

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) No. 264 of 2018

[Arising out of Order dated 26th June, 2018 passed by the National Company Law Tribunal, Chennai Bench in CA/80(A)/252/2018]

IN THE MATTER OF:

Adroit Trade (P) Ltd. (Struck off)

No. 3, 6th Avenue,
Harrington Road, Chepet,
Chennai
Tamil Nadu – 600 031.

Through its Promoter/Director

Javid Pasha,
S/o Osman Ali Khan
Carisbrooke,
102, Harrington Road, Chepet,
Chennai
Tamil Nadu – 600 031.

...Appellant

Vs

Registrar of Companies, Chennai

Block No. 6, B Wing, 2nd Floor,
Shastri Bhawan, Haddows Road,
Chennai
Tamil Nadu – 600 034.

....Respondent

Present:

For Appellant: Mr. Nesar Ahmad, PCS and Mr. Rohit Chaudhary,
Advocates.

For Respondent: Mr. P. S. Singh, Advocate.

J U D G M E N T

BANSI LAL BHAT, J.

Appellant, 'Adroit Trade (P) Ltd.' – a company incorporated on 08.12.1983 in the State of Tamil Nadu with a share capital of Rs.3 Lakhs, came to be struck off from the Register of Companies. This happened as a result of action under Section 248 of the Companies Act, 2013 by the Respondent – 'Registrar of Companies' for failure on the part of Appellant to file its annual returns and balance sheets since incorporation. The Appellant filed C.A. No. 801(A)/252/2018 under Section 252(3) of the Companies Act, 2013 (hereinafter referred to as the 'Act') seeking a direction to Registrar of Companies, Chennai (for short 'ROC') to restore the Company in the Register of Companies, which came to be dismissed in terms of impugned order dated 26th June, 2018 passed by National Company Law Tribunal, Division Bench, Chennai (hereinafter referred to as the 'Tribunal'). The reasons for dismissal of the Application have been incorporated in para 5 of the impugned order, which reads as under:-

“5. *The Applicant Company has not filed Income Tax returns and Statutory Compliance with the ROC since its incorporation (08.12.1983) and there is no adequate*

reason to restore the company's name has been given. The applicant has not filed any proof for having submitted other statutory returns like Tax filing etc. The court case relates to an issue before the Hon'ble High Court of Madras in 2017. This itself cannot be a reasonable ground as the applicant has failed to file the returns with the ROC from 1983 onwards. Therefore the Adjudicating Authority has no scope to admit the petition without any proper documentary proof and accordingly we dismiss the Company Application."

2. The impugned order has been assailed by the Appellant on the ground that the Tribunal failed to distinguish between the two situations contemplated by provisions of Section 252(3) of the Companies Act, 2013 in which the Tribunal can order restoration viz. when the company was carrying on business or was in operation at the time of striking off of its name and the alternative situation where it appears just to the Tribunal that the name of the Company be restored to the Register of Companies. According to Appellant, even if the Company was not carrying on any business or was not in operation at the time of striking off, it was still open to the Tribunal to order restoration if it appeared to be 'otherwise just'. It is contended on behalf of Appellant that the Tribunal failed to appreciate the fact that due to pending litigation the land owned by the Appellant Company

could not be utilized for development and commercial activities as per its object clause. According to Appellant, the Company had temporarily stopped carrying on business but it has been continuously in operation since 1983 and paying municipal taxes on the land owned by it. Learned counsel for Appellant submits that the Tribunal has failed to appreciate that the Appellant Company was not a shell company. It is further contended that neither the Appellant Company nor its Directors were served any notice for removal of the name of the Company from the Register of the Companies and for this reason alone the impugned order cannot be sustained.

Appellant has filed list of new documents filed before this Appellate Tribunal in terms of order dated 11th January, 2019, which were not filed before NCLT, Chennai Bench when the matter was pending consideration before the Tribunal. These include copies of tax payment receipts issued by Udthagamandalam Municipality, FDR for Rs.26,50,000/-, Tax Challan in regard to payment of Income Tax for financial year 2017-18, statutory return for the same financial year, acknowledgements from Registrar of Companies, Sale Deeds dated 31st July, 2007, 24th August, 2007, 18th October, 2012, 5th July, 2013, 24th November, 2017, Bank Statement of Appellant Company from 22nd October, 2017 onwards and case status of the pending cases.

3. Respondent – Registrar of Companies, Chennai has filed its report based on records which reveals that ‘M/s Adroit Trade (P) Ltd.’ was

incorporated on 8th December, 1983 with the main object of undertaking sale or purchase of goods and articles with provision of keeping same in deposit or on consignment and carry on business of exporters and importers of merchandise, etc. Reportedly, the Appellant Company has not filed its annual return and balance sheet since incorporation. Action taken under Section 248 of the Companies Act, 2013 resulted in striking off the name of Company from the Register of Companies. It is further reported that further documents submitted by the Appellant could not be accepted in the form of hard copies as in terms of the rules the balance sheet and annual reports of the Company are required to be filed online through MCA Portal only. It is further reported that notice was given to Appellant Company through publication in both vernacular and English language published respectively in Tamil 'Dhinamani' issue dated 11th May, 2017 and English 'The Hindu' issue dated 11th May, 2017.

