

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

COMPANY APPEAL (AT) NO.264 OF 2019

(Arising out of Impugned Order dated 6th June,2019 passed by National Company Law Tribunal, Mumbai Bench, Mumbai in Appeal No.2015/252(1)MB/2018)

In the matter of:

Priya Fabricator Pvt Ltd
Kunal Niwas, Newale Mala,
At Post Chikali, Tal: Haveli,
Pune 412114

Appellant

Vs

The Registrar of Companies,
PCNTDA, Green Building,
Block A, 1st and 2nd floor,
Near Akurdi Railway Station
Akurdi, Pune 411035

Respondents

Mr. Anirban Tripathy, Advocate for appellant.
Mr. Kamal Kant Jha, Sr. Panel counsel for ROC, Pune/R1.

JUDGEMENT
(11th December, 2019)

Mr BALVINDER SINGH, MEMBER (TECHNICAL)

The appellant has filed this appeal under Section 421 of Companies Act, 2013 against the order dated 6th June, 2019 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai whereby dismissing the appeal and affirmed the order of striking of the name of the appellant company from Register of Companies, Pune.

2. The appellant company was incorporated on 6th January, 2012 under the Companies Act, 1956 with object of carrying engaging in manufacturing

and fabrication engineering goods. After incorporation, the appellant applied for allotment of industrial land to Maharashtra Industrial Development Corporation on 5.8.2014. The MIDC allotted a plot admeasuring 400 sq Mtr to appellant company on 2.7.2016. The appellant company submitted project report which was approved by a Nationalised Bank. The nationalised Bank, Indian Overseas Bank sanctioned a loan of Rs.2.92 crores and disbursed on 11.3.2019. Appellant company in the meantime realised that the Respondent has struck off the name of the appellant company from the Register of Companies under Section 248(3) of the Companies Act, 2013. Vide Form No. STK5 dated 07.04.2017. The appellant company stated that the company is regularly filing Tax returns for the assessment year 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17. Appellant company stated that non filing of annual compliance documents was neither wilful nor intentional. The appellant company could not file the annual compliance documents as the company was not having any professional to take care of these reporting statutory compliances.

3. The order was challenged in Company Petition before NCLT, Mumbai. However, by the impugned order dated 06.06.2019 NCLT has dismissed the appeal on the ground that there are no business operations and no assets since incorporation. NCLT also held that the Fixed Assets are Nil, Long term borrowings Nil, Short Term Borrowing Nil, Income from operation Nil, expenses towards cost of materials nil. Therefore the NCLT held that the company is not carrying out any business and dismissed the appeal filed by the appellant company.

4. Learned counsel for the appellant company submits that the company is making every effort in the business activity of the company. Land has been allotted by the State Department. Project report submitted by the appellant company has been approved by the Indian Overseas Bank and the loan has been sanctioned and disbursed on 11.3.2019 (Page 4). This shows that the company doing business activity and to acquire land and loan is also a part of the business activity. Appellant stated that they have made a payment of Rs.24,40,000/- to MIDC (Page 52) to acquire the industrial plot and also paid Rs.73,20,000/- on 30th May, 2017 (Page 56). Appellant stated that the Bank has sanctioned the loan of Rs.2.92 crores and the appellant company has paid 30% margin money on rent receivables and the industrial plot has been mortgaged. The appellant company stressed that it can not said that the appellant is not doing any business.

5. Learned counsel for the Respondent submitted that the appellant company has not filed the statutory returns for the financial years 31.3.2013 to 31.3.2016, neither filed the application within such period for obtaining the status of a dormant company under Section 455 of the Companies Act, therefore, the ROC issued STK-1 notice on 11.3.2017 regarding the removal of the name of the company with direction to submit any representation against the striking of the name of the company within 30 days from the date of the notice. No reply was submitted by appellant. Thereafter, the Respondent STK5 and STK-7 notices were issued and the name of the appellant company was struck off from the register of the companies.

6. We have heard the parties and perused the record.

7. Learned counsel for the appellant during the course of arguments admitted that they have not file the statutory returns for more than two years as per Companies Act, 2013. We also note that the STK-1, STK-5 and STK-7 notices were issued by the ROC and the name of the company was struck off. However, learned counsel for the appellant argued that the annual returns and financial statements are ready and are ready to file it immediately. We also note that the appellant has been allotted an industrial plot for which they have made more than Rs.90 lakhs to Maharashtra Industrial Development Corporation. We also note that the project report submitted by the appellant to Indian Overseas Bank has been approved and the Bank has sanctioned a loan of Rs.2.92 crores with a margin of 30%. The Bank has also put a condition to mortgage the plot with no objection from the Maharashtra Industrial Development Corporation. This is an attempt to obtain business and making requisite arrangements including deposit of margin money with Bank and also payment to Maharashtra Industrial Development Corporation. Therefore, it cannot be said that the appellant is not carrying any business and have made no expenses.

8. From the above discussions and observations we have come to the conclusion that it would be just that the name of the company is directed to be restored. The following order/directions are passed:-

i) Impugned order is quashed and set aside. The name of the appellant company shall be restored to the Register of Companies subject to the following compliances:

ii) Appellants shall pay costs of Rs.1,00,000/- (Rupees One lac only) to the Registrar of Companies, Pune within 30 days.

iii) Within 30 days of restoration of the company's name in the register maintained by the ROC, the company will file all their annual returns and balance sheets due for the period ending 31.03.2013 to date. The company will also pay requisite charges/fee as well as late fee/charges as applicable.

iv) In spite of present orders, ROC will be free to take any other steps punitive or otherwise under the Companies Act, 2013 for non-filing/late filing of statutory returns/documents against the company and directors.

The appeal is accordingly allowed.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

New Delhi
Bm