

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.325 of 2018

[Arising out of Order dated 11.06.2018 passed by National Company Law Tribunal, Chennai Bench, Chennai in CA/444/2018]

IN THE MATTER OF:

Before NCLT

Before NCLAT

M/s. NU AGE
Resources and Placements
Private Limited
Intersight Building,
Anna Building,
Thykoodam Bypass,
Vytila P.O,
Cochin – 682019
Kerala State

Original Applicant

Appellant

Versus

Registrar of Companies,
Kerala
BMC Road,
Thirkkakkara P O,
Kakkanad, Ernakulam
District – 682021
Kerala State

Original Respondent

Respondent

For Appellant:

**Shri Govind Manoharan and Shri A. Karthik,
Advocates**

For Respondent:

None

J U D G E M E N T

(8th February, 2019)

A.I.S. Cheema, J. :

1. The Appellant – original Applicant of CA/444/2018 filed before National Company Law Tribunal, Chennai Bench, Chennai ('NCLT', in

short) has filed this Appeal against the Impugned Order dated 11.06.2018 rejecting the Application for restoration of the name of the Company to Register of Companies under Section 252 of the Companies Act, 2013 ('Act' in short).

2. We have heard learned Counsel for the Appellant. ROC remained absent in spite of service of Notice.

3. The learned Counsel for the Appellant submitted that the Appellant Company has been carrying on business of the recruiting, training and placing persons in suitable professions and it was carrying on operations when the name of the Company got struck off for non-filing of Returns. It is argued by the learned Counsel that the Appellant filed Application for revival of the Company and that, the ROC in its Reply, had in para – 8 submitted that the name of the Company may be restored subject to the conditions as mentioned in para – 8 of the Reply being complied. Thus, according to the Counsel, looking to the Reply of Registrar of Companies, the name should have been restored.

4. When we asked the learned Counsel for the Appellant to show us the application/appeal filed before NCLT for restoration of the name of the Company, he referred to Annexure – 48 at Page – 186 of the Appeal paper book saying that the Appellant had filed letter before NCLT on 07.03.2018 for restoration of the name of the Company. It is

a short document styled as a letter addressed to the NCLT with an address of “Dear Sir” and the contents read as under:-

“Sub: Application for Revival of Companies under the sec 252 of the Companies act 2013

M/s. NU AGE RESOURCES AND PLACEMENTS PRIVATE LIMITED was incorporated on 27th day of November, 2003, in the State of Kerala as a Company Limited by Shares, bearing Corporate Identity Number (CIN): U74910KL2003PTC016649. The Company has not filed Balance sheet and annual return for the financial years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17 with the Registrar of Companies as required under section 92 and 137 of the Companies Act, 2013 so the Company had been struck off. Now we want to revive the Company which was struck off and requesting make an order to The Registrar of Companies, Kerala be directed to revive the Company which was struck off under section 248 of the Companies Act, 2013.

We are enclosing the following documents for your kind reference:

We hereby request you to kindly accept the application and approve the same.”

What documents were annexed, Ex. – 48 does not tell us and Appellant has not annexed documents to this one-page exhibit. We pointed out to the learned counsel for the Appellant at the time of arguments that this document does not spell out any of the grounds as contemplated by Section 252 of the Companies Act. The Counsel, however, stated that this was the only document on the basis of which the NCLT was moved. He stated, further, that he was relying on the

Reply filed by the ROC where in para – 8, ROC had submitted that it had no objection to restore the name of the Company back to the Register of Companies subject to compliance of Rule 87A(4) of NCLT (Amendment) Rules, 2017. We had at the time of the submissions being made by the learned Counsel for the Appellants, expressed to him that the Reply of ROC pointed out the steps taken before striking off the Company and no response in spite of Notices and the defaults and in para – 8, left it to the NCLT giving no objection subject to certain compliances being done and so, it is necessary for him to show us that either the Company was in business or it was in operation or that there was any just ground on the basis of which, the name of the Company should be restored. When NCLT is moved, objection or no objection of ROC is not material. It is necessary for party to satisfy provisions of Section 252. The learned Counsel merely pointed out the Balance Sheets and Annual Returns for the Financial Years 2011 – 2012 to 2016 – 2017 to state that the Company was in business. When we perused the Impugned Order, the short Order reads as under:-

“Counsel for the applicant is present. It has been submitted that the company was formed during the year 2003 and till the year 2011, the Balance Sheets and Annual Returns were filed, and for non-compliance of the same, the name of the Company has been struck off by the concerned RoC u/s 248(5) of the Companies Act, 2013. RoC has filed its report which is placed on record. It has been submitted by the counsel for the applicant that the company has not availed any loan and there are no liabilities.

An amount of one lakh is lying in the accounts of the company. Counsel for the applicant is not in a position to show that the applicant company is carrying on its business as per its object. There is no record placed on file that the company is a going-concern and carrying on commercial activities. The company is a shell company. The application is devoid of merits. Therefore, stands **dismissed.**”

Thus, if Annexure – 48 is perused, the Appellant did not plead before NCLT that it was in business or was a going concern at the time when the Company was struck off or that any just ground exists to restore name of the Company. These are the requirements called for by Section 252 of the Companies Act, 2013. In the Appeal, claims have been made claiming that in the Financial Years mentioned above, the Company was doing business for which the balance sheets and Annual Returns were prepared and then it is claimed that the non-filing of the same was due to oversight on the part of Directors and that it occurred accidentally and inadvertently. It is claimed that the Directors were out of station and engaged accounting professional to ensure compliance of the legal provisions “including finalization of the accounts and filing the same with statutory authorities”.

No such case appears to have been put up before NCLT. If the Company was in operation since 2003 and defaults started only from 2011 – 2012, the Directors would know the compliances required. Accidental or inadvertent omission can occur once or twice but when

the non-compliance relates to many years, it cannot be claimed that there was accidental or inadvertent omission on the part of the Company or its Directors. If such balance sheets and Annual Returns (as are being now shown) had been regularly prepared, there was no reason as to why the same were not filed. Without the Returns having been filed before any authority, they cannot be taken on their face value of dates shown to accept that in the period claimed, the Company was actually doing business or was in operation. In the Appeal paper book, there appears one Income Tax Return for 2016 – 2017 (Annexure 36) and another Return for Assessment Year 2017 – 2018 (Annexure 43). Even if we are to see these documents, the gross total income is shown as zero and the current year losses are shown as 44,389 and 57,791, respectively.

5. We do not find that the Appellant pleaded or made out a case for restoration of the name of the Company before NCLT nor has it convinced us that the name of the Company deserves to be restored. We are proceeding to dismiss the Appeal but, however, we will expunge the sentence regarding the Company to be a shell Company as according to us, there needs to be more material to brand a Company as a shell Company.

6. The Appeal is dismissed. The Impugned Order is maintained except for the sentence “The Company is a shell Company.”, which we expunge.

No Orders as to costs.

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

[Balvinder Singh]
Member (Technical)

/rs/nn