

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

COMPANY APPEAL(AT) NO.231 OF 2018

(ARISING OUT OF THE JUDGEMENT AND ORDER DATED 10TH APRIL, 2018
PASSED BY NATIONAL COMPANY LAW TRIBUNAL, BANGALORE IN
COMPANY PETITION NO.40/BB/2018)

IN THE MATTER OF:

M/s Insys Instruments Systems
(India) Pvt Ltd.
No.328, 14th Cross, Sadashivnagar,
Bengaluru 560 080

Appellant

Vs

Registrar of Companies (Karnataka)
E-Wing, 2nd Floor,
Kendriya Sadana,
Koramangala
Bengaluru 560 034

Respondent

For Appellant:-Mr.Goutham Shivshankar, Advocate

For Respondents: - Mr. Gaurav Rohilla, Advocate.

JUDGEMENT

MR. BALVINDER SINGH, MEMBER (TECHNICAL)

01.The present appeal has been filed by the appellant under Section 421 of the Companies Act, 2013 impugning the order dated 10th April, 2018 passed by the National Company Law Tribunal (NCLT), Bangalore Bench in CP No.40/BB/2018.

02.The brief facts of the case are that the appellant Company was incorporated on 5th August 2010 under the name and style of “Insys Instruments Systems (India) Private Limited” with the Registrar of Companies, Karnataka with its registered office at Bangalore-560080.

- 03.The main objects of the Company is to carry on the business of manufacture, assemble, sell, import, export, market, franchise, distribute all types of electric and electronic instruments machines, accessories, spares, tools and consumables; to undertake and participate with machine building industries, engineering, establishments, research and development establishments and software development connected to machine tools both in India and abroad etc.
- 04.The authorised share capital of the Company is Rs. 2,00,00,000/- divided into 20,00,000 Equity Shares of Rs. 10/-each. The Paid up Share Capital of the Company is Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs. 10/- each.
- 05.It is averred that, the Registrar of Companies, Karnataka has struck off the name of the appellant Company from the Register of Companies maintained by it due to defaults in statutory compliances viz., failure to file financial statements & Annual Return which is due from the date of its incorporation till date.
- 06.It is further averred that the respondent has not followed the procedure prescribed under Section 248(1) of the Company Act, 2013, notice as required Section 248(1) of the Company Act, 2013 has not sent and also not given sufficient time to fulfil the condition as mentioned in pursuant to provisions of Section 248(1) of the Companies Act, 2013.
- 07.It is further averred that the accounts of the appellant Company has been prepared and audited and that the company had engaged the services of a company secretary to perform the task of filing the returns with the office of the Registrar of Companies, Karnataka, who did not reveal the facts to the Directors of the appellant Company. It is further stated that, during May 2017 when the balance sheet as at 31/03/2016 and the Auditor's Report was ready to be filed with the Registrar of Companies, Karnataka came to know that, the name of the appellant Company has been struck off by the Registrar of Companies.
- 08.It is further averred that, if the name of the appellant Company is not restored in the register of companies maintained by the Registrar of

Companies, the appellant as well as its shareholders shall suffer irreparable loss and hardship and will be highly prejudiced.

09. It is further averred that the appellant Company, in the event of revival of the Company and restoration of the name of the Company in the Register maintained by the Registrar of Companies, Karnataka, shall file all outstanding statutory documents i.e., the financial statements and annual returns upto date.
10. The Registrar of Companies, Karnataka, Bengaluru filed its reply before the NCLT Bangalore.
11. The Registrar of Companies, Karnataka, Bengaluru denied all the averments made in the petition except those which are specifically admitted herein and submitted his report as follows that:
12. It is submitted that on verification of the MCA 21 portal in the month of March 2017 when action under Section 248(1) of the Companies Act, 2013 was initiated against the eligible Companies, it was seen that the appellant Company has not filed either the Balance Sheet or the Annual Returns from the date of incorporation till 2015-16. Therefore, the Respondent had reasonable cause to believe that the appellant Company is not carrying on any business or operation and therefore a notice in Form STK-1 dated 18.03.2017 was sent to the Company. Further, STK-1 notice dated 31.03.2017 was sent to all the Directors of the Company to the address available in the MCA 21 portal.
13. In the said notice STK-1 that was sent to the Company and to the Directors of the Company, it was inter alia mentioned that the Company is not carrying on any business or operation for three immediately preceding financial years nor has made any application u/s 455 of the Act and that the respondent proposes to strike off the name of the Company from the Register of Companies as per Section 248 of the Act, unless a cause is shown to the contrary within 30 days from the date of receipt of the STK-1 notices.
14. It is submitted that a consolidated notice in STK-5 in English and Hindi was released in the official website of the Ministry of Corporate Affairs on 28.04.2017 and in the official Gazette on 20.05.2017 and the same

