

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) No.239 of 2018**

[Arising out of Order dated 30.05.2018 passed by National Company Law Tribunal, Allahabad Bench, Allahabad in CP No.23 of 2012]

**IN THE MATTER OF:**

**Before NCLT**

**Before NCLAT**

Lakshmirattan Cotton  
Mills Company Limited  
Through its Director  
Sashank Gupta,  
MI-307, Barra 2  
Kanpur 208027  
Uttar Pradesh

Original Petitioner

Appellant

**Versus**

1. Union of India  
Through Secretary,  
Ministry of Corporate  
Affairs, Garage No.14  
'A' Wing,  
Shastri Bhawan  
Rajendra Prasad Road  
New Delhi 110001

Original Respondents

Respondents

2. Registrar of Companies  
Uttar Pradesh &  
Uttrakhand, 37/17,  
Westcott Building,  
The Mall,  
Kanpur – 208001  
Uttar Pradesh

**For Appellant:**

**Shri Arun Saxena and Shri Rahul Kumar Singh,  
Advocates**

**For Respondents:**

**Ms. Prema Priyadarshini and Shri Ashish Shaw,  
Advocates**

**J U D G E M E N T**  
**(31<sup>st</sup> January, 2019)**

**A.I.S. Cheema, J. :**

1. This Appeal has been filed by the Appellant against the dismissal of its Company Petition No.23/2012 by the National Company Law Appellate Tribunal, Allahabad Bench, Allahabad ('NCLT', in short) by Order dated 30.05.2018, which was filed initially as a Petition in the High Court of Allahabad under Section 560(6) of the Companies Act, 1956 ('old Act', in short). The Petition had been filed as the Registrar of Companies had by Order dated 11.05.2010 struck off the name of the Petitioner Company from the Register of Companies, which order was published in Gazette of India dated 22.05.2010. Copy of the Company Petition as was filed initially in the High Court, is available at Annexure A-10 and it shows that the Appellant referred to its Memorandum of Association, which inter alia showed the business of the Company as not merely spinning, weaving, dying, etc. including the manufacture, purchase and sale of materials of cotton, etc. but also the object of purchase, acquire, construct, maintain or alter any buildings. The Petition claimed that the Company prepared and audited accounts every year since incorporation which was in 1934. The Petition referred to existence of unfriendly relations between family members who were shareholders of the Company, because of which the business came to a halt and was not being carried on for last 10 years. The Petition showed that the ROC issued Notice dated 29.10.2007 under

Section 560(1) to the Company; as there was no response, another Notice under Section 560(2) dated 18.12.2009 was issued enquiring if the Company was carrying on business and that in case of default, the Company would be struck off; and that the ROC then issued yet another Notice under Section 560(3) on 11.02.2010 and ultimately passed Order under Section 560(5) on 11<sup>th</sup> May, 2010 dissolving the Company. The Order was published in Gazette was also not disputed. The Appellant claimed that the Company never became defunct but due to the disputes, it could not submit balance sheets to the ROC, although the accounts had been audited. The Petition attached balance sheets with Auditors Report for years ending March, 2007 to March, 2011 and claimed that the Company was operational and it was able to carry on the business, but that it was not defunct. The Petition claimed that now the family members had come together and intended to continue the Company and sought restoration of the name of the Company.

2. The ROC filed Reply when the matter was in the High Court and copy of which is at Annexure A-11. The ROC claimed that the Company had not filed statutory balance sheets and Annual Returns for the last 10 years and so, the ROC believed that the Company was not carrying on business/operations and thus, the proceedings under Section 560 of the old Act were started. The ROC stated that the copies of balance sheets for the years 2009 to 2011 filed in NCLT, had not been filed with the ROC and

the same could not be said to be authenticated. The ROC claimed that the Appellant was not entitled to relief.

3. It appears that after the matter was transferred to NCLT, the Appellant had filed Clarification Affidavit, copy of which is at Annexure A-20. It appears, somewhere in 1968, Tax Recovery Officer of Income Tax Department at Kanpur had, for dues attached properties of the Company and had given management of the properties to a Director of the Company, as Receiver, to maintain accounts of Receipt and maintain Bill Register, Tenants Register etc. (Annexure –A-13). Annexure – A-20 claimed that, the management of the Company was taken over by special enactment called “Lakshmirattan and Atherton West Cotton Mills (Taking Over of Management) Act, 1976” dated 05.09.1976 (hereafter referred as - Act of 1976) and that subsequently, on nationalization, the textile undertaking was nationalized by the “Textile Undertakings (Nationalization) Act, 1995” (hereafter referred as - ‘Nationalization Act’). The Appellant claimed that initially the management of the textile undertaking was taken over and subsequently, the assets of the Company were handed over to the National Textile Corporation (in short, ‘NTC’), UP by the Income Tax Department, which had earlier attached the same. The Appellant claimed that the properties attached by the Income Tax Department included not merely the textile undertaking but other properties of the Company, which could not be handed over and the Affidavit enlisted the same as under:-

- “3. That the properties (including actionable claims) not pertaining to the textile undertaking which has been handed over to the NTC UP are as under:
- (1) A Building situated at 122/1, Sarojini Nagar, Kanpur about 47000 sq yrd.
  - (2) Bungalow and godown situated at 199/502, 199/506 & 199/507, Darshan Purwa, Kanpur about 14700 sq yrd.
  - (3) Bungalow situated at 16/19 (old) 16/58 (new), Civil Lines, Kanpur about 3520 sq yrd.
  - (4) An open Plot situated at 15/68, Civil Lines, Kanpur about 3000 sq yrd.
  - (5) Other actionable claims etc.”

4. The Impugned Order shows that the matter was decided by the NCLT and by the Judgement dated 30.05.2018, the Tribunal referred to the Act of 1976 and concluded by referring to the provisions that the management of the Petitioner “Company” was taken over by the Government of India. It also concluded that there was no partial takeover of the ownership and proceeded to dismiss the Company Petition.

5. Being aggrieved, the present Appeal has been filed. It is claimed in the Appeal and it has also been argued by the learned Counsel for the Appellant that before the Company Petition was filed, the Appellant had filed Civil Miscellaneous Writ (Tax) No.977/2006 before the Hon’ble High Court of Judicature at Allahabad where reference was made with regard to the developments under the Act of 1976 and the subsequent act of nationalization of the Textile Undertaking and it was also claimed that

before the Act of 1976, Income Tax Recovery Officer had attached properties of the Company which included not merely the Textile Undertaking part but also other properties and after the nationalization on 3<sup>rd</sup> May, 2006, wrongly the Income Tax Department released all the properties in favour of National Textile Corporation because of which, Writ Petition was filed seeking quashing of the Orders dated 3<sup>rd</sup> May, 2006 of the Income Tax Recovery Officer. The learned Counsel submitted that apart from the textile division, the Company had other properties, which were source of business by way of rent for the Company and the Act of 1976 or the Nationalization Act had not taken over those properties and thus, the Company was operational and according to him, when the Income Tax Authorities wrongly released all the properties of the Company in favour of NTC, the Writ Petition was filed and it was pending when ROC struck off the Company and in the circumstances, it was just and appropriate that the name of the Company should have been reinstated. The Counsel pointed out documents to show that the Hon'ble High Court had kept the Writ Petition pending so that the decision regarding restoration of the name of the Company is first decided by NCLT.

6. The learned Counsel for the Respondent in the argument in defence has relied on the Reply which was filed in High Court (when the matter was in High Court), which we have referred as at Annexure – A-11. That Reply basically relates to the Petition as was filed, the foundation of which was that the statutory documents have not been filed for the last 10

years and the Company claimed that due to the disputes, the same could not be filed and the ROC claimed that there was no justification for restoration of the name of the Company.

