

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) No. 147 of 2018

IN THE MATTER OF:

Valuefab Solutions Pvt. Ltd.

230, Lake Shore Homes Layout,
Kasavanahalli Village, Sarjapur Road,
Bengaluru- 560037, Karnataka

...Appellant

Vs

ROC, Karnataka

II Floor 'E' Wing Kendriya Sadan,
Kormangala, Bengaluru- 560034

....Respondent

Present:

For Appellants: Ms. Asmita Deshpande, Advocate.

For Respondents: None.

JUDGEMENT

A.I.S. CHEEMA, J. :

The Appellant Company is Private Limited Company. It was struck off from the Register of Companies vide notification dated 17th July, 2017 for failure to file Financial Statements and Annual Returns. In response to show cause notice from respondents the appellant had informed on 20th February, 2017 that the Directors of the Applicant Company were in the process of winding up and they will comply with the statutory requirements for the same. The appellant claims that it was misled by an online portal "*Vakil Search*" that it was not mandatory to file Annual Returns and thus there was default. Appellant filed application under Section 252 of the Companies Act, 2013 to

restore the company on just an equitable cause but the NCLT vide impugned order dated 26th February, 2018 dismissed the petition. Thus this appeal.

2. Counsel for the appellant has been heard. The respondent ROC remained absent in spite of service of notice.

3. Counsel for appellant referred to the copy of the Company Petition 200/2017 (Annexure-B) (Pg. 36) to submit that the appellant had filed the petition when the company was struck off from the Register of Companies. The learned counsel referred to provision filing of appeal to the Tribunal under Section 252 if a person is aggrieved by an order of the registrar notifying a company as dissolved under Section 248 of the new Act. She referred to Sub-Section 3 of Section 252 which reads as under:

“ If a company, or any member or creditor or workmen thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just

for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.”

According to Ld. Counsel even if the company was not carrying on the business or was not in operation, still if otherwise it is just that the name of the company should be restored to the register of companies then the NCLT should have allowed the name of the appellant company to be restored. She claimed that the appellant had given reasons in NCLT that the appellant wanted the company to be restored so that it could comply with the winding up procedure and the company could have an honourable exit.

4. We have gone through the impugned order. The NCLT has in details recorded in initial part of its judgment the pleadings made by the appellant/petitioner. (We wish the concerned NCLT at Bangaluru Bench will give at least paragraph numbers in the Judgment so that reference would be easy). At page 3 of the certified copy of the impugned order the learned NCLT referred to the case put up by registrar of companies as under:

“ The Registrar of Companies has filed Counter affidavit dated 18th January, 2018 along with the Annexures. The Registrar of Companies herein denies all the averments made in the Petition save the averments which are specially admitted herein below and submit his counter to the Petition as under:

i.) *The Petitioner Company is a private limited company incorporated on 21.02.2012 vide CIN NO. U72900KA2012PTC062633. The Registered Office of the Petitioner Company is situated at No.230, Lake Shore Homes Layout, Kasavanahalli village, Sarjapur Road, Bengaluru -560037. The copy of the Company Master Data is shown as **Annexure I**.*

ii.) *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 (hereafter called as the 'Act') was initiated against the eligible Companies it was seen that the Petitioner Company has not filed either the Balance Sheet or the Annual Returns from the year 2013-14 to 2015-16. Therefore the Respondent had reasonable cause to believe that the Petitioner Company is not carrying on any business or operation and therefore a notice in Form STK-1 dated 16th March, 2017 was sent to the Company with a copy of the same to Mr. Guntupalli Siva Rama Krishna Prasad and Mr. Srinivasa Rao Nudurpati, Directors of the Company to the address available in the MCA 21 portal. The copies of the said notices are shown as **Annexures III & IV** respectively.*

iii.) *In the said notice STK-1 that was sent to the company and the directors of the company, it was mentioned that the petitioner company was not carrying on business or operation for a period of two immediately preceding financial years and that the company*

has not applied 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 Sec 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.

*iv.) It is submitted that a consolidated notice in STK-5 in English and Hindi was released as per Rule 7 of the Companies (Removal of name of Companies from the Register of Companies) Rule, 2016, 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-5 A, 30 days' time was given to show cause to the contrary to the action of strike off. Copies of the notice in website, Official Gazette and paper publication in Vijay Karnataka and the Times of India are shown as **Annexure-V, VI, VII & VIII respectively**.*

v.) 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 Petitioner Company till 21.06.2016 the day on which the list of defaulting companies were crystallized, the Respondent proceeded to strike off the name of the Petitioner Company from the Register of Companies

and published a notice in STK-7 in the homepage of the MCA on 17.07.2017. A copy of the said STK-7 Notice is shown as **Annexure-IX**. It was also published in the official Gazette on 29.07.2017 stating that the from 17.07.2017 names of the companies mentioned therein including the petitioner company have been struck off from the Register of Companies as per sec 248(5) of the Act. A copy the publication made in the Official Gazette on 29.07.2017 is shown as **Annexure-X**.

vi.) It is stated in the petition that the applicant company was a non-functional company at the time of strike off and that it wants the company to be revived only for the purpose of winding up of the company.

