

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 381 of 2018

[Arising out of Order dated 29th August, 2018 passed by the National Company Law Tribunal, Bench-III, New Delhi in Appeal No. 510/252/ND/2018]

IN THE MATTER OF:

**1. Pawan Jaggi,
(Holding 38.63% Seasons Creation Private Limited)**
S/o Mr. Amar Nath Jaggi
r/o F-1/6, Model Town-II,
Delhi - 110009

**2. Swaran Jaggi,
(Holding 16.34% Seasons Creation Private Limited)**
W/o Mr. Amar Nath Jaggi
r/o F-1/6, Model Town-II,
Delhi - 110009

...Appellants

Vs

**The Registrar of Companies,
NCT of Delhi & Haryana**
4th Floor, IFCI Tower,
Nehru Place,
New Delhi - 110019.

....Respondents

Present:

For Appellant: Mr. P. P. Khurana, Sr. Advocate with Mr. Sachin Sood and Ms. Priya Soni, Advocates.

For Respondents: Mr. P. S. Singh, Sr. Panel Counsel with Mr. Mahender Kr. Bhardwaj and Mr. K. C. Dubey, Advocates for ROC.

J U D G M E N T

BANSI LAL BHAT, J.

'M/s Seasons Creation Pvt. Ltd.' (hereinafter referred to as the 'Company') incorporated on 20th June, 1989 under the provisions of the Companies Act, 1956 (for short 'the Act') with its main objects being engaged in business of manufacturing, trading, importing and exporting of and dealing in all other similar kind of textile goods of all varieties and distinctions and hosiery goods with registered office located at Model Town, Delhi and having authorized capital of Rs.20 Lakhs came to be struck off from the Register of Registrar of Companies vide notice STK-7 dated 21st August, 2017 for being inactive. Appeal preferred by the shareholders of the Company under Section 252 (3) of the Act seeking restoration of the name of the Company to the Register of Companies maintained by the Respondent – 'Registrar of Companies, NCT of Delhi & Haryana (for short 'ROC') came to be dismissed in terms of impugned order dated 29th August, 2018 passed by the National Company Law Tribunal, Bench-III, New Delhi (for short 'the Tribunal') in Appeal No. 510/252/ND/2018 on the ground that the Company had not done any business after the year 1999 and the Company had failed to apply for obtaining the status of a dormant company. The huge delay of 19 years in starting the business activities of the Company also weighed with the Tribunal in dismissing the appeal.

2. The case setup before the Tribunal for restoration of the Company's name to the Register of Companies was that the Company had been doing a good business and earning profits till the year 1999. It was during the period between 1st February, 1999 to 26th July, 1999 that one of the Directors cum Shareholder in connivance with some staff members committed theft of stock of raw material, work in progress, finished goods, all machineries and assets alongwith book of accounts, statutory records and documents etc. in respect whereof FIR No. 25/99 dated 26th July, 1999 was registered against the accused and investigation was commenced. The said assets were hypothecated with Allahabad Bank against the loan taken by the Company and the loan was satisfied by Appellant No. 1 by making one time settlement with the lender. The Appellants urged before the Tribunal that the ROC did not comply with the requirements of law and no notices were issued to the Appellants before striking off the name of the Company. The Company maintained that it did not receive any show cause notice or communication from ROC and no opportunity was granted to it to file pending documents before striking off the name of the Company. Respondent – ROC contested the appeal before Tribunal pleading that the Company was struck off for not being in operation and not carrying on any business for a period of two years immediately preceding relevant financial year and not obtaining the status of a Dormant Company. It was urged before the Tribunal that the Company has filed its Annual Return and Balance Sheet for financial year ended on 31st March, 1993 and 31st March, 1992, respectively. On consideration of the respective stands of the parties,

the Tribunal found that the Company had last filed its Annual Accounts only upto 1993 and Income Tax Returns were last filed for the accounting year 1997-98, therefore, it was established that the Company had not done any business after the year 1999. The Tribunal accepted the plea of Appellants that one of the Directors of the Company had dishonestly removed the machinery and raw materials valued at around Rs.2 Crores, however, it observed that the Company had no reason not to file statement with ROC under Section 455 of the Act to obtain the status of a Dormant Company. 19 years huge delay in not starting the business was also a circumstance weighing against allowing restoration of the name of the Company to the Register of Companies.

3. It has been urged in the instant appeal that the Company was earning profits till the year 1999, however, during the period intervening between 1st February, 1999 to 26th July, 1999 one of the Directors cum shareholder in connivance with some staff members committed theft of stock of raw material, work in progress, finished goods, all machineries and assets alongwith book of accounts, statutory records and documents etc. in respect whereof FIR No. 25/99 dated 26th July, 1999 was registered against the accused and investigation was commenced, during the course of which the stolen machineries were seized by the Police. The aforesaid assets were hypothecated with Allahabad Bank against the loan taken by the Company and the loan was satisfied by Appellant No. 1 by making one time settlement with the lender. It is further urged in appeal that the fixed assets being land

standing in the name of Company was acquired by Haryana Government under Award no.1 dated 28th October, 1998 for HSIIDC, Kundli. The Appellants filed petitions for enhancement of compensation in regard to the Company's land acquired by the Haryana Government, which was awarded and against which appeals are being contested by the Appellant Company before Hon'ble High Court of Punjab and Haryana. However in the meantime, the Company's name was struck off by the Respondent under Section 248 of the Act without issuing any prior notice to the Appellants Company and its Directors in total violation of the requirements of Section 248 (1) of the Act. It is further urged that no opportunity of being heard was given to the Appellants to explain or rectify the filing of pending documents.

