

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

COMPANY APPEAL (AT) NO.267 OF 2019

(Arising out of impugned order dated 10th July, 2019 passed by the NCLT, Principal Bench, New Delhi in Company Petition No. 227(ND)/2016).

In the matter of:

Rajiv Kapur
Flat No.28 C,
Mansarovar Apartments,
Sector 61,
Noida, UP 210307

Appellant

Vs

1. Registrar of Companies,
4th Floor, IFCI Tower,
Nehru Place,
New Delhi 110019
2. Laj Leasing & Credit Pvt Ltd,
S-395, Greater Kailash II
New Delhi-110048
3. Mr. Kanwal Kapur,
S-395, Greater Kailash II
New Delhi-110048
4. Nupur Kapur,
S-395, Greater Kailash II,
New Delhi 110048

Present:

Mr. Angad Mehta, Advocate for appellant and Mr. Rajiv Kapur, appellant in person.

Mr Neeraj Kr Gupta, Advocates for Respondent No.3 and 4.

JUDGEMENT
(29th November, 2019)

MR. BALVINDER SINGH, MEMBER(TECHNICAL)

Appellant and four others individuals, claiming themselves to be the creditors of Respondent No.2 Company, filed Company Petition

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No.227(ND)/2016 before the NCLT, Principal Bench, New Delhi seeking restoration of the name of the Respondent No.2, M/s Laj Leasing and Credit Pvt Ltd, on the register of companies maintained by the office of the ROC, NCT of Delhi and Haryana. NCLT, Principal Bench, New Delhi vide its impugned order dated 10.07.2019 dismissed the Company Petition No.227(ND)/2016 on the ground that the appellant has failed to prove that he is a creditor of the company. Being aggrieved by the said impugned order the appellant, not other four individuals who were petitioners in the company petition, has filed the present appeal under Section 421 of the Companies Act, 2013 praying therein that the impugned order dated 10.07.2019 be set aside and name of Respondent No.2 company be restored to its original number.

2. After issuance of notice to the Respondents, which was received by the Respondents, nobody appeared on behalf of Respondent No.1 and 2. Respondent No.3 and 4 entered appearance through their counsel but did not file the reply.

3. Appellant stated that Respondent No.2 was a company incorporated and floated by his grandfather Late S.L. Kapur who was the creditor of Respondent No.2 in the sum of Rs.74,60,000/- and the same is reflected in the Balance sheet of financial year ending 31.03.1993 (Page 43 of the appeal) of Respondent No.2. Shri S.L. Kapur died intestate in the year 1994. Appellant stated that he has 6.7% share in Joint family property and the principal amount due is Rs.5 lacs. Appellant stated that the Respondent No.3 and 4 applied for the striking off of the Respondent No.2 from the Register of Companies and stated on oath that no liabilities existed as of 30.06.2005 and the company was not doing any business for the 10 years prior to the strike Company Appeal (AT) No.267/2019

off application in the year 2005. These respondents have filed affidavits and indemnity bonds to this effect. Appellant filed a suit for partition of the joint family estate in the High Court of Delhi. Appellant stated that in the said suit, Mr. Gaurav Kapur, who was Respondent No.4 in the said suit, admitted that the amount of Rs.74,60,000/- was loaned to Respondent No.2 company by late Sh S.L. Kapur from the joint family corpus of funds. Appellant stated that with the intent to recover this amount, appellant caused a search to be conducted in the MCA records and came to know that Respondent No.2 company was struck off from the Register of companies in the year 2007. After that appellant sought certain information under RTI Act from ROC office which also confirms that the Respondent No.2 company name has been struck off. Appellant has filed copies of Balance sheets for the year 1993, 1995, 1996 and 1998 which clearly reflects that the amount of Rs.74,60,000/- as loan to the company. Appellant stated that therefore the appellants are the creditors of Respondent No.2 and entitled to maintain this appeal. Appellant stated that the Respondent N.3 and 4 have given a wrong statement to the MCA that there exists no liability whereas Mr Anil Kumar informed the Delhi Police that he has received the amount of Rs.74,60,000/- from Respondent No.2 in 2007. Appellant stated that the Respondent N.3 and 4 have filed a fabricated application for striking off the company. Appellant also stated that the Learned Metropolitan Magistrate-04, South-East, Saket Court has found the signature of Sh S.L. Kapur on his purported Will to be forged. Appellant stated that in separate proceedings before Hon'ble High Court, Sh Anil Kapur has denied the receipt of these funds, which was paid to him before 30.06.2005 as per the application for strike off filed with Company Appeal (AT) No.267/2019

the ROC by Respondent No.3 and 4. Therefore, the appellant is aggrieved of the impugned order and seeks restoration of the company.

