

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No.183 of 2018

(ARISING OUT OF ORDER DATED 13TH APRIL, 2018 PASSED BY NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, CHENNAI IN CP NO.CP/65/(IB)/2018.

IN THE MATTER OF:

**Palaniandavar Benefit Fund Ltd
49, Nethaji Road,
Nagapattinam 611001
Tamil Nadu**

...Appellant

Vs

**Registrar of Companies, Chennai.
Block No.6,
B Wing, 2nd floor,
Shastri Bhawan,
26, Haddows Road,
Chennai-600034
Tamil Nadu**

...Respondents

**Present: Mr Anandh K, Advocate for appellant.
Mr. Amit Acharya, Advocate for Respondent.**

J U D G M E N T

BALVINDER SINGH, MEMBER (TECHNICAL)

The appellants, original petitioners, have filed this appeal, under Section 421 of the Companies Act, 2013, being aggrieved by the impugned order passed in CP No.CP/65/(IB)/2018 filed in National Company Law Tribunal, Chennai Bench, Chennai (NCLT in short) whereby the Company Petition was dismissed on 13th April, 2018.

2. The appellant, original petitioner, is a company incorporated on 5.12.1991 under the Companies Act, 1956 as a Company limited by shares and having its Registered Office at Nagapattinam, Tamil Nadu. The main object of the company are as follows:-

a) To encourage the members to save money by making easy and periodical subscription.

b) To receive deposits from its members at favourable and reasonable interest rates.

c) To invest the moneys received from the members to their benefits without doing the Banking business as defined under the Banking Regulations Act, 1949.

i) In immovable properties such as houses and lands.

ii) in government securities and in securities enumerated in the Indian Trusts Act and other securities approved by the Board of Directors.

d) to grant loan to the members at favourable interest on jewels of gold and silver vessels or government promissory notes and of such other securities as may be approved by the Board of Directors.

e) The company shall not do (i) Chit fund Business; (ii) Insurance Business (iii) Banking Business and Trafficking in shares and debentures and the company shall not operate a current account with the members.

3. The primary business of the company is to accept money from its members and in turn provide small ticket loans to its members not exceeding Rs.15000/- per member/beneficiary. The members and the beneficiaries of

the appellant are located in and around the area of Nagapattinam. The Respondent vide show cause dated 20.3.2017 (Page 200-201) issued notice to the appellant intimating that the available record of the company shows that the 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. The Respondent further stated that the respondent intend to remove the name of the appellant from the register of companies and also seeking their representation. Later on, the name of the appellant company was struck off by the Registrar of Companies due to the alleged defaults in statutory compliances namely failure to file Financial Statements and Annual Returns for the Financial Years 2010-11 to 2015-16. The same was published in the Gazette of India dated 15th-21st July, 2017 in Page No.14800 of Gazette of India under S.No.12077 (Para 3, Page 1 of Reply). The appellant vide letter dated 18th August, 2017 represented to the ROC to revive the company and allow it to function.

4. Being aggrieved by the said action of the ROC, the appellant filed a company petition before the NCLT stating herein that the defaults are not deliberate and not with a view to defraud anyone. The appellant further stated that they were under impression that statutory compliance have been done. The appellant, original petitioner, stated that the company has been in operation since the inception and has never ceased to carry on its business till date. Therefore, there were no genuine grounds for the Respondent to strike off the company from its records for not carrying on operation. The original petitioner further stated that the account of the company were

prepared and audited years on years within the time period. The appellant stated that he had engaged the services of a professional accountant to perform this task and based on the assurance provided by the professional accountant that the accounts would be filed within the statutory period the company did not follow up on the filing to have been made by the accountant. The appellant stated that they received notice dated 27.3.2017 and the same was handed over to the professional and the said professional assured to rectify the problem. The appellant could not access the professional accountant and he has made himself scarce. Then the appellant company approached the counsel and the said counsel did investigation and checked the MCA portal and found that the name of the company had been struck off. The appellant represented to the ROC to consider revival of the appellant company. The appellant stated that the appellant has been active since incorporation and has also been maintaining all the requisite documentation, as per the provisions of the Companies Act, 2013.

