

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 10 of 2019

[Arising out of Order dated 6th September, 2018 passed by the National Company Law Tribunal, Mumbai Bench in C.P. No. 482/LLP 56/NCLT/MB/MAH/2017]

IN THE MATTER OF:

**Registrar of Companies,
Maharashtra, Mumbai**

Having its office at
'EVEREST', 100, Marine Drive,
Mumbai – 400 002.

...Appellant

Vs

1. Acadia Hotels and Resorts LLP

(Formerly known as Acadia Hotels and
Resorts Pvt. Ltd.)

Address: 508, Ceejay House,
Dr. Annie Besant Road, Worli,
Mumbai City, MH – 400 018.

2. Agility Steel and Developers LLP

(Formerly known as Agility Steel and
Developers Pvt. Ltd.)

Address: 11, Maduli Apartment,
Dr. Annie Besant Road, Worli,
Mumbai City, MH – 400 018.

3. Brickstone Construction LLP

(Formerly known as Brickstone Construction Pvt. Ltd.)

Address: 11, Madhuli Apartment,
Dr. Annie Besant Road, Worli,
Mumbai City, MH – 400 018.

4. Grishmak Travels and Transport LLP

(Formerly known as Grishmak Travels
And Transport Pvt. Ltd.)

Address: 11, Madhuli Apartment,
Dr. Annie Besant Road, Worli,
Mumbai City, MH – 400 018.

5. Rakshak Properties LLP

(Formerly known as Rakshak Properties Pvt. Ltd.)

Address: 508, Ceejay House,
Dr. Annie Besant Road, Worli,
Mumbai City, MH – 400 018.

...Respondents

Present:

For Appellant: Mr. Kamal Kant Jha, Advocate.

For Respondents: Mr. Amit Shroff and Mr. Akhil Nene, Advocates.

J U D G M E N T

BANSI LAL BHAT, J.

Respondents herein filed CP No. 482/LLP 56/NCLT/MB/MAH/2017 against the Registrar of Companies, Maharashtra, Mumbai (Appellant herein) under Section 56 of Limited Liability Partnership Act, 2008 (for short 'the Act') before the National Company Law Tribunal, Mumbai Bench (for short 'the Tribunal') praying for liberty to allow them to remove the objections and file a fresh Form - 3 without penalties besides allowing them to file their Form - 8 and Form - 11. The Tribunal, after consideration of the matter, allowed the petition in terms of the impugned order dated 6th September, 2018 holding that there was no willful negligence on the part of Respondents herein, particularly, when they had been filing their Form - 8 and Form - 11 till year 2015-16 without any objection from the Appellant herein which was possible only after submission of Form No. 3. Aggrieved thereof the Appellant has filed the instant appeal on the ground that the

Tribunal had no jurisdiction as the Appellant had not refused to register or give effect to conversion of the companies into LLPs and the Respondents could approach the Central Government only for compounding of offence.

2. A flashback of the events culminating in filing of the Company Petition by Respondents and passing of impugned order may be adverted to briefly. Respondents were initially incorporated as Private Limited Companies under Companies Act, 1956. As a sequel to the decision taken by the erstwhile Directors, the Respondent companies took necessary steps to convert the erstwhile Private Limited Companies into LLPs in accordance with Section 56 and the third schedule of the Act. Certificates of registration dated 27th March, 2012, 29th March, 2012, 30th March, 2012, 3rd April, 2012 and 24th April, 2012, respectively came to be issued in their favour by the Appellant. Thus the Respondents got converted into LLPs and carried on business as such. The case setup by the Respondents before the Tribunal was that after their conversion into LLPs in the year 2012 the Respondents filed information with regard to LLP agreements (Form – 3), the annual return (Form – 11) and the statement of account and solvency (Form – 8) with the concerned authorities. According to Respondents, Form – 3 alongwith relevant fee were accepted by the Ministry of Corporate Affairs whereas Form 11 and 8 submitted by the Respondents were accepted by the Appellant. However, Form – 8 for the financial year 2015-16 was not accepted on the pretext that the Form could not be filed until Form - 3 for the initial agreement was filed despite the fact that Form – 3 had been filed way back in 2012 and Forms – 8 and 11 were accepted from 2012 to 2016 without

raising any objection with respect to Form No. 3. Later the Respondents came to know that the Form – 3 filed earlier was not taken on record. The objection in this regard came to the knowledge of Respondents only after filing RTI. It became known that there were some objections to the Form – 3 already filed which were to be rectified but since the same were not rectified, the Form – 3 filed was declared invalid. Subsequently the Respondents were informed that they would have to file fresh Form-3 which meant that they will have to pay a heavy penalty of about Rs.10,86,000/- for removal of objections as regards each of the Respondents. The Respondents further averred in the petition before the Tribunal that they did not receive any correspondence from the Appellant since 2012 informing that the Form – 3 filed by them had several objections which were required to be removed. They further claimed in the petition that in identical cases objections were allowed to be cleared without payment of any penalty. However, the Respondents were singled out arbitrarily by not permitting them to remove the objections without paying heavy penalty.