vii.) The Petitioner has prayed that the name company be restored to the Register of Companies under section 252 of the Act. Subject to the satisfaction of this Hon'ble Tribunal and in the event of this Hon'ble Tribunal willing to revive the Company, then the Respondent humbly prays that this Hon'ble Tribunal may kindly,

- a) Direct the petitioner to undertake to file the overdue returns upto date within 30 days in the MCA 21 Portal from the date of the order of NCLT reviving the company and comply with the provisions of Companies Act, 2013;
- b) Direct the Petitioner to pay costs as decided by this Hon'ble Tribunal to be paid to the account of Central

Government favouring the Pay and Accounts Officer, Ministry of Corporate Affairs, Southern Region, Chennai, towards the expenses incurred by the Respondent in taking Section 248 action, like postage, stationary, advertisement charges etc.

c) Direct that the revival order be automatically vacated if the above compliance are not made within a maximum period of 30 days from the date of the receipt of the order of the Petitioner.

The Registrar of Companies has exercised its power under Section 248 of the Companies Act, 2013 read with (Removal of name of Companies from the Registrar of Companies) Rules, 2016 after following the procedure as per the law, giving opportunity to the Petitioner Company to file its Statutory Returns and upon non-filing of Statutory Returns the name of the Company was struck off.”

5. The NCLT referred to Rulings cited to record that facts of those matters were different. NCLT then referred to Section 252 (3) of the Companies Act referred and observed:

“It is stated in the petition that the petitioner company was not carrying on the business and operational at the time when the name was struck off by the Registrar of Companies and that the petitioner company had made a representation to the respondent by its letter

dated 20.02.2017 that they are in the process of closure. It is further stated that the petitioner company had commenced its product development activity immediately after incorporation until June 2013, but could not generate any revenue and was not conducting business thereafter. The Board therefore decided to wind up the company since there was no potential for business. It is also mentioned that the bank account maintained with HDFC Bank was also closed as on 31.03.2016.

As per the Profit and Loss Account for the year 2016-17, the Company has not done any business and has incurred certain expenditure towards travelling expenses, audit fee etc. of Rs.45,875/- and the Company has no fixed assets nor any non-current and current assets, except cash balance of Rs. 1,79,023/- as on 31.03.2017. The Company has mentioned that the Company wants to go for winding up as per para 4.7 of the petition which is reproduced below:

“That the applicant avers that the Company had commenced its product development activity immediately after incorporation until June, 2013. However, could not generate any revenue and was not conducting any business thereafter. The Board had also decided to wind up the Company since there was no potential for business.”

Vide para 4.11(reproduced below), the Petitioner Company confirms that the Bank Accounts have been closed:

“That the bank account maintained with HDFC Bank was also closed as on 31.03.2016. Copy of the Bank closure letter enclosed as Annexure-H.”

After hearing the Counsel for the Petitioner Company and perusal of the material on record the report of the Registrar of Companies, Karnataka and ongoing through the provisions of Section 252(3) of the Companies Act, 2013, this Tribunal is of the view that the applicant company was a non-functional company at the time of strike off its name and that the company wants to be revived only for the purpose of winding up of the company. The citations relied upon by the learned counsel for the petitioner are in respect of the Companies Act, 1956. The ground on which the name of the company has to be restored is not at all conveyed by Section 252(3) of the Companies Act, 2013.”

The NCLT concluded that if restoration of the name of the Company was to be allowed only for the purpose of winding up, it would defeat the very purpose of striking off the company. It also found that the appellant/petitioner had no assets other than nominal cash balance in the current liabilities and there was no justification for restoring the name of the company.

6. The learned counsel for the appellant vehemently argued that the company was misled that filing of returns was not necessary due to advice received from the online portal copy of which has been filed with the appeal at page 90. We find that this cannot be an excuse for non-filing of the financial statements and returns. We do not find that there is any error in the judgment of the NCLT where it observes that just for going through process of winding up would not be a reason to set aside the striking off of the company for non-compliance. It appears the process for striking of the company of the name of the company was duly followed by the ROC as is clear from the counter affidavit filed by ROC which has been extensively referred to by NCLT and which portion of the judgment we have reproduced. It is not a case that the Company was carrying on business or was conducting its operations and default in filing took place. The object of Section 252 appears to be to safeguard companies which were carrying on business or were in operation so that they should get opportunity to be restored. We do not find that there would be justification to restore the name of the company only for the company to go through the process of winding up, or closure.

7. At the time of arguments learned counsel for the appellant tried to submit that because of the striking off of the present company the directors have been affected due to DIN getting blocked and they are aggrieved because they are connected with other companies also. Learned counsel was unable to show that any such ground was taken before NCLT or in the Company Petition. As such we have not allowed the learned counsel to raise this new ground for

the first time in the appeal. Again, it would also be no 'just' cause under Section 252(3) of the new Act.

8. Considering the record and the submissions made before us, we do not think that there is any substance in this appeal.

9. The appeal is dismissed. However there will be no orders as to cost.

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

(Balvinder Singh)
Member (Technical)

New Delhi
Date: 22nd May, 2018

Sh/mn