4. Heard the rival sides and perused the record. Ground urged in regard to service of notice under Section 248 of Companies Act, 2013 has not been stressed at the hearing. Challenge to impugned order on this score, thus, no more survives.

5. It is not in controversy that the Appellant Company incorporated on 8th December, 1983 with main object of undertaking sale and purchase of goods and articles besides carrying on business of exporters and importers of merchandise, machinery, cassettes and electronic component devices has

not filed its Annual Return and Balance Sheet since incorporation. Failure on the part of Appellant and its Directors to adhere to the statutory compliances is attributed to a variety of reasons including adverse market conditions, financial issues and pending litigation forcing the Appellant Company to stop its operations, which had been commenced pursuant to its incorporation. Learned counsel for Appellant has pointed out that the Appellant Company had acquired title to the parcel of land measuring 3.05 Acres together with the Rosemount Properties situated in Ootucamund Town in Tamil Nadu in terms of sale deed dated 5th December, 1984, portion whereof was subsequently sold. The Appellant is presently holding 23 Cents or 10,000 Sq. Ft. of land which it intends to develop. However, a suit has been filed against the Appellant Company by 'S. G. Nichelos and others' which is pending adjudication before Ld. Subordinate Judge of the Nilgiris. Proceedings in the suit have been kept on hold by Hon'ble High Court at Madras which is hearing an appeal against dismissal of interim injunction application preferred by the opposite party. It is nobody's case that the Appellant Company is a Shell Company. It is also not denied that the Company is locked in a litigation not commenced by it and further proceedings in the suit have been stayed by the Hon'ble High Court of Madras. There is nothing in the Report of ROC to even suggest that the Appellant Company was not in existence. The documents relied upon by the Appellant, some of which were not before the Tribunal, unmistakably demonstrate that the Appellant Company is a living entity and its operations

have come to a grinding halt, one of the reasons being the pending litigation and the order of stay passed by the Hon'ble High Court of Madras. Pending litigation in itself has been judicially recognized as a 'just' ground for restoration of a Company struck off the Register of Companies. It is apt to refer to the observations of Hon'ble High Court of Madhya Pradesh in the matter of **'UmedbhaiJhaverbhai Vs. Moreshwar Keshav and Ors. [MANU/MP/0117/1953:AIR 1954 MP 146]'**, wherein it was held, inter alia, in paragraph 8 thereof that:

"..... when a suit is actually pending against a company and is being contested by it at the time of the removal of its name from the register, it is proper to direct restoration of the name of the Company particularly when the Directors were aware of the fact of the contested litigation and were actually taking part in it."

6. Appellant has been able to demonstrate that the Appellant Company has been carrying on business of sale and purchase of property though the instances given are few and far between and such transactions cannot be said to be substantial and of respectable magnitude. However, that does not detract from the fact that the Appellant was carrying on business which was seriously affected because of pending legal process. In the given

circumstances, it would be just to restore the struck off Appellant Company at the instance of Company itself or its Shareholder or Director. The Tribunal erred in declining to restore the Appellant Company merely on the ground of statutory non-compliances when there were cogent reasons justifying its restoration. The Tribunal also failed to notice the effect of its refusal to restore the Appellant Company which undoubtedly would have a deleterious effect on the very existence of the Company in as much as the Appellant would no more be able to defend the litigation slapped on it and would get dismissed into oblivion thereby sounding a death-knell to the very existence of the Company. The Tribunal appears to have been oblivious of the proposition that it had power to order restoration of the Appellant Company in the Register of Companies on a just ground notwithstanding the fact that it failed to transact business for the assigned reasons. The matter was to be approached from a broader perspective keeping in view the interests of various stakeholders and larger social interest which can be better subserved by restoring a Company struck off for mere statutory non-compliances, which is not a Shell Company as is the admitted position in the instant case.

7. For the aforesaid reasons, the impugned order cannot be supported. We are convinced that it is just to restore the Appellant Company. Consequently, the appeal is allowed and the impugned order is set aside. Appellant Company is restored to its original status. The Appellant is directed to file all statutory compliances/ returns together with the

prescribed fees and penalties leviable thereon as mandated by law. This shall be done within thirty days from the date of pronouncement of this judgment unless the period is extended by the Respondent – Registrar of Companies, Chennai.

[Justice Bansi Lal Bhat]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

NEW DELHI

29th April, 2019

AM