

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

(Arising out of Order dated 8<sup>th</sup> January, 2018 passed by the National Company Law Tribunal, Principal Bench, New Delhi in CP No. 1022(ND)/2016).

**Company Appeal (AT) No. 84 of 2018**

**IN THE MATTER OF:**

**1. G.S.C. Industries Pvt. Ltd.**

Having registered office at  
Palace Cinema Building,  
20, Roshanara Road,  
Delhi- 110 007

**2. Mr. Harinder Singh Bedi,**

Resident of S-285A,  
Panchshila Park,  
New Delhi- 110 017

**.. Appellants**

**Vs.**

**Registrar of Companies,  
NCT of Delhi & Haryana,**

Having office at 4<sup>th</sup> Floor,  
IFCI Tower, Nehru Place,  
New Delhi- 110 019

**.. Respondent**

**Present:**

**For Appellants:- Mr. N.P.S Chawla, Mr. Kaustubh Prakash, Mr. Sujoy Datta, Mr. Vinay Vaish, Mr. Mohit Das, Mr. Aaryan Sharma, Advocates.**

**For Respondent:- Mr. Sanjib K Mohanty, Advocate for ROC, Mr. Amit Acharya, Advocate**

**J U D G E M E N T**

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

The Appellant No. 1, original Applicant/Petitioner- Company, filed an application under Section 560(6) of the Companies Act, 1956 ('Old Act' in short)

before the Hon'ble High Court of Delhi at Delhi on 15<sup>th</sup> July, 2016 seeking restoration of the name of the Applicant in the Register of Companies maintained by Registrar of Companies, NCT of Delhi & Haryana ('ROC' in short). Subsequently, the matter came to be transferred to the Principal Bench, National Company Law Tribunal, Delhi ('NCLT' in short) and was registered as CP No. 1022(ND)/2016. Appellant/Original Petitioner has filed a copy of that petition at Annexure-A9. The petition in short filed was as follows:

- a) The Petitioner referred to particulars regarding incorporation of the Respondent – Company on 15<sup>th</sup> February, 1956 and referred to the Memorandum of Association and Articles of Association (pg. 202 to 226). The Petitioner claimed that the name of the Company was struck off by Registrar of Companies vide order dated 31<sup>st</sup> May, 2007 pursuant to notification under Section 560(5) of the Old Act which was issued in the Gazette dated 23<sup>rd</sup> June, 2007. Copy of the Gazette has been filed in the appeal (Pg. 227-228) which shows the Original Petitioner Company being struck off under Section 560(5) of the Old Act. Various other companies were also there who were struck off by the said Gazette Notification.
- b) The Petitioner claimed that being aggrieved by striking off, the Petition was filed through Director Shri Harinder Singh Bedi, who has been authorised by the Board Resolution dated 25<sup>th</sup> January, 2016. A copy of the Board Resolution has been annexed as Annexure-P3 (Pg. 230). According to the Petitioner, the Company was set up to work as producers, exhibitors, distributors etc. in cinematograph films, talkies etc.
- c) The Petition referred to the authorised and paid up share capital of the Company. In paragraph-7, the Petition claimed that the company since

incorporation in 1956 has been carrying on “business of producers, executors, distributors, importers, exporters, manufacturers, financiers, repairers, buyers, sellers or otherwise dealers” in cinematograph films, talkies etc. It was claimed that since incorporation, the Company had been regularly complying with the provisions of the Old Act and has been filing requisite documents and that “they have been holding Annual General Meetings regularly and its accounts are also being maintained and audited regularly till date.” Paragraph-9 of the petition claimed that the Petitioner “had been carrying in its building the business of running a cinema hall under the name and style of “PALACE” continuously without any interruption till 2002”. The Petitioner then claimed that due to onset of multiplex and change in market conditions the cinema was faced with dwindling demand and in view of major renovations required – “the business of cinema was in abeyance” The pleadings in paragraph-9 of the petition further are – “During the period of abeyance, the Petitioner was unable to file/electronically upload the documentation as required by the Registrar from time to time owing to, being short-staffed and absence of professional help. However, the promoters/directors with a renewed vigor have now decided to restore the cinema to its old glory and are thereby requesting to restore the company’s name in the Register of the Companies maintained by Registrar of Companies, NCT of Delhi & Haryana.” The Petitioner Company further claimed that if the name is not restored, it would suffer irreparable loss and injury. The Petitioner claimed that the Company has been maintaining and preparing all requisite documents as per Old Act along with Companies Act, 2013 (“New Act” in short) applicable

to it “but due to operation being in abeyance and non-presence of staff, the documents could not be filed with the office of Registrar of Companies, NCT of Delhi and Haryana and this promotor/owner were unaware the technicalities and intricacies of such compliance.”