7. We have heard learned Counsel for both sides. The Counsel for the Appellant referred to Judgement of the Hon'ble High Court of Delhi at New Delhi in CP 185/2008 dated 21.04.2010 in the matter of "**Indian Explosives Ltd. Vs. Registrar of Companies**" where the Petitioner had Arbitration Award in its favour against Company which had been struck off and it became impossible for the Petitioner to execute the Award and restoration was sought. The Hon'ble High Court referred to another matter decided by the High Court of Madhya Pradesh where it was observed that when suit is pending and is being contested, it is proper to direct restoration of the name of Company, if it is removed.

8. The learned Counsel for the Appellant has relied on the Judgement in the matter of "**U.P. State Sugar Corporation Vs. Burwal Sugar Mills Co. Ltd. and Ors.**" reported as MANU/SC/0156/2004: 2004(2)SCALE646. That matter related to U.P. Sugar Undertakings (Acquisition) Act, 1971 where after considering the provisions of that Act, the Hon'ble Supreme Court in para – 14 observed as under:-

"14. The intention of the Legislature is clear that the land and buildings which were connected with or were in use for the purposes of the factory would be covered by clause (vi) of section 2 (h). Admittedly, the registered office of the respondent company was located at House No. 54/14 Canal Range, Kanpur.

There is no material on the record to show the premises in question were being used or occupied for the storage of sugar. Similarly, there is no material on record to, show that the house in question was being used as a guest house or for the residence of a Director of the factory. Respondent No.1 is a registered company and is running a sugar factory at Barabanki with its registered office in House No. 54/14 Canal Range, Kanpur. Under the Act it is the factory along with its properties which were connected with or were in use for the purposes of the factory which were acquired and not the properties and assets of the company running that factory. The Act specifically differentiates between a company owning a sugar undertaking and the sugar undertaking itself. The Company is much wider entity as against the undertaking which is only one of the assets of the company. The Legislature deliberately did not touch the company and acquired only the undertaking as per the objects of the Legislature. The registered office of the company is located in House No. 54/14 Canal Range, Kanpur which is owned and possessed by the company and is not a part of the 'Schedule Undertaking' and, therefore, the same could not vest in the State. Handing over of its possession by the Receiver to the appellant was illegal and contrary to the provisions of the Act.”

Relying on the above, the learned Counsel for Appellant has referred to the provisions of the Act of 1976 as well as the Nationalization Act before us to submit that what was taken over in 1976 was the management of the textile division of the Company and what was nationalized was that division and it did not include the other properties of the Company. According to him, the document at Annexure – A-13 dated 9<sup>th</sup> December, 1968, which is much before the Act of 1976, itself showed that the company had various properties which were giving income from rent also and thus according to him, those properties could not be mixed



up with what was part of the textile division. He claimed that in any case, those disputes are pending in the Writ Petition before the High Court and it was inappropriate for the NCLT to enter into the merits of those aspects and decide on its own what was subject matter of disputes before the High Court.

9. In the Writ Petition, which is said to be pending before High Court, an Order (Annexure – A-17) appears to have been passed as long back as on 03.07.2006, which reads as under:-

“It is contended that the petitioner company in its entirety was not taken over under the Textile Undertakings (Nationalization), Act, 1995 and only one of its mill i.e. M/S Laxmirattan Cotton Mills, Kalpi Road, Kanpur was acquired. But the respondents have released the entire property of the petitioner Company from attachment in favour of M/S National Textiles Corporation Ltd. (respondent Nos.2 and 3) by the Impugned Order contained in Annexure No.8 and 9 to the writ petition.

Heard Mr. Awasthi on behalf of respondent No.4 and 5. He is allowed four weeks' time to get instructions. Respondent No.1 is represented by Sri Vibhu Prakash Mishra and learned Standing Counsel appears for the Central Government. They are allowed three weeks' time to file counter affidavit. Rejoinder affidavit, if any, may be filed by the petitioner within two weeks thereafter.

Issue notice to respondent Nos.2 and 3 returnable within a period of four weeks. Steps may be taken within a week.

List this case after the expiry of the aforesaid period.