4. Respondent No.3 to 4 did not file any reply but decided to argue the matter.

5. Learned counsel for the appellant argued that the Respondent No.3 and 4 applied for the striking off of the Respondent No.2 from the Register of Companies and these respondents stated on oath that no liabilities existed as of 30.06.2005 and the company was not doing any business for the 10 years prior to the strike off application in the year 2005. These respondents have filed affidavits and indemnity bonds to this effect. Learned counsel for the appellant drew our attention to the affidavit submitted by Respondent No.3 and 4 at Page No.85 of the appeal where they have stated on oath that **“Company does not have any Assets & Liabilities”**. Learned counsel for the Appellant further argued that in the suit filed for partition of the joint family estate in the High Court of Delhi, Mr. Gaurav Kapur, who was Respondent No.4 in the said suit, admitted that the amount of Rs.74,60,000/- was loaned to Respondent No.2 company by late Sh S.L. Kapur from the joint family corpus of funds. Learned counsel for the Appellant further argued that with the intent to recover this amount, appellant caused a search to be conducted in the MzCA records and came to know that Respondent No.2 company was struck off from the Register of companies in the year 2007. After that appellant sought certain information under RTI Act from ROC office which also confirms that the Respondent No.2 company name has been struck off. Appellant has filed copies of Balance sheets for the year 1993, 1995, 1996 and 1998 which clearly reflects that the amount of

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Rs.74,60,000/- as loan to the company. Appellant argued that therefore the appellants are the creditors of Respondent No.2 and are entitled to maintain this appeal. Appellant stressed that the Respondent N.3 and 4 have given a wrong statement to the MCA that there exists no liability whereas Mr Anil Kumar informed the Delhi Police that he has received the amount of Rs.74,60,000/- from Respondent No.2 in 2007. Appellant again stressed that the Respondent N.3 and 4 have filed a fabricated application for striking off the company. Appellant also argued that the Learned Metropolitan Magistrate-04, South-East, Saket Court has found the signature of Sh S.L. Kapur on his purported Will to be forged. Appellant argued that in separate proceedings before Hon'ble High Court, Sh Anil Kapur has denied the receipt of these funds, which was paid to him before 30.06.2005 as per the application for strike off filed with the ROC by Respondent No.3 and 4.

6. Learned counsel for the Respondent No.3 and 4 argued that as per the Will of Late of Mr. S.L. Kapur the said amount of Rs.74,60,000/- was bequeathed to the legal heir Mr.Anil Kapur. Learned counsel further argued that the said amount was paid to Mr.Anil Kapur by the Respondent No.2 company. Learned counsel drew our attention to Income Tax Officer order dated 17.3.2016 to prove his argument. Learned counsel for Respondent No.3 and 4 argued that there is no joint family corpus of Late Sh S.L. Kapur and the appellant was not associated with the Respondent No.2 company and the name of the company was struck off on 31.1.2007. Learned counsel for the Respondent No.3 and 4 argued that there was no joint family and the properties/funds of Late Sh S.L. Kapur was his self acquired property and as per his will the same were handed over to Mr. Anil Kapur.

7. We have heard the parties and perused

8. It is not in dispute that the Respondent No.2 company's name was struck off on 31.1.2007. We note from the record that the Respondent No.3 and 4 filed Indemnity Bond and Affidavit dated 21.07.2005 before the ROC for striking off the name of the Respondent No.2 company and undertook that the Respondent No.2 has no assets and liabilities and also undertook and indemnified ***“to pay and settle the lawful claims arising in future after the striking off the name of the company; to indemnify any person for any losses that may arise pursuant to striking off the name of the company; to settle all lawful claims and liabilities which have not come to our notice upto this stage even after the name of the company has been struck off in terms of Section 560 of the Companies Act,1956.”*** We also note that the Respondent No.2 company has not filed any balance sheet after 1998. On seeing the balance sheets which have been filed by the appellant, we note that the amount of Rs.74,60,000/- has been reflected in the Balance Sheets as “unsecured loan”. Therefore, it can not be said that it was a deposit. We also note that the Respondent No.3 and 4 has given an affidavit and indemnity in the year 2005, while applying for striking off the name of the company, that the Respondent No.2 company has no assets and liabilities and also undertook to pay any liability arising later on. We cannot say that it is outstanding as on 2005 or it has been paid to somebody who was not entitled to it because there are no records since 1998. Since the company has no assets and the company has not filed any return from 1998 onwards, therefore, it would be futile to restore the name of the company.

9. However, in view of the affidavits and indemnity bonds given by the Respondent No.3 and 4, the appellant is not remediless. He can proceed against the Directors who have given affidavits and indemnity bonds to the appropriate forum.

10. The appeal is accordingly disposed off.

(Mr. Balvinder Singh)
Member (Technical)

(Justice Jarat Kumar Jain)
Member (Judicial)

(Dr. Ashok Kumar Mishra)
Member (Technical)

New Delhi

Bm/