d) The Petitioner claimed that the documents of earlier orders could not be filed due to circumstances explained and that the Company was in the process of its regularisation. It claimed in 2016 that the Company came to know from the Practising Company Secretary regarding striking off the name of the Company and inspection of Company records in MCA Portal was taken. The Petitioner claimed that Respondents had not given notice as per Section 560(1)(2) & (3) and they did not have earlier knowledge about notification under Section 560(5) of the Old Act and so did not get opportunity to represent before the ROC. The Petitioner claimed that there was non-compliance of these provisions and expressed that the Company was ready and willing to file upto date Annual Returns and Balance Sheets, since non-submissions. It claimed that since incorporation it had been carrying on the objects of producers, exhibitors, distributors etc. in cinematograph films, talkies etc. and it was just and equitable to restore the name of Company.

2. It appears that in view of the petition, the Appellant/Original Petitioner filed affidavit/no objection certificates (Pg. 231 to 240 of the Appeal) claiming to be Principal Directors of the Company and that they had no objections to restore the name of the Company.

3. When the matter came up before the Principal Bench of NCLT at Delhi, the ROC filed reply (Pg. 278 of Appeal) and the reply claimed that as per records available with ROC, the Company had last filed its balance sheet as on 31<sup>st</sup> March, 1999 and statutory documents i.e., Annual Returns and Balance sheets since 1999 had not been filed in contravention of Section 159/220 of the Old Act and so ROC believed that the Company was not carrying on any business or was in operation and it was considered fit to strike off the name of the Company and finally struck off the name of Company under section 560(5) of the Old Act vide notification published in the Official Gazette of India dated 23<sup>rd</sup> June, 2017.

4. In paragraph-4 of the Reply, the ROC stated that in view of non-filing of statutory documents, the Company be put to strict proof of composition of Board of Directors; the state of operation of the business and viability of running the company and making necessary statutory compliance in future if company was to be revived. The ROC claimed that Company had failed to produce any statutory document as proof of it being in operation and carrying on business and put to proof. ROC stated that notices under Section 560 of the Old Act were not traceable as the records of ROC had been shifted to Indian Institute of Corporate Affairs Campus. ROC claimed that although the Petitioner claimed that because of being short staffed, the compliance could not be done but the Synopsis of the petition had claimed that part time employee/Accountant was there and that the stand was contrary. It also claimed that no Income tax returns were produced in support of the claim of being operational till date.

5. It appears that after such rely of the ROC, the Company filed rejoinder dated 19<sup>th</sup> July, 2017 and with the rejoinder produced balance sheet stating to be of 31<sup>st</sup> March, 1999.

Thus while the Company Petitioner was unable to state the year till when the compliance had been done (see para-15 of the Company Petition) and vaguely expressed that it was ready to produce Annual Returns and Balance sheet since non-submission, with rejoinder the Annual Return and Balance sheet was filed till 1999. Rejoinder also added, what was stated to be, latest list of Directors. The Rejoinder claimed that since incorporation till 1999, the Company had filed all statutory documents but later erred due to reason that cinema hall run by the company faced dwindling demand from the public and the company faced employees' problem. Further it was claimed that the company was holding Annual General Meetings each year and Annual accounts for each and every financial year were audited by the statutory Auditors continuously. With the rejoinder the Petitioner filed the copies of Income Tax Returns as Annexure-III. Copies of such returns filed with the appeal relate to Assessment years 1998-99 till 2000-01; 2002-03; and after a gap from 2003-04 till 2012-13, copies of the returns for the Assessment years 2013-14 till 2016-17 were filed.