- was published in the newspaper in Kannada in Vijay Karnataka (Kannada Edition) and in English in the Times of India on 13.05.2017 and in all the above said notices i.e. STK-1, STK-5 and STK-5A, 30 days' time was given to show cause to the contrary to the action of strike off.
- 15.It is submitted that since neither cause was shown to either the physical notices or to the website, Gazette and newspaper notices either by the Company or by its Directors, and also since no Balance Sheet or Annual Return was filed by the appellant Company till 21.06.2017 the day on which the list of defaulting Companies were crystallized, the Respondent proceeded to strike of the name of the Company from the Register of Companies and published a notice in STK-7 in the homepage of the MCA on 17.07.2017. It was also published in the official Gazette on 29.7.2017 stating that from 17.07.2017 names of the companies mentioned therein including the appellant company have been struck off from the Register of Companies as per sec 248(5) of the Act.
- 16.Arguments were heard by the NCLT and the appellant has stated that, the company has been carrying on business and company and its shareholders shall suffer irreparable loss and hardship if company is not restored. Further, the company is also ready to submit all pending relevant documents.
- 17.Appellant also argued that there is no inquiry, investigation and complaints against this Company.
- 18.1st Respondent argued that he exercised his power under Section 248 of the Companies Act, 2013 read with (Removal of Names of Companies from the Register of Companies) Rules, 2016 after following the procedure as per the law, giving opportunity to the appellant Company to file its Statutory Returns and upon non-filing of Statutory Returns the name of the Company was struck off, vide has notice No. STK-7/ROC(B)/2017 dated 17.07.2017
- 19.After hearing the parties, the learned NCLT passed the impugned order dated 10.4.218. The relevant portion of the same is as follows:-

“After going through the Petition and various balance sheets provided for the years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, & 2016-17 it reflects that, there is no revenue from operations. Similarly, in the balance sheet as at 31/03/2017 it reflects that, there are only 2(two) Current Assets i.e., Cash and Cash equivalents of Rs. 24,989/- and other Current Assets of Rs 25,000/-. This other Current Assets of Rs. 25,000/- is also preliminary expenses (pre-operation expenses). The company has no revenue from operation. This reflects that, the company is not doing any business and they are in processing for allotment of land from KIADB, but the reasons known that, the matter is still under correspondence for taking possession of the land and as far as KIABD is concerned vide their letter dated 16th December 2016, it is stated that, if the possession of land is not taken within 30 days from the date of payment of the premium shall result in cancellation of allotment and 10% of the amount paid towards premium and EMD shall stand forfeited. The amount which has been paid by the company as reflected in their letter dated 23rd November 2016 is not appeared in their Balance sheet as on 31/03/2017.

There is no revenue from operations since incorporation i.e., from August 2010 to 2017. There are no grounds to order for restoration of the name of the Petitioner Company as no fixed or other substantial assets are available. No materials from the side of Petitioner Company to establish that, it was an ongoing concern at the time when its name was struck off. Therefore, we are of the opinion that, the name of the company cannot be restored and the Registrar of Companies, Karnataka, Bangalore had rightly removed the name of the company from the register of companies.

Considering all facts and circumstances, the company does not deserve to be revive and hence, the petition is therefore deserved to be dismissed.

In the result petition is dismissed.”

20. Being aggrieved by the said order dated 10.4.2018 the appellant has filed the present appeal.

21. The appellant has stated that the NCLT has failed to apply its mind while coming to a finding that the appellant company had no operations, when the appellant had produced sufficient documents to establish that from early 2013 itself the directors of the appellant company had been busy in obtaining the required permits and allotment of land to establish a manufacturing facility.
22. The appellant submitted that it has submitted sufficient proof regarding continuous correspondence between the various government bodies and the appellant company that the appellant company is in operation.
23. The appellant submitted that the NCLT should have considered that the appellant company has been allotted a plot of land by KIADB and was in the process of making the required payments and enter into a lease deed with KIADB, NCLT should have restored the name of the appellant company.
24. The appellant submitted that even though the appellant company is not carrying on any business, the appellant company should be considered to be fully operating and that the same is sufficient in view of Section 252(3) of the Companies Act to restore the appellant company.
25. The appellant submitted that if the appellant company is not restored, the shareholders of the company will be severely affected and therefore it is in the interest of the appellant company as well as its members to restore the name of the appellant company.
26. The appellant submitted that the ROC without providing any notice to the Appellant company and without affording it with an opportunity to

explain wrongly struck off the name of the appellant company from the register of the ROC.

27.The appellant submitted that the Appellate Tribunal should consider these facts and restore the name of the company

28.Reply on behalf of the 1st respondent has been filed. 1st respondent.

