

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

COMPANY APPEAL(AT) NO.24 OF 2018

IN THE MATTER OF:

Moturi Srinivas Prasad
S/o Late Dr. M. Satyanarayana,
Plot No.110,
Road No.10,
Jubilee Hills,
Hyderabad
Telangana

Appellant

Vs

Nandan Renewable Energies Ltd
Survey No.142, 143 and 148,
Hygely Village,
Zaheerabad Mandal,
Sangareddy District,
Telangana 502318

Respondent No.1

Registrar of Companies,
2nd Floor,
Corporate Bhavan,
GSI Post,
Tattiannaram Nagole,
Bandlaguda,
Hyderabad 500068

Respondent No.2

For Appellant:- Mr. Y. Suryanarayana, Advocate.

For Respondents: - Ms Monalisa Kosaria, Advocate.
Mr. Amit Acharya, Advocate for Mr. S.K. Mohanty, Advocate for ROC.

ORAL JUDGEMENT
(05.12.2018)

A.I.S. Cheema, J. - Heard counsel for the appellant and learned counsel for Respondent No.1 company and Advocate Shri Amit Acharya holding for amicus curiae. Learned counsel for the appellant submits that the appellant had filed Company Appeal No.129/252/HDB/2017 before National Company Law

Tribunal (NCLT in short) for restoration of the name of company which was struck off by the ROC on 5th May, 2017. Learned counsel for the appellant submits that the company was incorporated in 2008 to manufacture plants for the production of Bio-diesel and/or Synthetic diesel. The company was carrying on business and there was no intention to close the business. It is stated that due to certain disputes between the shareholders, balance sheets and annual returns could not be filed for the last four years. Then it was noticed that the company had been struck off. The counsel states that one Mr. Volam Bhaskar Rao, claiming himself to be Director filed Writ Petition No. 24064/2017 questioning the striking off the company. The present appellant was contesting that writ petition and claim that the said Mr. V. Bhaskar Rao was not authorised person.

2. It appears that in NCLT the appeal of the present appellant was opposed by Nandan Renewable Energies Ltd, company, represented by said Mr. Volam Bhaskar Rao by filing Company Application No.188/2017 by seeking impleadment. Learned counsel for the appellant accepts that the said impleadment application was allowed.

3. Impugned order shows that in the impleadment application Mr. V. Bhaskar Rao raised disputes which have been noted by the NCLT in para 3 of its order how the writ petition questioning the very same striking off was filed.

4. When the matter came up for hearing in NCLT the appellant reiterated averments but requested the NCLT to permit the appellant (referred as applicant) to withdraw the application with a liberty to approach again after duly complying with the provisions of law and also filed a memo dated 21.11.2017 that owing to some technical defects, and typographical errors in the appeal the withdrawal was being sought.

5. Impugned order shows that the impleaded respondent has strongly opposed the maintainability of the application including the locus standi of application. Still in this appeal before us, said Mr. Volam Bhaskar Rao is not made Respondent.

6. Learned counsel for the appellant is vehemently submitting that the appellant be permitted to withdraw the appeal which was filed in NCLT with liberty to file afresh after removing defects. He states that it is admitted fact that

the writ petition against striking off of the company is pending before the Hon'ble High Court of Hyderabad.

7. Learned NCLT took note of the fact that the issue raised before NCLT was already raised before the Hon'ble High Court and the appellant as well as impleading party was parties in the writ petition. The NCLT was of the view that when one legal remedy is already invoked by the party duly impleading the other party, entertaining the present application would lead to multiplicity of litigation, which was not warranted.

8. For the aforesaid reasons the NCLT was of the view that the appellant has not come with clean hands and dismissed the appeal with costs of Rs.50,000/- on the appellant.

9. Having heard the learned counsel for the appellant and looking to the disputes which appear to be between the promoters-directors which have been referred in para 3 of the impugned order, it cannot be said that it was a simple matter of only restoration. The question of restoration is pending before the Hon'ble High Court in a writ petition and in such a situation it would not be appropriate to entertain this present appeal. The request for permission to withdraw the appeal before NCLT with liberty to file fresh cannot be granted as no technical flaw as such was shown. The permission cannot be left contingent to the result of the writ petition also which will again be subject to appeal. As such no blanket permission to re-file could be there. We proceed to dispose the present appeal with only direction to set aside the cost which was imposed by the learned NCLT. We set aside the cost as moving NCLT is undisputedly a remedy available, which was resorted to. It is different, that NCLT did not entertain due to already pending writ petition.

10. The cost imposed in the impugned order by the learned NCLT on the appellant is set aside. Otherwise, the impugned order is upheld. With these directions the appeal is disposed off.

11. We appreciate the assistance which Learned Amicus Curiae has rendered to us in this appeal on earlier dates.

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

(Mr. Balvinder Singh)
Member (Technical)

Bm/nn