4. The impugned order is said to be erroneous in as much as the Tribunal, despite acknowledging the factum of the raw material, machinery and finished goods, etc. of the Company having been stolen by one of the Directors leading to halting of business activities and seizure thereof by Police during investigation in the aforestated FIR, failed to appreciate that the Appellants could not have recovered the same as the Company's name was struck off from the Register of Companies. The impugned order is also assailed on the ground that the Tribunal failed to take notice of FIR No. 301/16 filed at Saraswati Vihar Police Station, Delhi in August, 1999 against the accused Director for illegal transfer of Car of the Appellant Company in the name of his Brother-in-law, in which charge sheet has been preferred and is pending trial before leaned Metropolitan Magistrate, North-

West Rohini Court. It is further urged in appeal that on account of striking off the Company's name from the Register of Companies, the Appellant Company's account was closed which created a hindrance in recovery of the assets and its value from various Government Departments. Moreover, Execution Petition in the enhancement of compensation matter is said to be pending before learned Additional District Judge, Sonipat. These aspects are stated to have been overlooked by the Tribunal while dismissing the appeal. Our attention has been invited to non-realization of an amount of Rs.73,14,511/- remitted by HSIIDC in regard to the value of the assets due to freezing of the bank account of the Company. Same is stated to be the case in regard to amount of Rs.5,76,260/- deposited by HSIIDC towards TDS deducted with the Income Tax Department on 27th February, 2018. It is therefore urged that such realizations would not be effected unless the Company's name is restored in Register of Companies.

5. Heard learned counsel for the parties and perused the records.
6. Learned counsel for the Appellants has reiterated the grounds urged for restoration of the name of Company to the Register of Companies by laying stress on the procedure observed in striking off the name of Company to emphasize that non-conformity with the same has resulted in condemning the Appellants unheard and the Company has been struck off without affording it an opportunity of being heard. This has been seriously contested by the Respondent. So far as observance of procedure embodied

in Section 248 of the Act regulating striking off the company from Register of Companies and removal of its name for its failure to commence operations or not being in operation or not carrying on its business during the relevant period i.e. for two financial years immediately preceding the relevant financial year, is concerned, after going through the reply affidavit of Respondent and the available record including the Gazette Notification published for June 24- June 30, 2017, we are satisfied that the Company figuring at serial number 19461 of the Gazette Notification dated September 9- September 15, 2017 has been duly struck off from the Register of Companies w.e.f. 21st August, 2017. Any procedural lapse going to the root of the impugned action of the ROC resulting in removal of name of Company from the Register of Companies being abysmally absent, arguments raised on this score are overruled.

7. However, that does not bring the curtain down on the matter as it is undisputed that the Company was carrying on operations with a good turnover till 1999 and two events of significance sounded death knell to its operations. The first event relates to clandestine removal of the machinery, raw material and finished goods, etc. by one of the Directors in respect whereof criminal investigation is stated to be underway after an FIR has been registered. Same is true about the alleged transfer of Car belonging to the Company by the same accused Director to his relative. The second event relates to acquisition of the fixed assets i.e. the land belonging to the Company by HSIIDC, in respect whereof compensation has been awarded

and litigation by the Appellants has fructified in enhancement of compensation regarding which an execution petition is stated to be pending consideration before learned Additional District Judge, Sonipat. It is brought to our notice that the amount of compensation and the amount deposited toward TDS of the Income Tax Department is not being realized as the Company's account stands frozen due to removal of its name from the Register of Companies. It is a matter of record that the factum of fraudulent activities of one of the Directors of the Company involving theft of machineries and raw materials to the extent of Rs.2 Crores is taken note of by the Tribunal in the impugned order. In the given circumstances, it would be unjust to strike off the name of Company from the Register of Companies merely because it failed to apply for seeking of a Dormant Status.

8. In view of the foregoing discussion, we are of the considered opinion that the twin grounds projected at the hearing constitute a valid and just ground for restoring the Company on the Register of Companies. We accordingly set aside the impugned order, allow the appeal and direct restoration of the name of the Company on the Register of Companies subject to the Appellants complying with all the statutory requirements for the defaulting period and paying off the fee including penalties leivable thereon warranted under law as determined by the Registrar of Companies, NCT of Delhi & Haryana, within one month.

Copy of this order be sent to Registrar of Companies, NCT of Delhi & Haryana for information and compliance.

[Justice Bansi Lal Bhat]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

NEW DELHI

5th September, 2019

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