1st respondent reiterated its facts what he has stated in the Company Petition that on verification of the MCA 21 portal in the month of March 2017 when action under Section 248(1) of the Companies Act, 2013 was initiated against the eligible Companies, it was seen that the appellant Company has not filed either the Balance Sheet or the Annual Returns from the date of incorporation till 2015-16. Therefore, the Respondent had reasonable cause to believe that the appellant Company is not carrying on any business or operation and therefore a notice in Form STK-1 dated 18.03.2017 was sent to the Company. Further, STK-1 notice dated 31.03.2017 was sent to all the Directors of the Company to the address available in the MCA 21 portal.

29.In the said notice STK-1 that was sent to the Company and to the Directors of the Company, it was inter alia mentioned that the Company is not carrying on any business or operation for three immediately preceding financial years nor has made any application u/s 455 of the Act and that the respondent proposes to strike off the name of the Company from the Register of Company as per Section 248 of the Act, unless a cause is shown to the contrary with 30 days from the date of receipt of the STK-1 notices.

30.It is submitted that a consolidated notice in STK-5 in English and Hindi was released in the official website of the Ministry of Corporate Affairs on 28.04.2017 and in the official Gazette on 20.05.2017 and the same was published in the newspaper in Kannada in Vijay Karnataka (Kannada Edition) and in English in the Times of India on 13.05.2017 and in all the above said notices i.e. STK-1, STK-5 and STK-5A, 30 days' time was given to show cause to the contrary to the action of strike off.

31.It is submitted that since neither cause was shown to either the physical notices or to the website, Gazette and newspaper notices either by the Company or by its Directors, and also since no Balance Sheet or Annual Return was filed by the appellant Company till 21.06.2017 the day on which the list of defaulting Companies were crystallized, the Respondent proceeded to strike of the name of the Company from the Register of Companies and published a notice in STK-7 in the homepage of the MCA on 17.07.2017. It was also published in the official Gazette on 29.7.2017 stating that from 17.07.2017 names of the companies mentioned therein including the appellant company have been struck off from the Register of Companies as per sec 248(5) of the Act.

32.1st respondent prayed that the Hon'ble Tribunal may be pleased to take into consideration the above observations and to pass such order as deems fit and proper in the circumstances of the case.

33.We have heard the learned counsel for the parties and perused the record.

34. Learned counsel for the appellant argued that the ROC without providing any notice to the Appellant company and without affording it with an opportunity to explain wrongly struck off the name of the appellant company from the register of the ROC. On the other hand the ROC argued that on verification of the MCA 21 portal in the month of March 2017 it was seen that the appellant Company has not filed either the Balance Sheet or the Annual Returns from the date of incorporation till 2015-16, therefore, a notice in Form STK-1 dated 18.03.2017 was sent to the Company. Learned counsel for Respondent further argued that notice dated 31.03.2017 was sent to all the Directors of the Company to the address available in the MCA 21 portal. Learned counsel for the respondent argued that in the said notice that was sent to the Company and to the Directors of the Company, it was interalia mentioned that the Company is not carrying on any business or operation for three immediately preceding financial years nor has made any application u/s 455 of Companies Act, 2013 and that the respondent proposes to strike off the name of the Company from the Register of Company as per Section 248 of the Act, unless a cause is shown to the contrary with 30 days from the date of receipt of the STK-1 notices. Learned counsel for the respondents further argued that a consolidated notice in STK-5 in English and Hindi was released in the official website of the Ministry of Corporate Affairs on 28.04.2017 and in the official Gazette on 20.05.2017 and the same was also published in the newspaper in Kannada in Vijay Karnataka (Kannada Edition) and in English in the Times of India on 13.05.2017 and in all the above said

notices i.e. STK-1, STK-5 and STK-5A, 30 days' time was given to show cause to the contrary to the action of strike off. Learned counsel for Respondent argued that since neither cause was shown to either the physical notices or to the website, Gazette and newspaper notices either by the Company or by its Directors, and also since no Balance Sheet or Annual Return was filed by the appellant Company till 21.06.2017 the day on which the list of defaulting Companies were crystallized, the Respondent proceeded to strike of the name of the Company from the Register of Companies and published a notice in STK-7 in the homepage of the MCA on 17.07.2017. Learned counsel for Respondent further argued in the official Gazette on 29.7.2017 it was stated that from 17.07.2017 names of the companies mentioned therein including the appellant company have been struck off from the Register of Companies as per sec 248(5) of the Act.

35. We have heard the learned counsel for the parties. We observe that sufficient notice have been served on the appellant to show cause within 30 days of the said notices the reasons for not complying the Act but appellant chose not to reply. Therefore, we are satisfied that the sufficient notice was served on the appellant.

