

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**  
**COMPANY APPEAL(AT) NO.64 OF 2018**

(ARISING OUT OF IMPUGNED ORDER DATED 7.12.2017 PASSED BY THE NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, CHENNAI IN CP NO.CP/111/(252)/2017)

**IN THE MATTER OF:**

1. Venku Hospitals Pvt Ltd  
5/12, V. Mount, Poonamalle  
Nandambakkam,  
Chennai-89
  
2. Mr. J.E.Arul Raj  
s/o Jesu Adimai  
Amala Bhavan, Rudra Road,  
St. Thomas Mount,  
Chennai

Appellants  
(Original Petitioners)

Vs

Registrar of Companies,  
Chennai,  
Block No.6,  
B Wing, 2<sup>nd</sup> floor,  
Shastri Bhawan 26,  
Haddows Road,  
Chennai-600034.

Respondent  
(Original Respondent)

**For Appellant:**-Mr Anandh K, Advocate.

**For Respondents:** - Sh Sanjib Kumar Mohanty, Advocate (Amicus Curiae).

**JUDGEMENT**

**MR. BALVINDER SINGH, MEMBER (TECHNICAL)**

The appeal has been filed by the appellants being aggrieved by impugned order dated 7.12.2017 passed by National Company Law Tribunal, Chennai Bench, Chennai in Company Petition No.CP/111/(252)/2017 whereby the appeal of the appellants for restoration of the name of the company in the register of companies filed under Section 252 of Companies Act, 2013 (Act in short) was dismissed. The NCLT held that since the appellant company did not file its

annual accounts and annual returns w.e.f. the FY ending 2000-01 onwards till date due to which it has been “struck off” from the Register of Companies during 2005, as the show cause notice was given on 20<sup>th</sup> July, 2005 as contemplated under Section 560(1) of Companies Act, 1956.

2. It is stated that the main objects of the company are to undertake, promote, assist or engage in all kinds of research and development work required to promote, assist or engage in setting up hospitals and facilities for manufacturing medical equipment. It is stated that the company also do the work of design, manufacture, import, export, buy, sell, install, maintain and improve all kinds of equipment and instrumentation for hospitals, dispensaries, clinics, laboratories and health centres,

3. It is stated that the appellants had entrusted the job of filing annual returns and IT returns from the year 2000 to a consultant who has not only failed to file the Annual Filing but has also not coordinated with the Chartered Accountant in filing IT returns. The appellants stated that sometime in early August, 2017, it came to the knowledge of appellant No.2 only after the verification of records by the current Practising Company Secretary that the appellant No.1 had not filed returns since 2000-01. It also came to know that the company has also not filed annual accounts and annual returns from the FY 2001-02 onwards. It is stated that this job was assigned to a consultant who has failed to coordinate with the company and its auditors. It is next stated that the appellants also came to know that ROC also issued Show Cause Notice dated 20<sup>th</sup> July, 2005 as per Section 560(1) of the Companies Act, 1956 and subsequently struck off the name of the appellant company.

4. The appellants filed company petition before the NCLT for restoration of the name of the appellant company in register of companies and the NCLT dismissed the petition on the ground that since appellant No.1 was statutorily disqualified on account of non-filing of returns and in any case no plausible explanation for non-filing has been given.

5. It is stated that the appellant No.1 company is entitled to file the application/petition for restoration of its name to the ROC under the Companies Act, 2013. It is stated that being an artificial juridicial person, the Company can act only through the Directors and therefore, the company petition was

maintainable. It is stated that personal disqualification of individual from becoming Director in any other company does not denude the appellant No.2 of its authority and responsibility to act on behalf of the appellant No.1 company.

6. It is stated that the appellant No.1 is still carrying on some of its business objectives. It is stated that appellant No.1 also holding several assets and liabilities. Thus non-restoration of the appellant company would result in irreparable loss and prejudice to the appellants, its contributories and creditors. It is stated that it would also result in the fixed assets of the appellant company going into a limbo/deadlock resulting in wastage of property, which is also contrary to the public policy.

7. Reply on behalf of the ROC Chennai has been filed. It is stated that the appellant company failed to file Annual Returns, Balance Sheet with the ROC for the FY 2002, 2003 and 2004. Therefore, noted dated 20.7.2005 was served on appellant company under Section 560(1) of the Companies Act, 196. The appellants did not respond the same, therefore, the name of the company was struck off from the Register of Companies w.e.f. 25.5.2007 (Page 7 of the counter reply). It is stated that the NCLT in its order has held that the appellant No.2 has no locus standi to file the revival petition under Section 252(3) of the Companies Act, 2013. It is also stated that the directors of the appellant company will not incur disqualification as Section 274(1)(g) of the Companies Act, 1956 cannot be applied to directors of a Private Limited Company. Further the company was struck off from the register of companies on 25.5.2007 and hence Section 164(2)(a) of the Companies Act, 2013 cannot be applied.

