

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.415 of 2018

[Arising out of Order dated 12th October, 2018 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in C.P. No.71/441/NCLT/AHM/2018]

And

Company Appeal (AT) No.416 of 2018

[Arising out of Order dated 11th October, 2018 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in C.P. No.68/441/NCLT/AHM/2018]

IN THE MATTER OF:

Before NCLT

Before NCLAT

- | | | |
|--|-------------------------|----------------|
| 1. SML Films Limited
Road No.3, Plot No.815
Sachin G I D C
Surat – 394230,
Gujarat | Original Applicant No.1 | Appellant No.1 |
| 2. Pragnesh Ishwarlal
Jariwala
G-2, Somnath
Mahadev Society,
Old Umra Jakat Naka
Surat – 395007,
Gujarat | Original Applicant No.2 | Appellant No.2 |
| 3. Dharmesh Harishkumar
Jariwala
6/1650, Gundi Sheri,
Lal Darwaja,
Surat – 395007,
Gujarat | Original Applicant No.4 | Appellant No.3 |

Versus

The Registrar of
Companies (ROC),

Respondent

ROC Bhavan,
Opp. Rupal Park Society
Behind Ankur Bus Stop,
Naranpura,
Ahmedabad – 380013,
Gujarat

(Array of parties in both the Appeals is same)

For Appellant: Shri Niraj Trivedi, PCS

For Respondents: Shri Sanjib K. Mohanty, Advocate

J U D G E M E N T
(7th February, 2019)

A.I.S. Cheema, J. :

1. These two Appeals arise out of two Impugned Orders passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad ('NCLT', in short). Both the Appeals are taken up together for disposal by this common Judgement, as parties are same and the matters relate to compounding of offences under the Companies Act albeit under different provisions. The Appeals were argued together and same points have been raised.

2. The Appellants along with one Ishwarlal Jariwala had moved for compounding in both the matters. The Impugned Orders were passed on 12.10.2018 and 11.10.2018 respectively. It appears that Ishwarlal Jariwala, who was one of the Applicants for compounding, expired on 2nd November, 2018 for which Death Certificate has been filed. Thus, these

Appeals are by the Company and the other two Directors of the Company – M/s. SML Films Limited.

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3. This Appeal is against Impugned Order in C.P. No.71/441/NCLT/AHM/2018 passed by the NCLT on 12.10.2018. The Appellants claimed and it has been argued that the Company was initially a private limited company and had passed Board Resolution on 31.03.2009 for appointment of Mr. Ishwarlal Jariwala as whole-time Director with a designation – Executive Director. At another Board Meeting held on 30.09.2009, Mr. Dharmesh Jariwala was appointed as whole-time Director with a designation – Executive Director. The Company was required under Section 303(2) of the Companies Act, 1956 ('old Act', in short) to submit Return in prescribed Form No.32 within 30 days of change of designation. It is claimed that in February, 2017, Company Secretary was appointed and he brought the lapse to notice. Thereafter, the Company immediately took action and filed Form DIR-12 on 28.03.2017 with ROC. The Appellants suo moto filed application for compounding under Section 441 along with now deceased Ishwarlal Jariwala which was forwarded by ROC to NCLT, Ahmedabad. NCLT, Ahmedabad passed the Impugned Order. The Appeal claims that the Appellants had suo moto moved ROC for filing the Form and suo moto applied for compounding, but the NCLT had imposed fine which aggregates to Rs.17,62,800/- which, it is claimed, is exorbitant. According to the Appellants, the ROC had never

found fault with the Appellants and they should not be made to pay such huge fine as they had themselves approached the ROC. The Appellants further claimed that since Ishwarlal Jariwala has died after the Impugned Order was passed, this Tribunal should set aside the fine as was imposed on Ishwarlal Jariwala.