Considering the submissions and looking into the facts of the case, in the meanwhile it is provided that the respondents shall not alienate, encumber, or

change the nature of the property which has been released in favour of respondent Nos.2 and 3 until further orders of this Court.

It is further provided that respondent Nos.2 and 3 shall maintain separate accounts of income from the properties of the petitioner, which has been released in their favour vide impugned orders.”

The above Order of the Hon’ble High Court makes clear the dispute. It is clear that the Hon’ble High Court was already seized of the dispute whether portions of the properties disputed by the Company, had been taken over or not under the two Acts under reference.

10. The NCLT has relied on Section 3(4) of the Act of 1976 and observed that the management of the “Company” had been taken over by the Act of 1976. To quote the words of the NCLT, the same reads as under:-

“From the fact of the case itself, it is obvious that Company is not doing any business at the time of striking off its name. In the year 1995 assets of textile undertaking were nationalized by the Textile undertaking (Nationalization) Act 1995. The entire textile undertaking was vested with the Govt. of India. Special Act 98- Lakshmi Rattan and Atherton West Cotton Mills (Take Over of Management) Act 1976 was passed pursuant to which management of the petitioner company was taken over by the GOVT of India in terms of the section 3(4) aforesaid ACT and thus exclusive control vested with the Govt. of India through National Textile Corporation, so petitioner in the present matter has no control over the Company.”

(Emphasis supplied)

We have perused the Act of 1976. The aims and objects as appearing from Annexure - A-14 as well as the name of the Act itself shows

that the Act was brought about to “takeover management” of the two Mills - 1) Lakshmi Rattan Cotton Mills Company Limited and 2) Atherton West and Company Ltd. Chapter – 2 of the Act of 1976 has a title “Taking Over Of The Management Of The Undertakings Of The Two Companies”, then Section 3(1) specifies that on and from the appointed day, “the management of the undertakings of the two companies shall vest in the Central Government.” In that context, Sub-Section (4) reads as under:-

“All persons in charge of the management, including persons holding offices as directors, managers or any other managerial personnel of either of the two companies, immediately before the appointed day, shall be deemed to have vacated their offices as such on the appointed day.”

To read it in a simple way, (excluding the inclusive portion) the Sub-Section read that all persons in charge of the management shall be deemed to have vacated their offices as such on the appointed day. As the matter is pending in the High Court, we are looking at these provisions as to how they prima facie appear to us and we find ourselves in disagreement with NCLT that management of the “Company” was taken over. Our observations are for limited purpose of restoring name of Company. Naturally, Hon’ble High Court will take its own decision.

11. Looking to the disputes pending in the High Court, according to us, it would be appropriate to restore the name of the Company to the Register of Companies leaving all questions open for the Appellant and Respondents to dispute in the Writ Petition for final adjudication by the

Hon'ble the High Court. Striking off of the name of the Company would create difficulties for the Appellant to pursue its remedies before the High Court and in the facts of the matter, when litigation was pending, the name of the Company should not have been struck off.

12. The particulars show that in spite of Notices, the Company did not respond and we do not find fault with the ROC when the name was struck off because the Appellant admittedly had not responded to the Notices. However, in the facts of the matter, we find it just under Section 252(3) of The Companies Act, 2013 that the name of the Company should be restored, but Appellant should bear costs payable to ROC.

13. For the above reasons, we give following directions:-

- a) The name of the Appellant Company shall be restored in the Register of Companies to its original status subject to:-
  - i) The Appellant Company deposits costs and expenses of Rs.1 Lakh with the Registrar of Companies along with certified copy of this Order, within one month of passing of this Order.
  - ii) Within three months from the date of passing of this Order, the Appellant Company shall file all due and pending financial statements, annual returns and documents with the Registrar of Companies and

comply with requirements of Companies Act, 2013 and rules made thereunder along with prescribed fee, payment of late fee or any other charges which are leviable.

- b) Subject to above compliances, the Impugned Order is quashed and set aside.

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

[Balvinder Singh]  
Member (Technical)

*/rs/nn*