5. ROC submitted its report before the NCLT. Respondent stated that the appellant company has not filed Balance Sheet, statutory returns and Annual Returns upto date. Respondent therefore, initiated action under Section 248 of the Companies Act for striking off the name of the appellant. The appellant company was duly served a notice and after following due process of law the appellant company name was struck off and was published in the Gazette of India dated 15th -21st July, 2017 in page No.14800 of Gazette of India under S.No.12077.

6. After hearing the parties the Learned NCLT passed the impugned order dated 13.4.2018. Relevant portion of the impugned order is as under:

“xxxx It has been stated in the objections that the applicant company was incorporated during the year 1991, and the Balance Sheets and Annual Returns were filed upto 2010. Thereafter, the same have not been filed due to which the name of the Company has been struck off from the Registrar of Companies dated 15-21st July, 2017.

Heard the counsel for the applicant. Perused the application alongwith the record placed on file and the objections filed by the Counsel for the ROC.

The Income Tax Returns were filed for the AYs 2016-17 and 2017-18 which reflect the payment of tax as ‘nil’, the same is evidencing that the Company is not carrying on any business, and it is a shell company. Therefore, the application stands rejected.”

7. Being aggrieved by the said order dated 13.4.2018 the appellant has filed the present appeal praying therein for following reliefs:

- i) Restore the name of the Appellant company namely Palaniandavar Benefit Trust Limited to the file and/or to the Register of Companies maintained by the Respondent, Registrar of Companies, Chennai, Tamil Nadu;
- ii) Direct the Respondent to rectify the master data by modifying the status from Strike-off to Active within the specific time as this Hon’ble Appellate Tribunal may deem fit and proper;
- iii) Direct the Appellant to file all pending financial statements and annual returns with Respondent and comply with the requirements of

the Companies Act 2013 and rules made thereunder within such time as may be directed by the Hon'ble Appellate Tribunal.

iv) Pass such further/other order(s) as to this Hon'ble Appellate tribunal may deem fit and proper.

8. The appellant submitted that the striking off a company can be done only after following certain steps as per Section 248 of the Companies Act, 2013. The appellant submitted that the Registrar has not met the conditions as mentioned in Section 248 of the Act. The appellant further submitted that the Registrar of Companies cannot resort to an action under Section 252 unless and until the procedure contemplated under Section 248(1) is complied with.

9. The appellant submitted that he was not afforded any reasonable opportunity of being heard before the action was taken by the Respondent and the said action of the Respondent is clearly violative of principles of natural justice.

10. The appellant submitted that the observations of the NCLT that the appellant is not engaged in any business is contrary to the facts of the case as is evident from a cursory examination of the Financial Statement and Income Tax Returns of the Appellant.

11. The appellant submitted that the default in filing the returns was a result of lack of legal awareness of the directors of the appellant and the appellant did not act in any mala fide manner and non-filing of returns was only due to inadvertence.

12. The appellant submitted that NCLT has erred in treating payment of nil tax and incurring of loss as tantamount to not carrying on any business. The

appellant further submitted that since the appellant company is struck off, all its assets and liabilities are locked. The appellant submitted that not restoring the company will also result in the assets and liabilities of the appellant going into a limbo and remain useless.

13. Reply/report on behalf of the Respondent has been filed. The respondent stated that the appellant has not filed Balance Sheet and Annual Returns for the financial year 2011 onwards. The Respondent has, therefore, initiated action under Section 248 of the Companies Act, 2013 for striking off the name of the company from the Register of Companies and consequently the name of the petitioner company was struck off from the Register of Companies. The respondent submitted that they had given Notice dated 20.3.2017 in Form No.STK 1 (Page 200) to the appellant that the appellant 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 the dormant company under Section 455. The Respondent further stated that the appellant was given thirty days' time to send his representation alongwith relevant documents. It was further directed unless a cause to the contrary is shown within the period, the name of the appellant company shall be liable to be removed from the register of companies. The Respondent stated that no such representation was received from the appellant.