3. The learned Tribunal found that the Respondents had submitted the Form – 3 as early as in the year 2012 and subsequently, they were allowed to file Form No. 8 and 11 till the year 2015-16. Objection as regards Form No. 3 was raised only from the financial year 2015-16 after computerized system was introduced from 2013 by the Ministry of Corporate Affairs (MCA). The learned Tribunal noticed that the LLPs who filed Form-3 since 2013, though defective, were allowed to file Rectified/Revised Form 3 without any fine or penalty. Since the Respondents filed Form-3 prior to

2013, the same was not captured in the database of the computerized system of the MCA. As regards the core issue qua statutory compliance relating to conversion of Private Companies into LLPs, the learned Tribunal observed as under:-

“13.1 As far as the question of applicability of Section 56 of LLP Act, 2008 is concerned, this Section prescribes conversion from private company into limited liability partnership. Next is Section 58 of LLP Act, which prescribes registration and effect of conversion. Both these Sections are providing a procedure for such conversion from Company to LLP, therefore, required to comply certain formalities of submission of requisite forms. It is not a case of non-submissions but a case of confusion in filing, that too due to change in the procedure originally prescribed. Under these circumstances, it is not justifiable to doubt the bonafides of the Petitioners. Compliance of a procedure is to be taken leniently if it is not disturbing the enacted law itself.”

The learned Tribunal was of the view that there was no willful negligence from the side of the Respondents, particularly when they were able to file their Form - 8 and Form - 11 till the year 2015-16 without any objection with the Appellant which itself was possible only after submission of Form No. 3. Having regard to all circumstances, the Tribunal allowed the

Respondents to rectify omissions, if any, in their Form-3 within a period of one month and the Appellant was directed to accept the same without any fee or additional fee.

4. Heard learned counsel for the parties and perused the record. Before dealing with the merits, it would be appropriate to determine whether the appeal has been preferred within the prescribed period of limitation and in the event of delay whether the Appellant has carved out a case for Condonation of delay. Under Section 421 of the Companies Act, 2013 the aggrieved person can prefer appeal to the Appellate Tribunal within a period of 45 days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved. The Appellate Tribunal is empowered to condone delay not exceeding 45 day on a sufficient cause being shown to its satisfaction. In the instant case, the Appellant was a party to the proceedings in the Company Petition before the Tribunal and the impugned order was pronounced in presence of its counsel on 6th September, 2018. The certified true copy issued free of cost accompanying the memo of appeal has been issued on 15th October, 2018. The appeal has been preferred on 4th January, 2019. Condonation of delay is sought on the ground that the impugned order was brought to the knowledge of the Appellant through the letter of Respondents dated 28th September, 2018 but the appeal could not be preferred within the period of limitation. The Appellant admittedly was a party to the proceedings in the Company Petition before the Tribunal and the order was pronounced in presence of its counsel which clearly emerges from the impugned order. Therefore, knowledge has

ordinarily to be reckoned from the date of the order as the Appellant was not a stranger to the proceedings. But it is provided that the period of limitation will be computed from the date the copy of certified order is made available to the Appellant. Even if it be assumed that the Appellant was not aware of the pronouncement of the impugned order, it could have applied for a certified copy the moment it learnt about the impugned order. The Appellant has stated in para 2 of the Condonation of Delay Application (I.A. No. 66/2019) that it got knowledge of the order from the letter of Respondents dated 28th September, 2018. However, it is not spelt out in the application as to what prevented the Appellant from obtaining a certified copy of the impugned order or why appeal was not filed with prayer to allow time for obtaining the certified copy/ exemption from filing of certified copy. That apart no ground has been assigned for Condonation of delay. It is shocking that no ground much less a lawful excuse or a reasonable cause has been assigned to demonstrate that there was a sufficient cause which prevented the Appellant from filing the appeal within the prescribed period of limitation i.e. 45 days or even the extended time i.e. 90 days. The appeal is hopelessly time barred. Even if, the period of limitation is computed from 15th October, 2018 i.e. the date on which free certified copy was made available to the Appellant, the appeal has been preferred beyond prescribed 45 days and in absence of even the slightest whisper in the Condonation of delay application about a reasonable cause/ sufficient ground justifying Condonation of delay, there would be no justification to condone the delay. The appeal on this count is held to be not maintainable.

5. Assuming for the sake of argument but not holding that the appeal is maintainable, be it seen that the Appellant has no case on merit either. Admittedly, the Respondents complied with the procedure as was in vogue when the Respondents were converted from Private Companies into LLPs. Admittedly, Form-3 was accepted and no defects therein were communicated to the Respondents for rectification. This was followed by filing of Form Nos. 8 and 11 which were accepted without demur from 2012 to 2016. It is indisputable as also not controverted that Form Nos. 8 and 11 could not have been accepted by the Competent Authority unless Form-3 was accepted. It is not in dispute that the MCA introduced the computerized system from 2013. If, the Form-3 filed by the Respondents prior to 2013 was not captured in the database of the computerized system of MCA, that cannot work to the detriment of the Respondents who complied with the procedure as was in vogue at the relevant time, i.e. in 2012 and in the event of the Respondents being required to file a Rectified / Revised Form-3, same needed to be communicated to the Respondents. Once it dawned upon the Respondents in October, 2016 that the Forms No. 8 and 11 for the financial year 2015-16 were not being accepted until Rectified Form-3 was filed, they had to resort to RTI for ascertaining the reasons. It is therefore manifestly clear that no delinquency can be attributed to Respondents for non-compliance or breach. While switching over to a computerized system the Appellant as also other concerned authorities were supposed to notify the affected persons and allow them to file the Rectified/ Revised Forms as mandated without slapping any penalty on them.

Adopting a blood thirsty approach and that too against compliant entities is unwarranted moreso when such entities complied with the legal requirements and made compliances in accordance with the then prevailing system. This is apart from the reason that the concerned authorities accepted Form-8 and 11 from 2012 to 2016 without demur. Viewed thus no flaw can be found in the impugned order which does not suffer from any legal infirmity apart from being justice oriented and conforming to the spirit of law.

6. For the aforesaid reasons this appeal deserves to be dismissed on both grounds i.e. limitation as well as merits. We accordingly uphold the impugned order and dismiss the appeal. However, there shall be no order as to costs.

[Justice Bansi Lal Bhat]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

NEW DELHI

25th September, 2019

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