

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 232 of 2018

IN THE MATTER OF:

**Regional Director, Southern Region,
Ministry of Corporate Affairs,
RoC, Tamil Nadu**

...Appellant

Versus

Om Shakthi Agencies (Madras) Pvt. Ltd.

...Respondent

Present:

For Appellant : **Mr. T.P.S. Singh, Advocate and
Mr. Rajaneesh Kr. Singh, Dy. Director.**

For Respondent : **Mr. Arun Kathpalia, Senior Advocate assisted by
Mr. Goutham Shivshankar, Advocate**

ORDER

06.08.2018 An application under Section 131 of the Companies Act, 2013 was filed by M/s. Om Shakthi Agencies (Madras) Pvt. Ltd. before the Tribunal for rectification of the financial statement of return. In the said case, the Central Government was not impleaded as party-respondent, but the appellant - Regional Director, Southern Region of the Ministry of Corporate Affairs, Chennai and Registrar of Companies, Tamil Nadu impleaded as respondent. The case was heard and order under Section 131 was passed on 27th March, 2018 with the following observations:

*“Counsel for the Petitioner present. Counsel for IT
Department present. Counsel for RoC also present. As
seen from the Order dated 07.02.2018, the Registry was
directed to issue the notice to RD, RoC, IT Authorities and*

*the Counsel for the Petitioner was also directed to issue a private notice to the said Authorities. Pursuant to which the Counsel for the Petitioner has delivered the notice by hand, the proof of which is placed on record. However, till date no objection has been filed by the RD, RoC and the IT Authorities. This fact has also been recorded in the Order dated 15.03.2018. In spite of availing the opportunities, the Counsel for the IT Department has not filed the objections even after passing the conditional order that the right of filing the objections shall stand forfeited. It appears from the conduct of the RD, RoC and IT Authorities that they are not interested to file the objections. Therefore, their right of filing the objections stands **forfeited**.*

Heard the Counsel for the Petitioner and perused the Application along with the record placed on file. Keeping in view of the facts and circumstances of the case and the submissions made by the Counsel for the Petitioner, I in exercise of the powers conferred under Section 131 of the Companies Act, 2013, permit the Petitioner to replace the original financial statements (Balance Sheets and Profit & Loss Account) for the year ended 31.03.2016 as filed before the MCA-21 on 11.05.2017 with the revised financial statements as approved. Accordingly, the approval is granted to the

revised financial statement as attached in Annexure-11 for the year ending 31.03.2016 as has been approved by the Board of Directors of the Petitioner Company at its Meeting on 15.12.2017.

*Accordingly, the Application stands **disposed of.***”

2. Learned counsel appearing on behalf of the appellant submitted that the Tribunal without impleading the Central Government as party-respondent or passed orders on the appellant, Regional Director, Southern Region who has not been empowered to deal with the subject matter. When the matter was brought to the notice of the Tribunal, right to file objection by appellant was forfeited.

3. Learned Senior Counsel appearing on behalf of the respondent submitted that the Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai represents the Central Government but such submission cannot be accepted as the Regional Director has not been empowered to pass any order on behalf of the Central Government.

4. Section 131 relates to voluntary revision of financial statements or Board's report, which reads as follows:

“131. (1) If it appears to the directors of a company that—

(a) the financial statement of the company; or

(b) the report of the Board,

do not comply with the provisions of section 129 or

section 134 they may prepare revised financial

statement or a revised report in respect of any of

the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar:

Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:

Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year:

Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

- (2) *Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—*

- (a) *the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and*
 - (b) *the making of any necessary consequential alternation.*
- (3) *The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular—*
- (a) *make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;*
 - (b) *make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;*
 - (c) *require the directors to take such steps as may be prescribed.”*

5. Proviso to clause (2) of Section 131 show that the Tribunal is to give notice to the Central government and the Income-Tax Authority. Clause (3) therein makes it clear that the Central Government is empowered to make rules as to the application of the provisions of the Act in relation to revised financial statement or a revised director's report and making different provisions according to which previous financial statements or reports are replaced or are

supplemented by the documents and to make further provisions with respect to the functions of the company's auditor. It is informed that no such Rule has been framed empowering the Regional Director, Southern Region, Chennai and decide such issue.

6. In the present case, we find that the Tribunal not only failed to notice the aforesaid provision but on wrong presumption forfeited the right of the appellant to file the reply, which was uncalled for. We hope and trust in future the Tribunal will not act in such manner by forfeiting the right of a person to file reply.

7. For the aforesaid reason, we set aside the impugned order dated 27th March, 2018 in CP/105/2018 and allow the respondent/applicant to implead the Central Government, through its Secretary, Ministry of Corporate Affairs, 5th Floor, 'A' Wing, Shastri Bhawan, Dr. R.P. Road, New Delhi, as party-respondent in the petition. If such an application for impleadment is filed, the Tribunal will allow prayer for impleadment it and after notice to the Central Government and other necessary parties will pass appropriate order in accordance with law.

8. At this stage, we make it clear that we have not gone into the merit of the case, which may be decided by the Tribunal.

The appeal is allowed with the aforesaid observations and directions. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk/