

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.336 of 2018

[Arising out of Order dated 16.07.2018 passed by National Company Law Tribunal, Mumbai Bench, Mumbai in CP No.1148/252/MB/2018]

IN THE MATTER OF:

Before NCLT

Before NCLAT

Yoglaxmi Investments
and Trading Pvt. Ltd.
9, Industry House,
Plot No.4,
Marwah Estate,
Off. Saki-Vihar Road,
Andheri (East),
Mumbai – 400072
Maharashtra

Original Petitioner

Appellant

Versus

Registrar of Companies,
Mumbai
Everest, 100,
Marine Drive,
Mumbai – 400002
Maharashtra

Original Respondent

Respondent

For Appellant:

**Shri Garvesh Kabra and Ms. Maithili Shubhangi
Tripathi, Advocates**

For Respondent:

Shri Anil Yadav, Deputy ROC, Mumbai

J U D G E M E N T

(14th February, 2019)

A.I.S. Cheema, J. :

1. This Appeal has been filed by the Appellant Company being aggrieved by the Impugned Order dated 16.07.2018 passed by the National

Company Law Tribunal, Mumbai Bench ('NCLT', in short) in CP No.1148/252/MB/2018 under Section 252 of the Companies Act, 2013 ('Act', in short). The Impugned Order dismissed the Petition filed by the Appellant for restoration of the name of the Company to the Register of Companies.

2. Copy of the Petition as was filed in NCLT (on 10.04.2018 – see Index of the Appeal) claimed that the Company has been struck off vide STK – 7 dated 18.08.2017. The Petition para – 4(E) stated that the Company has been “inactively carrying on the business operations since incorporation”. It was stated that due to non-filing of financial statements and Returns inadvertently for preceding 5 years for periods ending 31st March, 2013 to 31st March, 2017, the ROC presumed that the Company had not undertaken any business for the two preceding financial years. The Petition claimed that audited balance sheets, statement of profits and loss and schedules for the concerned years were being annexed to show that the Company was in operation. The Petition stated that because of the striking off, the Directors had got disqualified under Section 164(2) of the Act. The Petition claimed that audit reports had been filed with the Income Tax Department for the years ending 31st March, 2013 to 31st March, 2017 and claimed to have annexed the same as Exhibit 'E'. It claimed that Income Tax Returns for 2016 – 2017 and 2017 – 2018 were also being filed. Reliance was placed on Bank Statement also.

3. In the Impugned Order, NCLT found as under:-

“4. On hearing the submissions of the Petitioner and on perusing the Report of the ROC, Mumbai, and upon the documents filed, it is clear that the Company is not carrying on any business or operation as defined u/s 248(1)(c) of the Companies Act, 2013.

5. Upon perusal of the documents, affidavits submitted by the applicant company, it is noted that company had not filed statutory returns with ROC. Further it is also noted that the Fixed assets are **Nil**, revenue from operations **Nil**, other income is very very negligible i.e. Rs.378 for Financial Year ending 31.03.2017 and Rs.648 for the Financial Year ending 31.03.2016, employee benefits expenses **Nil** for the financial years as at 31st March 2012, 2013, 2014, 2015, 2016 & 2017 as per the documents submitted by the petitioner company. Further, as per the Income Tax Returns submitted for the Assessment Years 2016 – 17 and 2017 – 18, the gross total income was shown as **Nil**.

6. All the above ‘**Nil**’ figures and factual details substantiate the criteria that the company is not carrying on any business or operation as defined under section 248 of the Companies Act 2013. Therefore, the action taken by ROC is justified and the Bench did not find any ground to interfere with action of striking off by ROC. The Bench is also of the considered view that these type of companies only put burden on the system, Government/ROC, by way of record keeping, ensuring compliance by these companies and at times these companies may be used for various purposes other than the purpose/object for which the company was originally incorporated. It also puts burden on the company to comply with various regulatory/statutory compliances.

7. Therefore the petition is dismissed.”

We have perused the Appeal and Reply, and heard Counsel for the Appellant and Deputy ROC for the Respondent. Copy of STK – 7 is at Page – 196 vide which the Appellant Company was struck off on 18.08.2017. There were other Companies also whose names were struck off by the same Order. STK – 7 refers to the issuance of STK – 5 dated 27.06.2017. STK – 5, which is published, naturally gave opportunity to the Appellant to respond to the proposal to strike off the Company. In fact, at Page – 195 - Annexure A-9, there is letter from the Appellant Company to the Registrar of Companies dated 15.04.2017 which was filed with ROC on 24th April, 2017, which shows admission of receipt of Notice – STK -1. The Appellant admitted that it had received Notice relating to not carrying on business or operation for two immediately preceding financial years. Appellant claimed that the Company was operating and was carrying on business and that it was in the process of annual filings for the years starting 31st March, 2010 to 31st March, 2016 “in due course time”. It appears from record that in spite of such letter being sent by Appellant, no such Returns were filed with the ROC even till STK – 7 was issued and the Company was struck off on 18.08.2017. We have seen the Income Tax Returns at Page – 126 and 128 which appear to have been filed subsequent to the striking off, of the Company showing gross total income as zero and current year loss of Rs.21,306/- in 2016 – 2017 and Rs.11,622 in 2017 – 2018.

4. Although the Appellant claimed to be investment Company, no material is pointed out to us other than now prepared Returns. Statements

of accounts from banks are shown, which also have negligible figures. The learned Deputy ROC rightly submitted that bank statements for the period when demonetization was in force, have not been filed. When we asked the learned Counsel for the Appellant to show any document showing actual business being conducted or Company being in operation, the Counsel could not show any convincing evidence in that regard.

5. The learned Counsel submitted that the Appellant Company may be restored so that the Company can apply for voluntary dissolution. The Appellant in spite of getting STK – 1 Notice, did not respond to ROC and had not passed any special Resolution as contemplated under Section 248(2) of the Act for getting name of the Company removed. Now after the ROC has struck off the Company under Section 248(5), such submission is being made for the first time in Appeal. Looking to the Impugned Order as reproduced above, we do not think that any such opportunity needs to be given. The learned Counsel submitted that the Appellant Company be given benefit of Condonation of Delay Scheme, 2016 (COD Scheme). Perusal of that Scheme at Annexure – A12 shows that it was for a limited period and applied to defaulting companies other than companies which were struck off. Even with or without the Scheme, if NCTL was to be satisfied reading Section 248 with Section 252 that the name of Company needs to be restored on the Company showing that at the time when it was struck off, either it was in business or the Company was in operation or that there was any other just ground to restore the name of the Company.

No such grounds have been made out or established to the satisfaction of NCLT nor to us. We do not find any justification for interfering with the Impugned Order.

The Appeal is dismissed. No Orders as to costs.

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

[Balvinder Singh]
Member (Technical)

/rs/nn