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4. This Appeal is against Impugned Order passed by NLCT in C.P. No.68/441/NCLT/AHM/2018 and relates to violation of Section 269(2) of the old Act [corresponding Section 196(4) of the Companies Act, 2013 ('new Act', in short)]. It is stated that the Company was converted into a public limited company w.e.f. 03.12.2009. Earlier, it had been incorporated as private limited company on 05.07.2002. The Company had by Board Meeting dated 31.03.2011, appointed Mr. Pragnesh Jariwala, Mr. Ishwarlal Jariwala and Mr. Dharmesh Jariwala as Executive Directors and once again by Board Meeting held on 31.03.2014 reappointed them as Executive Directors for further period of 3 years. On both the occasions, they were required to submit Form - 25C to the ROC within 90 days. In February, 2017, the Company appointed qualified Company Secretary and the lapse came to their knowledge that the Forms had not been submitted. With effect from 01.04.2014, on enforcement of provisions of Companies Act, 2013, Form - 25C was substituted by Form MR-1. There was delay in submission of Form. The Company suo moto moved ROC and Forms were submitted on 17.03.2017. ROC forwarded the compounding application of

the Appellants and Ishwarlal Jariwala to NCLT. The Appeal claims that the offence occurred at the time of the old Act and penalty as applicable under that Act should have been applied and the fine imposed needs to be reduced. In this Appeal also, the Appeal prays to reduce the fine which was required to be paid by Ishwarlal Jariwala, who has now expired.

5. In both the Appeals, the ROC has filed Reply titled as - Representation.

Arguments

6. We have heard Counsel for Appellants in both the Appeals and the Counsel for ROC. At the time of arguments, the learned Counsel for the Appellants submitted that there was delay in filing of Returns in both these Appeals. When we had asked the learned Counsel to show as to how the fault could be found with Impugned Orders, where they have made calculations of fine applying the concerned provisions in the two matters. The learned Counsel fairly accepted that the calculations of days and quantum of fine as imposed is within the parameters provided by the concerned Sections. He submitted that he is unable to show any illegality in the calculations made by NCLT and imposing of the fine, but his submission was that the Company earlier did not have a Company Secretary till February, 2017 and thus, did not get proper advice and assistance and thus, there was delay in submission of the Forms. The learned Counsel submitted that if the total of the fine imposed in the two

matters is seen, it would be huge burden on the Company and the Directors and when Appellants had suo moto come forward to submit forms, leniency was required to be shown. He vehemently submitted that the Appellants pray for reducing of the quantum of the fine imposed in the two matters.

7. Against this, the learned Counsel for ROC supported the Impugned Orders and added that if the concerned Sections are seen, NCLT had already shown the leniency and the fines imposed are on the lower side and thus, according to him, no interference in the Impugned Orders was called for.

Reasons and Findings

8. We have gone through the Impugned Orders and the concerned provisions under which the defaults took place and the fines that have been imposed. There is no dispute regarding the calculations made by NCLT for arriving at the figures of fine. It does appear that the NCLT has already been lenient with the quantum of fine. It is surprising that when the Company became a public limited company on 03.12.2009, the Appellants should be saying that they appointed qualified Company Secretary only in February, 2017.

9. We are not inclined to take further lenient view regarding the quantum as it appears to us that NCLT has already given the concession possible to the Appellants. In fact, the provisions violated are aimed at

transparency and when in given time, the informations are not provided to ROC or Forms are not submitted, such defaults open doors for various misconducts which we have noticed in so many matters coming up before us with regard to oppression and mismanagement. We are of the view that delays in compliance of the provisions of Companies Act regarding submission of Returns and Forms are source of mischiefs in various instances. These lapses need to be viewed seriously. Even if on facts in a given case, leniency may be shown, it cannot be so much that fear of law gets taken away. There is no illegality in the Impugned Order. We do not think that for the misconduct, as noticed in the present Appeals, further leniency is required to be shown.

10. As regards, the request made by the learned Counsel for Appellants that the fine, as was imposed on Ishwarlal Jariwala, should be reduced from the total fine, we find that the death of Ishwarlal Jariwala took place after Impugned Order was passed. The present Appeal is not by the LRs of Ishwarlal Jariwala. Apart from this, the learned Counsel for Appellants has not pointed out to us anything on the basis of which we could interfere in their Appeal with regard to Impugned Order as regards Ishwarlal Jariwala only because he expired subsequent to passing of the Impugned Order.

11. There is no substance in these Appeals.

Both the Appeals are rejected. No Orders as to costs.

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

[Balvinder Singh]
Member (Technical)

/rs/nn