

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

**Company Appeal (AT) No.195 of 2018**

[Arising out of order dated 04.05.2018 passed by National Company Law Tribunal, New Delhi Bench in Appeal No.347/2017]

**IN THE MATTER OF:**

1. Gulab Singh Tanwar  
R/O: 37-A, Gulmohar Lane,  
Sirsi Road, Khatipura,  
Jaipur – 302000  

...Appellant No.1  
(Original Petitioner No.2)
2. Anirudh Tanwar  
R/O: 37-A, Gulmohar Lane,  
Sirsi Road, Khatipura,  
Jaipur – 302000  

...Appellant No.2  
(Original Petitioner No.3)

(Shareholders of Blue Water Motion Pictures Pvt. Ltd.)

**Versus**

The Registrar of Companies  
NCT of Delhi & Haryana,  
4<sup>th</sup> Floor, IFCI Towers,  
Nehru Place, New Delhi – 110019

...Respondent  
(Original Respondent)

**For Appellants:** Shri Sandeep Bisht, Advocate

**For Respondent:** None for the Respondent

**ORAL JUDGEMENT**

**28.09.2018**

**A.I.S. Cheema, J. :** The Appellants claim to be shareholders of Blue Waters Motion Pictures Pvt. Ltd. (Company – in short) which Company is

stated to have been incorporated on 14.07.2010. The Company later got struck off by ROC and hence the Appeals.

2. It is stated that the Company had filed financial statements and Annual Returns till 2012-2013 but thereafter there was default in submitting financial statements and Annual Returns. It is stated that due to certain difficulties, the Returns remained to be filed and the ROC struck off the Company issuing public Notice STK – 5 under Section 248 of the Companies Act, 2013 which was published on 27.04.2017. Returns for the years 2013 – 2014 to 2015 – 2016 were in arrears. The Appellants are claiming that the Appellants had filed Appeal No.347/2017 before National Company Law Tribunal, New Delhi ('NCLT' in short) as at Annexure – A-11 claiming that it has only two shareholders and there was delay in filing necessary statutory documents with the Respondents with regard to the above three years. It was claimed that due to ongoing losses and lack of business opportunities, the Petitioners – Appellants were unable to concentrate on the business and could not file the Returns. They came to know about the Company being struck off for the first time in April, 2017 when they tried to file the Returns. The Appellants claimed that the act was inadvertent and the Appellants sought restoration of the name of the Company to the Register of Companies.

3. When the matter came up before NCLT, the Impugned Judgement shows that the Appellants brought to the notice of the learned NCLT only the bank statements for Financial Years 2014 – 2015 to 2016 – 2017; internet bills for January – July, 2017 and MTNL bills for the period 2014 – 2015 to 2016 – 2017. Income Tax Department appears to have reported filing of

Returns only till 2013 – 2014. In view of such scanty documents, the learned NCLT observed as under:-

“5. We have perused the documents filed by the Company. It is apparent from the financial statements filed by the Company that there was no revenue generation in the Company for the years ended 31.03.2014, 31.03.2015 and 31.03.2016. Further, the bank account statements do not show any transactions which would demonstrate that the business operations are ongoing. Mainly all the credit transactions to the account have been made by one Saarthi Airways Pvt. Ltd. which is a company connected to the Petitioner Company and has common directors, as submitted by the Ld. Counsel of the Petitioner. Apart from the financial statements and the bank account statements, the Company has provided internet connection bills and telephone bills to show that its office was up and running. However, none of these documents show that the Company was actually carrying out the business for which it was incorporated. In fact, the lack of any revenue generation and any transactions relating to the business of the Company point towards the fact that there were no operations ongoing in the company. This factum is also supported by the pleading of the Company in its appeal where the Company has admitted as follows:

“13. It is further submitted that due to ongoing losses and lack of business opportunities, the Petitioners were unable to concentrate on the business and therefore they could not file the necessary statutory documents with the respondent...

14. That the Petitioner company was going through a rough phase since 2011, and therefore could not concentrate on the business of the company in totality...”

3.1 NCLT observed that the Appellants had accepted that Company had received Notice under Section 248 somewhere in March, 2017. For reasons discussed earlier, NCLT held that the Appellants were unable to show that Company was carrying on business and operations in two preceding financial years. Consequently, the appeal to NCLT was dismissed.

4. Aggrieved, the Appellants have filed this Appeal claiming that the NCLT had not considered the documents properly which it had filed showing that it is ongoing concern. During the pendency of this Appeal, the Appellants have by way of additional Affidavit placed various additional documents on record with Diary No.7131. The Counsel for the Appellant has pointed out from this Diary No.7131 documents to show that the Appellants - Blue Waters Motion Pictures Pvt. Ltd. were in the business of making short films and commercial films. The Counsel is pointing out documents like, agreements even for 2014-2015 and 2015-2016 and submitting that the Company was indeed in active business. Reference is made to 2 Motion Pictures, like **“TE3N”** and **“Parched”** and agreements relating to rights in them of the Company and even official communications with Diu Authorities in 2015; payment of Profession Tax etc. It is submitted that due to Company getting struck-off, the Company is now in difficulty for functioning and receiving and transacting the money and entering into further contracts.

5. We find that if the Appellants had all these documents with them, it was responsibility of the Appellants to put up their complete case before NCLT. It was improper for the Appellants to have filed scanty documents in NCLT and now when they have suffered dismissal of Appeal in NCLT, the present Appeal has been filed. At the same time, the documents do show that they are relevant and need consideration.

6. We are, however, deprived of having the views and observations of NCLT in this regard. It would be appropriate to send back the matter and let

the Appellants convince the NCLT that the Company was an ongoing concern in business and in operation, and deserves to be restored.

7. ROC has not appeared in this matter in spite of service. With Diary No.7131 in the documents filed, Returns of Income Tax of 2016 -2017 and 2017-2018 are also included as filed on 29.03.2018, showing '0' \*i.e. – Zero, gross total income. Looking at documents filed and money involved/transacted as appearing from the documents, this appears to be mismatched and Income Tax Authorities may have to be Noticed again. NCLT needs to summon them to consider the correctness of these documents.

8. For the above reasons, we need to set aside the Impugned Order and remand the matter to the NCLT, New Delhi. The NCLT will give opportunity to the Appellants to file these documents (filed before us with Diary No.7131) before NCLT and the NCLT may rehear the Appellants, ROC and Income Tax Authorities considering these documents which the Appellants have now filed. The Appellants shall file copies of these documents before NCLT and such other documents, if any, on which the Appellants want to rely before NCLT, on the next date which we are giving of appearance. The learned NCLT may rehear the Appellants and pass any suitable orders in the Appeal.

9. (A) The Appeal is allowed. The Impugned Order dated 04.05.2018 is quashed and set aside and matter is remanded and Appeal No.347/2017 is restored to file of NCLT, New Delhi Bench –III.

(B) The Appellants are directed to appear before NCLT on 24<sup>th</sup> October, 2018 on which date, the Appellants shall tender copies of the documents filed before us vide Diary No.7131 in the NCLT.

(C) Registry to send copy of this Judgement to Income Tax Authorities of Ward 5(1) of Delhi, for information, and to assist learned NCLT.

(D) NCLT may then rehear the Appel.

(E) Counsel for Appellants is present and he is told the above date of 24.10.2018 to appear before NCLT, New Delhi Bench III for further conducting the Appeal before NCLT. No separate Notice to Appellants will be necessary.

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

[Balvinder Singh]  
Member (Technical)

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