8. We have heard the parties and perused the record.

9. Appellant has argued that appellant company is managed by two shareholders namely the appellant No.2 and one Mr. Gnanaselvam Savarimuthu (Pare 7€ Page 5). Appellant further argued that the as per Section 252(3) of Companies Act, 2013 he is entitled to file revival application being shareholder of the appellant company.

10. Counsel for the ROC argued that Section 252(3) of the Companies Act, 2013 provides that revival petition before the Tribunal can be filed by a company or creditor or workman or member. ROC further argued that Section 252(3) of the Act allows a member to file revival petition of a struck off company.

11. We observe that the appellant No.2 is a shareholder of appellant company and as per Section 252(3) of Companies Act, 2013 and he is entitled to file the company petition for revival of the company.

12. Learned counsel for the appellant argued that since the company is struck off, therefore, all its assets and liabilities are locked and if the company is not restored then all its assets and liabilities of the company going into a limbo and remain useless. Learned counsel further argued that the appellant company is having rental income and also paying tax bill for house tax, water tax, conservancy tax, lighting and drainage tax and education tax. Learned counsel for the appellant has drawn our attention at Pages 43-44 of Appeal to this effect. Learned counsel for the appellants further argued that the company has taken loan from The Tamil Nadu Industrial Investment Corporation Ltd (Page 36 of Affidavit). The said loan has been secured by a first charge on the fixed assets and Personal guarantee of one of the directors. Learned Counsel for the appellants further argued that the company has taken unsecured loan from directors. It is further argued that the appellants have fixed assets in the nature of land, building, medical equipment, electrical installation, furniture, office equipment to the tune of Rs.1,09,12,539/-. Learned counsel for the appellants argued that the company has also rental income and are meeting the expenses out of that rental income.

13. Counsel for the ROC has not submitted his arguments on this aspect.

14. We have gone through two Tax Bills submitted at Page No.43 and 44 and observe that the Tax Bills are in the name of Chandrasekaran V and not in the name of company and amount of Rs.30274/- each have been paid Cheque No.57066 dated 24.10.2016 from Account No.102466041 and vide Cheque No.57358 from Account No.3166726599 on 30.1.2018. We find that the Tax Bills are not in the name of the company and the payment has been made from two different accounts. No proof has been given that these bills have been paid from the company's bank account and the bills are in the name of company. As regards the argument of the appellant that the company has taken secured loan and unsecured loan from Tamil Nadu Industrial Investment Corporation Ltd and directors respectively. We observe that the Balance Sheet filed by the appellants is for the Financial Year ending 31.3.1999. No Balance Sheet has filed after

31.3.1999 before us to ascertain what is the present status of the company. Similarly no profit and loss and statement has been filed before us of any date after 31.3.1999. In absence of these documents we are unable to know the present status of the company. Further learned counsel for the appellants has argued that the appellants have rental income but the amount of rental income has not been disclosed. If there is sufficient rental income then it may also have the liabilities towards the income tax. No proof of rental income and no proof of filing Income Tax Return for these years has been submitted before us that the company has met its tax liabilities etc to know the present status. Learned counsel for the appellant further argued that company has property in its name and the counsel has drawn our attention to Page No.43 to 59 in which the details of property is given and also Certificate of Encumbrance on Property is attached. Tax Bill refers to one Chandrasekara V with suffix in bracket as Venko Hospital in the address and relates to his house. Translation of Certificate of Encumbrance do not claim to be True copies and do not link property to the company and yet again are of 1994 and 1996.

15. We find from Pages 58 to 89 of the additional affidavit the copy of the sale deed dated 24.1.1996 in the name of the appellant company. Learned counsel of the appellant has argued that the company has taken loan secured by a first charge on the Fixed Assets. Only evidence of the same is in the Balance Sheet of year 1999, copy of which has been placed on record. No proof has been submitted by the appellant that the charge on the fixed assets still exists on that in Revenue and Corporation Records and the property still stood in the name of Company.

16. In view of the above discussions and observations, no case is made out by the appellants for us to interfere in the impugned order. Accordingly, the appeal is dismissed. No order as to costs.

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

(Mr. Balvinder Singh)  
Member (Technical)

New Delhi  
Dated: 18-02-2019

*bm*