6. The Advocate for the Petitioner filed on 4<sup>th</sup> September, 2017 Income Tax Returns claiming that the Annual Returns for 1990-2002 and 2015-16 were being filed which the learned NCLT has referred as balance sheets filed during the course of hearing without any support of affidavit and treating the same as not taken on record.

7. The learned NCLT after considering the matter, as was placed before it, discussed the material and found as under:

- i) Referring to the list of Directors claimed by the Petitioner, NCLT found (see para 2.5 of the impugned order) that no information has been given regarding the founding subscribers or the Directors of the Company before appointment of these person as Directors on 29<sup>th</sup> September, 1998;
- ii) What were filed as Annual Returns pertaining to Financial year 1999-2002 to 2015-16 were only copies of audited balance sheets and those were not accompanied by any affidavit.
- iii) The Petitioner claimed that the business of running of cinema hall “PALACE” was going on continuously without any interruption till 2002. There was no mention of any subsequent business being run after 2002 and this showed that the Company was not running any business on the date of striking off the Company by ROC on 23<sup>rd</sup> June, 2007 (date of gazette notification). Non-filing of Balance Sheet and Annual Returns since 1999 caused the ROC to believe that the Company was not carrying out any business;
- iv) The Petitioner-Company failed to produce any statutory documents as proof of being in operation and carrying on business;
- v) Copies of Income Tax Return have showed that Income Tax Returns were filed till 2004 and then have been filed for the year 2015 and 2016 and it shows that no Returns had been filed from 2005 till 2014;
- vi) NCLT referred to provisions of Section 560 of the Old Act and held that the Petitioner had not been able to show that on 23<sup>rd</sup> June, 2007, when it was

struck off, it was in fact carrying on any business and were in operation of the business;

- vii) The Petitioner has not been able to show any evidence to prove that it even filed Income Tax Return from 2005 till 2014;
- viii) The Balance Sheets for years 1999-2000 to 2015-16 filed on 4<sup>th</sup> September, 2017 were not taken on record as they were not accompanied by affidavit.

8. On such findings, the learned NCLT concluded that there was no credible evidence that the Company was carrying on business or was in business operation when its name was struck off or it would be just to restore the name of the Company. In paragraph 11 of the impugned order, NCLT observed:

*“11. It is also not understood how persons like Mr. Harinder Singh Bedi could act as director. He is totally stranger to the petitioner’s company. The erstwhile directors Sh. Gurmukh Singh Chawla and Mrs. Maheshinder Singh Sodhi have not come forward.”*

The petition was accordingly dismissed by NCLT.

9. Aggrieved by the impugned order, the present appeal was filed by original Petitioner as Appellant No. 1 and Shri Harinder Singh Bedi joined as Appellant No. 2 and the Appellants for the first time came up with new case with the appeal that although it continued business till 2002 when screening of films were suspended still the company continued to remain in operation continuously till date as was being detailed in the appeal. The Appeal then refers to Company being vested with valuable immovable property which is the asset of the company worth approximately Rs. 140 Crores. The Appellants claimed that Appellant



Company has taken steps and appointed statutory personnel to protect the campus. The Company was in discussion with various investors to explore business particularly on the land. In order to show that the Company was active and operational it filed with the appeal copies of minutes of Annual General Meetings of the Company from 1999 till date as claimed at Annexure-A2 and audited Financial Statements from 1999-2002 till 2015-16 which were placed before the NCLT along with Financial Statements for the Financial Years 2016-17 as enclosed at Annexure-A3 of the Appeal. With regard to Income Tax Returns not filed after Assessment year 2002-03 till before the Assessment year 2013-14, the Appellant/Petitioner claimed that the Returns have become time barred. Another ground raised is that the Company was in dispute with Security Agency in charge of maintaining the Palace Cinema compounds and due to non-payment of wages by the agency. The Company defended its right and contested by filing Written Statement in April 2005. The Appellant referred to payment of Property Tax Receipts dated 14.03.2006 enclosed as Annexure-A5. It is claimed that there was Demand Notice dated 19.01.2007 from the Recovery Officer, Employees' State Insurance Corporation for payment of ESI dues and the same were paid on 07.03.2007. Copy of the Bank Statement has been filed in this regard as Annexure-A6 to the Appeal. The documents as mentioned above have been referred by Appellant as evidence showing that even after 1999, the Company had been in operation. The Appellant claimed that it continued to be in operation. According to the Appellant, Annexure-A7 is copy of Index of charges relating to the Appellant No. 1 which shows that on the assets of the Appellant, active charge was there of Punjab & Sindh Bank since 1973 which continues to

be shown as open in the master data of the company. It is claimed by Appellant that as active charge was there, the Company could not have been struck off.