36. Learned counsel for the appellant argued that the appellant company had been allotted a plot of land by KIADB based on substantial amounts already paid and was in the process of making the required additional payments. Learned counsel further argued that huge investment has been made by the Directors of the appellant company. Learned counsel for the appellant further argued that even though the appellant

company is not carrying on any business, the appellant company should be considered to be fully operating and that the same is sufficient in view of Section 252(3) of the Companies Act, 2013 to restore the company.

37. On this issue, Learned counsel for the respondent argued that the Hon'ble Appellate Tribunal may take decision as it may deem fit and proper.

38. We have heard the parties on this issue. We observe from the allotment letter dated 16.12.2016 (Page 104) that the appellant company was allotted 0.50 acres of land for setting up an industry for the manufacture of "Aerospace Components" on certain terms and conditions as mentioned therein. We further observe from para 3(a)(i) of the said letter dated 16.12.2016 (Page 105) that a sum of Rs.50,00,005/- has been paid by the appellant towards 40% of the tentative premium of land and EMD. We have gone through the Balance Sheets for the March 2014 (Page 161) and March 2017 (Page 123) and find that there is no reflection of Rs.5000005/- in these Balance Sheets. We have also gone through letter dated 21st November, 2016 (Page No.109) of the appellant addressed to KIADB, Bangalore enclosing therewith a Demand Draft No.220653 dated 21.11.2017 for Rs.6,25,000/- towards first instalment for 0.5 acres of land allotted to appellant. These documents go to prove that the appellant has been allotted 0.50 acre of land by the KIADB and the appellant has deposited the amount of Rs.25,00,000/- vide DD No.140802 dated 28.10.2013 (Page No.73) way back in 2013 and the KIADB has issued Receipt

No.33781 dated 5/11/2013 for setting up an industry. Further the appellant has also deposited more amount vide Receipt No.37675 dated 30.11.2016 and an amount of Rs.625000/- as first instalment.

39.We further observe that the company was incorporated on 5.8.2010 and the company has not filed the Balance Sheet or the Annual Returns since its incorporation and inspite of notices issued by the ROC, no reply has been filed by the appellant, therefore, ROC struck off the name of the appellant from register of companies.

40.On hearing the parties and perusing the record we observe that the appellant has applied for allotment of land to KIADB in the year 2013 and also deposited Rs.25 lakhs in 2013 and also Rs.25 lakh in 2016 and have also deposited first instalment of Rs.625000/- with the KIADB in 2017. That as per letter of allotment dated 16.12.2016 (Page 104) the last instalment is due by 16.12.2019 which has not arrived so far. As per 4(a) of allotment letter, in case the appellant fails to pay the amount mentioned in para 3(a)(2) of the said letter before the expiry of the time stipulated therein, the offer of allotment stands automatically cancelled and the Earnest Money Deposit and 20% of the amount paid by appellant towards premium stands automatically forfeited. The appellant company was allotted 0.50 acres of land in 2016, though it was applied in 2013, to set up an industry. We also observe that the appellant company is continuously corresponding with the local authorities for allotment of land and getting other approval since 2013.

41.Considering that the appellant is continuously taking efforts to set up industry and also observing that the appellant had applied for land and

submitted project report in 2013 and the land was allotted in 2016. Further the company is depositing balance instalments towards the allotment of land. However, we observe that the amount deposited by the appellant has not been reflected in the Balance Sheets but as the appellant argued that the amount has been invested by the Directors, therefore, the same should have been reflected in the Balance Sheet. We expected that the Balance Sheets to be filed with the ROC are true and fair reflecting all transactions of the company.

42. From the above discussions and observations we have come to the conclusion that in the light of huge investment made by the directors/company and the appellant is continuously making efforts to set up the industry and also still depositing the instalments towards land, it would be just that the name of the company is directed to be restored. The following orders/directions are passed:-

- i) Impugned order is quashed and set aside. The name of appellant company shall be restored to the Register of Companies subject to the following compliances:
- ii) Appellants shall pay costs of Rs.10000/- to the Register of Companies within 30 days. The minimum costs is being imposed seeing that the company is a Start Up company.
- iii) Within 30 days' of restoration of the company's name in the register maintained by the Registrar of Companies, the company will file all their annual returns and financial statements due till date. The company will also pay requisite charges/fee as well as late fee/charges, as applicable.

- iv) In spite of present orders, ROC will be free to take any other steps, punitive or otherwise under the Companies Act, 2013 for non-filing/late filing of statutory returns/documents against the company and directors.
- v) The appeal is accordingly disposed of. No order as to costs.

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

(Mr. Balvinder Singh)
Member (Technical)

New Delhi
Dated:08.4.2019

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