

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 317 of 2018

IN THE MATTER OF:

- 1. Chafin Financial Consultants Pvt. Ltd. ...Appellants
Valentine Apartment
A wing, Flat no. 704/705
Pimplipada, Gen A.K. Vidya Marg
Malad(East), Mumbai
Maharashtra-400097**

- 2. Prafulla Kumar Sinha
Valentine Apartment
A wing, Flat no. 704/705
Pimplipada, Gen A.K. Vidya Marg
Malad(East), Mumbai
Maharashtra-400097**

- 3. Vidyawati Sinha
Valentine Apartment
A wing, Flat no. 704/705
Pimplipada, Gen A.K. Vidya Marg
Malad(East), Mumbai
Maharashtra-400097**

Vs

**The Registrar Of Companies, MumbaiRespondent
100, Everest, Marine Drive,
Mumbai-400002**

Present:

For Appellants: Mr. Kumar Anurag Singh, Advocate.

For Respondents: None.

Oral Judgement

A.I.S. CHEEMA, J. :

14.09.2018: Heard counsel for Appellant. Perused Impugned Order. The

Impugned Order is a short order and reads as under:-

“ Order ”

1. *This Company Petition is filed by Chafin Financial Consultants Pvt. Ltd. seeking relief against the respondent, inter alia among other things, to restore the name of the company in the Registrar of Companies maintained by the Respondent.*

2. *The grievance of the Petitioner is that the Company was struck off under Section 248 of the Companies Act 2013, due to defaults in statutory compliances, namely, failure to file Financial Statements and Annual Return, for the period ended on March 31, 2010, March 31, 2011, March 31, 2012, March 31, 2013, March 31, 2014, March 31, 2015, March 31, 2016 and March 31, 2017. The company was incorporated on 05/06/2009.*

3. *The Respondent side filed a detailed report on 28/03/2018 explaining the sequence leading to the striking off of the company. In addition to the publication of the name of the company on web site of the Ministry, the name was also published in official gazette and also another public notice was issued in leading English newspaper (Times of India) and a widely circulated vernacular language newspaper (Maharashtra Times-Marathi) on 03.05.2017. The Respondent side has further submitted that in absence of any representation against the proposed strike off action, the Registrar struck off the name of the company on 16/06/2017 and the dissolution order was published on the website of the Ministry vide STK 7 on 10.07.2017.*

4. *The Respondent also prayed in the facts and circumstances of the matter that the prayer the petitioner may not be allowed and the reliefs sought may not be granted. The respondent has justified in its report for the struck off the company due to non compliance with the provisions of section 248 of Companies Act 2013. The basis for striking off the name of the company was the continuous non-filing of the statutory returns and company is not carrying on any*

business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455, prior to its Struck Off.

5. *The petitioner company submitted that it has been carrying on operations on a small scale, however as per the Income Tax Return acknowledgement submitted for the Assessment Year 2017-18, the gross total income shows was Rs. Nil. The ROC Mumbai, struck off the name of the company due to defaults in statutory compliances, i.e. failure to file Financial Statements and Annual Returns for the period ended on March 31, 2010, March 31, 2011, March 31, 2012, March 31, 2013, March 31, 2014, March 31, 2015, March 31, 2016 and March 31, 2017.*

6. *Considering the above facts and circumstances, the report of the ROC, the Bench has not found any reasons to interfere with the action taken by the ROC in striking off the Petitioner Company. Therefore the petition is dismissed.”*

2. Counsel for Appellant is submitting that the name of the Company run by the Appellants namely Chafin Financial Consultants Pvt. Ltd. has been struck off. According to him the Respondents ROC claimed issuance of notice and public notice and gazette notification of the notice but the Appellants were not supposed to keep watching the newspaper notices and he claims that the company was a running company which has been directed to be closed.

3. Copy of Reply of ROC filed in NCLT shows ROC pointed out that the office had issued STK 1 Notice to Company and its Directors as well as Notice

in STK 5 form was published on website of Ministry and Notice was published in Newspapers as stated and still Appellants did not respond and only then action of striking off/dissolution was taken as per STK 7 on 10.07.2017. If the Appellants did not respond, it was on their peril.

4. It is admitted that the Company was registered on 05.06.2009 and Financial Statements and Annual Returns from the period ending 31st March, 2010 till 31st March, 2017 had not been filed. Thus, since establishment no returns appear to have been filed. The learned counsel is pointing out copies of Annual Returns which were prepared by CA. However there is no filing proof of these returns. If over the years Returns and Statements accounts were being prepared by Chartered Accountant there is no reason why the same were not filed.

5. Counsel is pointing out Annexure A-6 to show that there were transactions being done in the bank. However, if the document is perused, it appears that Prafful Kumar Sinha was depositing the amounts from time to time. Prafful Kumar Sinha is Appellant No. 2. No document to show actual business transaction was pointed out in NCLT. The bank accounts appear to have been more used for channeling the money. Index in Appeal claims Annexure A-7 to be copies of Income Tax Returns at page 98 to 233. But, Paper Book shows Annexure A-7 to be Audit Report under section 44 AB of Income Tax Act got prepared from Auditor. However, no filing proof with Authority is shown. No copy of Income Tax Returns filed is being shown to us although we

asked the Counsel to show the same. The impugned order has recorded that the ITR acknowledgement as filed in NCLT shows the income was Rs. Nil.

6. We find no substance in the argument that, as in Reply ROC stated that if the name of the Company is restored it should be directed to make all the pending compliances, shows admission to allow the petition. We find it to be proposal of ROC in the alternative to its prayer that the petition should basically be disallowed.

7. Nothing inspiring confidence is pointed out and we are not convinced that the company had commenced business or was carrying on business or was in operation and there is no reason to interfere with the impugned order. The Appeal is dismissed at the stage of admission.

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

(Balvinder Singh)
Member (Technical)

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