

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 228 of 2018

IN THE MATTER OF:

R. Manavazhagan

...Appellant

Versus

**Registrar of Companies,
Puducherry**

...Respondent

Present:

For Appellant : **Mr. Govind Manoharan and Mr. Anandh K.,
Advocates**

O R D E R

20.09.2018 This appeal has been preferred by Mr. R. Manavazhagan, Director and shareholder of 'Educare Network Consultant Private Limited' against the order dated 4th April, 2018 passed by the National Company law Tribunal, Chennai Bench, Chennai whereby and whereunder the application preferred by the appellant under Section 252(3) of the Companies Act, 2013 has been rejected with the following observations :

“Counsel for Applicant present. Counsel for RoC present and he has filed the objections. The same is taken on record. The Applicant Company has been incorporated during 2012. Thereafter, Annual Returns and Balance Sheets have not been filed till date.

The RoC has struck off the name of the Company under section 248(5) of the Companies Act, 2013 from the Register of companies for non-compliance with the provisions of the Companies Act, 2013 vide Notification dated 15th – 21st July, 2017.

Counsel for the Applicant has submitted that the Company is a small Company. But, there is no proof that the Company is carrying on any business. No Income Tax has been paid for all these years. The Income Tax Returns were filed, but the payment of the tax is shown as 'Nil'. There is nothing on record to suggest that the Applicant Company is a going concern. It is a shell Company. Therefore, not deserving the restoration of its name in the Register of the Companies.

*Therefore, the Application stands **rejected.**"*

2. Learned counsel appearing on behalf of the appellant submitted that the impugned order has been passed by the Tribunal without any specific reason to hold that the company is a shell company. According to the learned counsel for the appellant 'Educare Network Consultant Pvt. Ltd.' was not afforded any hearing when action was taken by the Registrar of Companies under Section 248 (5) of the Companies Act, 2013. He further submitted that the Tribunal failed to take into consideration that the application for restoration filed under Section 252(3) of the Companies Act, 2013 and the company is still functioning

and carrying on the business. Even the Registrar of Companies has not objected restoration of the company in its affidavit before the Tribunal filed on 27th February, 2018. This fact has also not been taken care of by the Tribunal while passing the impugned order.

3. In spite of the notice, the Registrar of Companies, Puducherry has not appeared and the aforesaid facts having not been disputed.

4. We have heard learned counsel for the appellant and perused the record. It is not in dispute that the Registrar of Companies has power to remove the name of a company from the Register of the Companies for the reasons mentioned in Section 248 of the Companies Act, 2013, which reads as follows :

“248. (1) Where the Registrar has reasonable cause to believe that—

(a) a company has failed to commence its business within one year of its incorporation [or];

*(b) ******

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455,

he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any,

within a period of thirty days from the date of the notice.

- (2) *Without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:*

Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

- (3) *Nothing in sub-section (2) shall apply to a company registered under section 8.*
- (4) *A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.*
- (5) *At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of*

companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

- (6) *The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:*

Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.

- (7) *The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.*

(8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.”

5. It is not a case of respondent that within one year from its operation the company was not carrying on any business or not in operation from two immediate preceding financial years. It is also not the case of the respondent that the company or its member made application for obtaining the status of dormant company under Section 455 of the Companies Act, 2013.

As per sub-section (1) of Section 248 before removal the name of the company from Register of Companies the Registrar of the Companies was required to issue notice to the company and all the Directors of the Company, its intention to remove the name of the company from the Register of Companies and to request them to send the representative along with the copies of the relevant documents within thirty days from the date of notice.

6. According to the appellant, notice was given by the Registrar of Companies and in its reply it was informed that the company was functioning. Though all these facts were brought to the notice of the Tribunal, it has not discussed the same while passing the impugned order.

7. On hearing the learned counsel for the appellant and on perusal of the record and going through the relevant provisions of Section 252 and 248, we are of the view that the Tribunal has failed to decide as to what is the specific violation committed by the company for removing its name from the Register in terms of Section 248 of the Companies Act. For the reasons aforesaid, we have no other option but to set aside the order. The impugned order is accordingly

set aside. The matter is remitted to the Tribunal to reconsider the case taking into consideration of the provisions of Section 248 and sub-section (3) of Section 252 of the Companies Act as also all the relevant evidence filed by the appellant in its support. The Tribunal is required to discuss all the evidences produced by the appellant including the Income-tax returns, bank statements and balance-sheets, profit and loss account etc., if filed, uninfluenced by the impugned order dated 4th April, 2018 preferably within three months. The appeal is allowed with the aforesaid observations. With this I.A. No. 1012 of 2018 and I.A. No. 1013 of 2018 stand disposed of. However, in the facts and circumstances there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc/