immediately preceding financial years the appeal filed by the appellants stands dismissed, without any order as to cost.”

6. Learned counsel for the appellant is submitting that although NCLT noted that the company had an agreement of sale in its favour of immovable property still it was ignored on the basis that no work had been carried out on the land. The learned counsel for the appellant pointed out the balance sheet of 2016-17 at Page 122 in the appeal paper book to say that in the balance sheet of 2016-17 the concerned property which was shown in the agreement of sale is reflected. The counsel pointed out the copy of said agreement of sale at Page 205 which showed the name of the company in the Annexure A (Page 226). The argument is that when immovable property is there it is just and appropriate to restore the name of the company.

7. There is no dispute that STK 7 was issued on 30.6.2017 after issue of STK 5. The appellant has not filed the copy of the STK 5. The number and date of STK5 is referred in STK 7. STK5 is published and the notice gives chance to the concerned company to still show cause. In the present matter NCLT has observed the fact that ROC followed due process to strike off the name of the company, was not disputed. When ROC issued notices to the appellant, the appellant never responded. As such the subsequent efforts to show that the appellant was in business or in operation or that it has property was never taken up with the ROC to find any fault of the action taken by ROC.

8. We are not convinced by the submissions made by the learned counsel for the appellant. The appellant has pointed out an agreement of sale of 2010 but there is no supporting sale deed to show that the transaction was even completed and property has been purchased by the company. NCLT has already observed that nothing is shown as carrying out work on any such land. In fact nothing is shown indicating possession and use of any such land. Merely showing an agreement of sale of 2010 which was before 2011 till when the earlier returns were filed would not be enough. If the balance sheet as on 31.3.2017 is seen (at page 122) it showed for value of the tangible assets and the short term borrowings, the figure to same of Rs.39,986,201/-. We are not impressed by pointing out by such old sale agreement, and balance sheet now prepared when Company has been struck off.

9. We do not find that the appellant has made out a case to show that the appellant was in business or that the company was in operation, when the company was struck off or that there is any just ground why the name of the company should be restored.

10. We do not find any substance in the appeal. The appeal is rejected.

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

(Mr. Balvinder Singh)
Member (Technical)

Bm/gc