14. The Respondent stated that the removal of names of companies from the Register of Companies, publication of the said notice was given in both vernacular and English language.

15. The Respondent stated that the NCLT has rejected the petition filed by the appellant on the grounds that the appellant company has filed Income Tax Returns for the AYs 2016-17 and 2017-18 which reflect the payment of tax as Nil, the same shows that the company is not carrying on any business and it is a shell company.

16. We have heard the learned counsel for both the sides and perused the record.

17. The first issue raised by the appellant that the striking off a company can be done only after following certain steps as per Section 248 of the Companies Act, 2013 and Registrar of Companies cannot resort to an action under Section 252 unless and until the procedure contemplated under Section 248(1) is complied with and the appellant was not given an opportunity of being heard.

18. We have seen the record and noted that the Notice dated 20.3.2017 was issued to the appellant and he was directed to submit his defence alongwith relevant documents in his defence within thirty days from the date of receipt of the notice. Further as per Section 248(1) and 248(4) and under second proviso to the Rule 7(1) of Companies Act, 2013, STK-5 notice was given for removal of names of companies from the Register of Companies, Publication of the said notice was given in both Vernacular and English Language. Therefore, it can not be said that proper procedure was not followed and no opportunity was given to the appellant of being heard and principles of natural justice has been complied with.

19. The next issue raised by the appellant is that the appellant is carrying on the business and the Respondent has wrongly struck off appellant name from the register of companies.

20. We have gone through the record and found that the appellant has not filed Balance Sheet and Annual Returns for the financial year 2011 onwards and its directors ought to have filed statutory returns in compliance of provisions of the Companies Act. In the absence of any material being placed by appellant before the ROC, we fail to understand how ROC would know if the company is doing any business.

21 The other issue raised by the appellant is that the default in filing the returns was a result of lack of legal awareness of the directors of the appellant and the appellant did not act in any mala fide manner and non-filing of returns was only due to inadvertence.

22. We have gone through the record and gave our considerable thoughts on this issue. From the record we observe that the company was incorporated in the year 1991 and since then the company is filing its Balance Sheet and Annual Returns and they have not filed the same from financial year 2011 onwards. Therefore, it can not be believed that the non-filing of returns was a result of lack of legal awareness of the director. We further observe that the company petition and company appeal has been filed by Mr. Maickavel Ravichandran, Director on behalf of the appellant company and he has stated that he is director and promoter of the company since 26th September, 2011. We have also perused the Articles of Association of the appellant and find that Sh M. Ravichandran was the director of the company (Page 37) in the year 1991. Similarly Mr. S. Sekar who is also now one of the directors was

also a director in the year 1991. Therefore the plea of the appellant that the default in filing the returns was as a result of lack of legal awareness of the Directors of the Appellant cannot be accepted as they have been filing the same uptill the year 2010 as also observed in the impugned order. The directors of the appellant are very well aware of the legal awareness.

23. The other issue raised by the appellant is that NCLT has erred in treating payment of nil tax and incurring of loss as tantamount to not carrying on any business. If Income Tax Return is Nil it will have to be read as Nil Return of Business.

24. We have gone through the Income Tax Returns Acknowledgement filed by the appellant at Pages 115 and 199. We further observe that the Income Tax for the Assessment Year 2014-15, 2015-16, 2016-17 and 2017-18 has been filed in the month of February/March, 2018. We do not find that there is any material or substance in those returns to show that the conclusion drawn by NCLT are perverse.

25. In view of the foregoing discussions we find no merit in the appeal. The appeal is, therefore, dismissed. No order as to costs.

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

(Mr. Balvinder Singh)
Member (Technical)

New Delhi

Dated:06-12-2018

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