NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 417-418 of 2018

[Arising out of two orders both dated 30th November, 2018 passed by the National Company Law Tribunal, Mumbai Bench in I.A. No. 1250/2018 & Company Petition No. 3713 of 2018]

IN THE MATTER OF:

1. Kaynet Finance Ltd.
Having Office at: 24/B,
Khatau Building, A.D. Modi Marg,
Fort, Mumbai – 400 023.

2. Kaynet Capital Ltd.
Having Office at: 24/B,
Khatau Building, A.D. Modi Marg,
Fort, Mumbai – 400 023.

....Appellants

Vs

1. Verona Capital Limited
Having Office at 408/409,
4th Floor, Metro Avenue,
New Western Express Highway,
Metro Station,
Opp. Guru Nanak Petrol Pump,
Hakala, Andheri (East),
Mumbai – 400 099. Maharashtra &
Having its registered office at
Suite 55, 224, Mittal Court,
Nariman Point,
Mumbai 400 0001.

2. Registrar of Companies,
Mumbai having his Office at
100, Everest, Marine Drive,
Mumbai – 400 002.

....Respondents

Present:

For Appellants: Mr. Kunal Kataria, Mr. Mahesh Agarwala, Mr. Rajeev Kumar and Mr. Arnav Behari, Advocates.

For Respondents: Ms. Mansi Vora and Ms. Priti Vora, Shareholders of R-1. Mr. Krinshnendu Dutta, Sr. Advocate (addressed arguments in part) with Mr. Ashim Sood, Ms. Roopali Singh, Ms. Sayobanki Basu and Ms. Senu Nizar, Advocates.

J U D G M E N T

BANSI LAL BHAT, J.

Appellants, 'Kaynet Finance Ltd.' and 'Kaynet Capital Ltd.', have preferred the instant appeal arising out of two impugned orders both dated 30th November, 2018 passed by National Company Law Tribunal, Mumbai Bench (hereinafter referred to as the 'Tribunal') by virtue whereof Company Petition No. 3713 of 2018 filed by Respondent No. 1 – 'Verona Capital Ltd.' under Section 252 of the Companies Act, 2013 (hereinafter referred to as the 'Act') was allowed and Appellants' Intervention Application being I.A. No. 1250 of 2018 was rejected. The impugned orders have been assailed on the ground that the Company Petition was not maintainable, the Appellants being 'persons concerned' under Section 252 of the Act had locus to seek intervention and the impugned orders suffered from serious legal infirmity and were passed without jurisdiction.

2. The necessary facts bearing upon the litigation culminating in filing of this appeal are required to be briefly noticed. Respondent No. 1 – 'Verona Capital Ltd.' was struck off from the Register of Companies on the ground that the Company was not carrying on any business and there were no business operations for the past two financial years and that the Company had not applied for obtaining the status of a 'Dormant Company'. The Registrar of Companies Mumbai (2nd Respondent) published public notice STK-7 for striking off the Company on 18th August, 2017. Respondent No. 1 through its Director filed Company Petition No. 3713 of 2018 under Section 252 of the

Act before the Tribunal praying for restoration of its name in the Register of Companies maintained by ROC, Mumbai that the Company was prepared to file the Annual Returns and Financial Statements for the period spanning Financial Years 2008-09 to 2016-17 besides any other documents as may be required by the ROC, Mumbai. The Company Petition was resisted by the Respondent - ROC, Mumbai on the ground that the Company had failed to file statutory returns for a continuous period of two years, which led ROC to believe that the Company had ceased to do its business warranting the name of Company being struck off from the Register of ROC. It appears that Respondent No. 1 herein produced audited report and financial statements for the years 2008-09 to 2016-17 and Income Tax Returns for Assessment Years 2009-10 and 2010-11 before the Tribunal to demonstrate that the Company was in operation. Further proof was laid to establish that the Company had earned profits and conducted business from the Financial Year 2009-10 till 2014-15. Restoration of Company was also sought on the ground that certain claims of the Company against some corporate bodies were pending litigation, benefit whereof would accrue to the Company only in the event of its revival besides benefitting the Exchequer by way of Taxes. Thus, revival of the Company was also projected as involving public interest. The Tribunal, upon according consideration to the issues raised allowed the restoration of the Company's name on the Register of ROC as it was of the view that ordering restoration of name of the Company would be 'just' and 'proper'. I.A. 1250/2018 preferred by the Appellants seeking intervention in the proceedings under Section 252 of the Act was dismissed by the Tribunal holding that the Appellants failed to establish their *locus standi* besides

demonstrating that any harm would be caused to them in the event of Company's name being restored in the Register of Companies.