10. The Appellant has further claimed, referring to documents at Annexure-A8 that the Appellant was unaware of the company being struck off and continued to pay property tax and water tax to the Municipal Corporation and Delhi Jal Board in 2009, 2010 and subsequently also. One of the grounds raised in the appeal is that learned NCLT should have granted the opportunity and allowed the Appellant to file further documentary proof or detailed affidavit required to show that it was in operation. The Appellant No. 2 Harinder Singh Bedi in the appeal for the first time came forward to claim that he was holding 1748 shares in the Company. On such basis, the Appellant has claimed to set aside the impugned order and has prayed to restore the name of the Company.

11. When the appeal was filed and the matter came up, order was passed on 21<sup>st</sup> March, 2018 that the documents which were not before the NCLT will not be taken into consideration in this appeal. Aggrieved by the said order, the Appellant moved the Hon'ble Supreme Court by filing Special Leave Petition and in Civil Appeal No. 4178 of 2018, the Hon'ble Supreme Court passed the following order:

...

*“Heard Ld. Counsel for the appellant.*

*The National Company Law Appellate Tribunal (NCLAT) has issued an order in which it has issued notice in the company appeal, but stated that the documents which were not before the Tribunal will not be taken into consideration in the appeal.*

*This being the position, we grant liberty to the appellants to move the NCLT for production of certain balance sheets and other*

*additional documents, which according to the appellants are vital to this case. This application can be made with the necessary affidavit in this behalf. If the NCLT allows the application, the documents can be relied on the appeal before the NCLAT.*

*The appeal is, accordingly, disposed of.”*

....

12. In view of such order, the Appellant went before NCLT and filed application. NCLT considered the application and order passed by the Hon'ble Supreme Court referred above and passed following order:

.....

*“We have heard Ld. Counsel at length and are of the view that the additional documents Annexure A-4, A-5, A-6(colly), A-7, A-8, A-9, A-10, A-11(colly) would be relevant to be considered keeping in view the provisions of Section 252(3) read with Section 248 of the Companies Act, 2013. Accordingly, the application is allowed. The documents may now be considered by NCLAT as directed by Hon'ble Supreme Court. The Application stands disposed of.”*

13. Copy of the order of NCLT has been filed before this Tribunal vide diary No. 6710 along with comparison table of documents. Thus, a host of new documents have been filed by the Appellant after the impugned order was passed by NCLT.

14. In appeal, ROC filed affidavit (vide diary No. 5851) reiterating the stand it had taken in the NCLT and while supporting the decision of the NCLT in the impugned order, left the matter to the Tribunal to pass appropriate orders on merits. Vide order dated 27<sup>th</sup> August, 2018, we directed ROC to file detailed affidavit and show copies of documents with regard to compliance as required under Section 560(1)(2) & (3) of the Old Act. ROC filed another affidavit vide diary

no. 7129 repeating earlier claims made and claimed in paragraph-7 of the Reply Affidavit that the notices under Section 560 of the Old Act were not readily traceable as the records of ROC had been shifted to Indian Institute of Corporate Affairs. It was claimed that efforts have been made to search for the records but the same being quite old, could not be traced out. It however relied on the Gazette Notification dated 23<sup>rd</sup> June, 2017 under Section 560(5) of the Old Act. Subsequently, Deputy ROC along with learned Counsel for ROC appeared and claimed that they were making efforts to search for the records and the same were yet to be traced out.