3. It is contended on behalf of Appellants that Respondent No. 1 had Zero revenue from operations and did not carry on any business as is reflected in the Balance Sheets and Profit and Loss Accounts filed by the Respondent No. 1 for Financial Years ending 31st March, 2016 and 31st March, 2017. It is therefore contended that the Tribunal has passed the order without appreciating the factual position. It is submitted that Respondent No. 1 had obtained loans to the tune of Rs.140 Crores from various entities including the family trust under the control of one Nikhil Gandhi, Chairman of SKIL Group of Companies, which are currently being investigated by ED, SFIO and other investigating agencies for their involvement in IL&FS loan scandal. It is submitted that Respondent No. 1 is in fact put up by Nikhil Gandhi to trade in the Indian Securities Market. It is further submitted that the Appellants wanted to bring on record some material facts in public interest to show that a Shell Company was being sought to be restored. Referring to the Intervention Application, it is submitted that the Appellants have filed a Civil Suit before City Civil and Sessions Court Mumbai against Respondent No. 1 and its three erstwhile Directors for recovery of moneys, thus they are 'persons concerned' under Section 252 of the Act. It is further submitted that any adverse decision in the proceedings was bound to affect the Appellants, thus they were party aggrieved having locus to maintain the appeal. It is further submitted that various litigations between Appellants and Respondent No. 1 commenced only after the Company was struck off by ROC and there

was no active litigation pending between the Appellants and Respondent No. 1 at the time of striking off the Company. Thus, the impugned orders were legally untenable.

4. Per contra, it is submitted by and on behalf of Respondent No. 1 that since the Appellants' prayer for intervention in the Company Petition stands rejected in terms of one impugned order, though passed on the same date when the impugned order allowing the Company Petition was passed, the Appellants are precluded from maintaining appeal against second impugned order whereunder the Company Petition for restoration of the Company on the Register of ROC was allowed. It is further submitted that the Appellants are the debtors and not members, shareholders, Directors or even creditors of the Company, thus, have no *locus standi* to seek intervention. Besides they cannot be termed as persons aggrieved under Section 252(1) of the Act. It is further submitted that the filing of Civil Suit by the Appellants against Respondent No. l would in fact justify restoration of the name of the Company but for seeking intervention Appellants can neither be termed as 'persons concerned' nor 'aggrieved persons'. It is submitted that the Appellants have fraudulently siphoned off amount to the tune of Rs.112 Crores and Respondent No. 1 is involved in active litigation for its recovery. The amounts were fraudulently siphoned off by the Appellants as Respondent No. 1 had appointed the Appellants as its stock brokers to effect transactions on NSE and BSE. It is further submitted that after lodging of FIR against Appellants they have fabricated the record and filed frivolous Suit against Respondent No. 1 which is presently pending trial before Mumbai City Civil Court. It is

further submitted that the Respondent No. 1 has been successful in its proceedings against the Appellants, who have been directed by various Fora to pay a total amount of Rs.35 Crore with interest to Respondent No.1. It is submitted that the petition filed by Appellant No. 1 under Section 34 of Arbitration and Conciliation Act, 1996 to set aside the NSE award stands dismissed by the Hon'ble Bombay High Court on 24th June, 2019. No interim relief has been granted in appeal under Section 37. SLP filed by Appellant No. 1 has been dismissed by the Hon'ble Apex Court. Appeal under Section 37 too has been dismissed by the Hon'ble Bombay High Court. However, it is submitted, the Appellants have failed to pay amounts under the Awards to Respondent No. 1. It is submitted that both NSE and BSE have since withdrawn trading facilities from the Appellants, appropriated the security deposit of Appellants and released the security deposit amount in favour of Respondent No. 1. It is therefore submitted that the Appellants are debtors of Respondent No. 1 owing moneys to it and as of now the Appellants have to pay Rs.35 Crore including interest to the Respondent No. 1. Both NSE and BSE have initiated proceedings against Appellants. It is further submitted that Respondent No. 1 had registered a complaint against the Appellants and its Directors with Economic Offences Wing (EOW) on 12th March, 2018 which has led to registration of an FIR and during investigation Appellants Bank Accounts have been frozen. Another complaint for fabrication of Respondent's ledger statements and Balance Sheet of Appellants had been lodged with EOW. As regards competence of Ms. Mansi Vora, it is submitted that she is a Shareholder of Respondent No. 1 entitled to file application for restoration of the Company.

5. Heard learned counsel for the parties and perused the record. There can be no dispute with the proposition that once Appellants' prayer for seeking intervention in Company Petition has been rejected by the Tribunal in terms of the first impugned order whereby the I.A. No. 1250/2018 was rejected, their appeal qua the second impugned order passed in C.P. No. 1373 of 2018 allowing restoration of the name of the Company under Section 252 of the Act is not maintainable. Admittedly, Appellants were not the members, shareholders, Directors, creditors or workmen of the Company falling within the ambit of Section 252 (3) of the Act and the documentary evidence staring in their face in the form of awards and other relevant material portrays their capacity as 'Debtors'. It is indisputable that in their capacity as 'Debtors' they could not claim to be the 'aggrieved persons' qua the order of restoration of name of Company and the appeal preferred against striking off of the name of the Company from Register of Companies at their instance would not lie. The appeal to the extent of such impugned order stands dismissed. Having regard to this position, the sole question for consideration in this appeal is whether the Appellants did have locus to seek intervention in the Company Petition preferred under Section 252 of the Act.

6. Section 252 (1) provides that an order of the Registrar notifying a Company as dissolved under Section 248 may be assailed in an appeal before the Tribunal within three years from the date of order of the Registrar. Such appeal can be preferred by any 'aggrieved person'. If such 'aggrieved person' is able to satisfy the Tribunal that the name of the Company has been unjustifiably removed from the Register of Companies, the Tribunal may order

restoration of the name of the Company in the Register of the Companies. The first proviso to sub-section (1) of Section 252 provides that before passing any order in appeal the Tribunal shall provide reasonable opportunity of making representations and of being heard to the Registrar, the Company and all the 'persons concerned'. In the instant case, admittedly, the order of removal of name of Company from the Register of Companies has been passed by the Registrar in exercise of powers vested in him under Section 248 of the Act on being satisfied that the Company was not carrying on any business or operation for the two immediately preceding financial years. The Appellant has not questioned vesting of such powers in Registrar and its exercise conforming to the procedure laid down in Section 248 of the Act and in view of the same it cannot be said that there is a material irregularity in removing the name of the Company. As regards the appellant being aggrieved of restoration of the name of the Company and the merits of the case not justifying such restoration in the Register of Companies, be it seen that the Appellant can be heard as regards merits only if he is the 'person aggrieved'. The expression 'person concerned' in first proviso to sub-section (1) of Section 252 has reference to only such person i.e. the 'person aggrieved' and none else. No other interpretation is possible on the plain language and purposive interpretation of the provision engrafted in Section 252(1) of the Act. The 'person aggrieved', in the context of removal of name of a Company from the Register of Companies can be no person other than the Company, any member or creditor or workmen, who are the necessary stakeholders, their fortunes being linked with the fate of the Company. If the Company sinks or ceases to exist, their interests are bound to suffer. However, same does not

hold good as regards a 'debtor', who would benefit rather than being harmed by striking off of the Company from the Register of Companies. It is in this context that the issue of locus of the Appellant in seeking intervention in Company Petition preferred against order passed by Registrar of Companies under Section 248 of the Act has to be appreciated.