15. We have thus tried to call for the records from concerned Government Office` but could not get the documents regarding compliance under Section 560(1) (2) & (3) of the Old Act. We did not let ourselves to be detained for the purpose as we find that if the documents had been available, it would have been possible for us to see if the Appellants could be said to be negligent. When the same are not available and the consideration under Section 560(6) of the Old Act is relevant for us, basically three parameters remain to be considered if the restoration of name of the Company is to be done. Sub section (6) of Section 560 of Old Act reads as follows:

*“(6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the Court, on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register; and the*

*Court may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.”*

16. It is clear from the above sub-section 6 of Section 560 that the Company or Member or Creditor, who feels aggrieved, needs to satisfy the Tribunal by showing that

- I. The Company was at the time of striking off carrying on business, or
- II. the Company at the time of striking off was in operation; or
- III. Otherwise, that it is just that the company be restored to the Register.

17. These are the three grounds which the Tribunal would require to consider if the name of a Company is to be restored. In this regard we have already seen that NCLT, on the basis of records as were placed before it and also considering the pleadings of the Appellant-Petitioner, came to a conclusion (and rightly so) that the Appellant was not in business since 2002 till 23<sup>rd</sup> June, 2007 when the Gazette Notification was published and the name of the Company was struck off.

18. What is material to be shown by Appellant is that at the time of striking off the Company was carrying business or was in operation. For this purpose, the documents subsequent to the date of striking off the name of the Company would not be material for consideration of the first two aspects as mentioned above although those documents may be relevant for considering the question whether it would be just that the name of the Company should be restored.

19. As far as records, the claim that the Company was in operation, there were no such pleadings in the Company Petition that although the Company was not in business since 2002, it continued to be in “operation” even thereafter till the name of the Company was struck off. The additional documents now being relied on were not filed before NCLT and there were no pleadings on this count also.

20. We have heard Counsels for both the sides. Learned Counsel for the Appellant submitted that in the present matter there are documents to show that on complaint of workmen, authority had initiated action and the company was defending the same. It is stated that documents have been filed to show that the property tax was being paid. Reference is made to one Annexure- A7 (page no. 162) to submit that in the “Charges Registered” there is a charge of Punjab & Sind Bank on the property for the Company which is still alive in the records. Learned Counsel submitted that the Company paid property tax in 2011 which was after the date of striking off in 2007. According to the Appellant, it never knew that the name of the Company was struck off. It has been submitted that although the business got affected in 2002 because of multiplex, the company continued to remain in operation. It is claimed that this can be seen from the various documents which have now been filed in this appeal.

21. In course of argument, it has been noticed that the Company Petition filed in NCLT did not contain pleadings to spell out that the company was in operation. Pleadings to make out a case to the effect that “it is just that the company be restored” were also not there. The Appellants have now filed additional affidavit. It is mentioned in Paragraphs 12 & 13 as under:

*“12. One of the submissions of the Appellants in the course of the arguments was to seek remand of the matter to Hon’ble NCLT for fresh consideration based on all the additional documents placed in record before this Appellate Tribunal till date.*

*13. The Appellants is desirous to get the present appeal disposed off with a direction to remand back the matter to Hon’ble NCLT for fresh adjudication based on all the documents/evidences placed on till date, with an opportunity to amend the original petition on the basis of the additional evidence taken on record by the Hon’ble NCLT vide order dated 03.08.2018.”*

22. The Appellants thus want that the pleadings in the petition filed in NCLT with regard to the claims being made that the Company was in operation when it was struck off and that there exist just reasons to restore the name of the Company. We do not have the benefit of observations of the learned NCLT with regard to various documents which have now been filed in appeal as they were not before learned NCLT when the impugned order was passed. It would be appropriate that the matter is remitted back to the learned NCLT for re-hearing.

23. We pass the following order:

a) Appeal is allowed. The impugned judgment and order is quashed and set aside. The original Petition is restored to file of National Company Law Tribunal, Delhi. The matter is remitted back to the learned NCLT for re-hearing.

b) Learned NCLT is requested to give opportunity to the Appellant to amend the petition so as to add pleadings with regard to the claim of the Appellant that company was in operation when it was struck off and that

there are just reasons as to why the name of the company should be restored.

- c) The Appellant be given opportunity to file in NCLT copies of additional documents filed by them in this appeal (if not already filed).
- d) Fresh opportunity of hearing may be given to both sides and the petition may then be disposed of as per law.
- e) Parties to appear before NCLT on 8<sup>th</sup> January, 2019.

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

(Balvinder Singh)  
Member (Technical)

**New Delhi:**  
**14<sup>th</sup> December, 2018**

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