7. The maxim 'ubi jus ibi remedium' means that unless there is infringement of a legal right warranting a legal action, there is no remedy available in law. This rests on the edifice that whenever law gives a right or prevents an injury, the affected person whose right has been infringed will have a remedy by way of legal action before a competent Court of Law. Based on this principle of jurisprudence, the Courts insist that the person seeking a legal remedy should be one whose legal rights have been jeopardized or are in jeopardy. This, put in simple terms, means that only such person can be permitted to seek legal remedy whose legal rights have been infringed. It is only invasion of legal rights that warrants grant of a legal remedy. Where a person has no legal interest, he cannot seek judicial intervention as he has no grievance in the eye of law. This principle of law has been judicially recognized and further reiterated by the Hon'ble Apex Court in *'Chiranjit Lal Chowdhuri' Vs. 'The Union of India & Ors.' reported in 1950 S.C.P.869*.

8. It is well settled that the legal right sought to be enforced must ordinarily be the right of the petitioner himself who complains of infraction of such right and seeks legal remedy before a Court of Law. The principle of *locus sandi* may have been diluted to some extent by allowing public interest litigation in regard to enforcement of certain rights concerning the public at

large, however, it does not detract from the broader principle that in case of any statutory violation, a right to seek remedy is conferred upon the statutory authorities like the Registrar of Companies entrusted with matters governing the companies or on members, creditors and other persons interested in the company. Even in case of a class action, a minimum threshold is prescribed. Merely because a Company happens to be a public company, it is not open to any member of the public to move the Court seeking directions to interfere in the management and affairs of the Company.

9. Adverting to the facts of the instant case be it seen that the Appellants sought intervention in Company Petition on the ground that they had filed a Civil Suit against the Company. This ground, though does not justify intervention in Company Petition as 'person aggrieved', in fact warrants the Company's name being restored in the Register of Companies, more so, as the Company is said to be even now involved in active litigation for recovery of moneys allegedly siphoned off by the Appellants fraudulently which according to Respondent is a staggering amount of Rs.112 Crore. Allegedly, Appellants generated false debits and issued fabricated contract notes to Respondent No. 1 thereby fraudulently siphoning off the amount of Rs.112 Crore while engaged as Stock Brokers by Respondent No. 1 to effect transactions at the stock exchanges. According to respondent, the Appellants fabricated ledger document to siphon off the amounts and filed a frivolous suit against the Company after case was registered against them before EOW. The suit is stated to be pending trial before Mumbai City Civil Court. It appears from record that the Appellants are Debtors to the Respondent No. 1 in whose

favour NSE Arbitral Award dated 18th April, 2018 for an amount of Rs.17,52,47,517.10/- with interest stands passed and appeal preferred against the same under Section 37 of the Arbitration and Conciliation Act, 1996 stands dismissed. BSE Arbitral Award also appears to have granted claims in favour of Respondent No. 1. It is evident that the Appellants having failed to pay the amounts admissible under the NSE Award and BSE Award to Respondent No.1 fall in the category of 'Debtors' of Respondent No. 1 and to wriggle out of their current liability of Rs.35 Crores including interest to Respondent No. 1 have resorted to the unfair tactics of filing a frivolous application for seeking intervention in the Company Petition only to frustrate the process of law. In the given circumstances, Appellants cannot be heard to say that Ms. Mansi Vora, admittedly a shareholder of Respondent No. 1 having stakes in the Company, was not entitled to seek restoration of name of Respondent No. 1 in the Register of Companies. Appellants have miserably failed to prove their locus and their malafide intention to thwart the course of law is writ large on the face of their attempted intervention.

10. For the foregoing reasons, we find that the Appellants could not claim to be the 'aggrieved persons' and had no locus to seek intervention in Company Petition. Neither of their legal rights was jeopardized nor was any of their legal right infringed. We are convinced that the intervention application dismissal whereof give rise to the instant appeal was filed with a malafide intention to stall the process of law and evade the liability judicially determined. The appeal is accordingly dismissed and the Appellants are saddled with costs quantified at Rs.2/- Lakh (Rupees Two Lakh Only) which

shall be deposited with the Registrar, NCLAT within thirty days. In peculiar circumstances of this case, we direct that 50 percent of the amount of costs shall be released in favour of Respondent No. 1 as and when realized.

[Justice Bansi Lal Bhat]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

NEW DELHI
13th December 2019

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