

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 401 of 2018

IN THE MATTER OF:

Satish Dhondiram Jawale

...Appellant

Vs

Registrar of Companies, Pune

....Respondent

Present:

**For Appellant: Ms. Anisha Mahajan, Mr. Manish Shekhar and
Mr. C S Kshitij Lunkad, Advocates.**

For Respondent:

O R D E R

05.03.2019: The Appellant 'Satish Dhondiram Jawale' alongwith other directors and shareholders filed application under Section 252(1) of the Companies Act, 2013 for restoration of the name of M/s Auctus Software Pvt. Ltd., Pune' (hereinafter referred to as 'Company'). The grievance of the Appellant was that the Company's name was struck off against the provision of Section 248(2) of the Companies Act, 2013.

2. The National Company Law Tribunal, Mumbai Bench (hereinafter referred to as 'Tribunal') noticed that the Company failed to file Financial Statements and Annual Return for the financial years 2010-11 onwards, however, the Company is carrying on business of dealing in leather and its byproducts. The Tribunal having also noticed that the Company though failed to file Financial Statements and Annual Return for the financial years 2010-11 to 2016-2017, but the Applicant had enclosed Income Tax Return for financial years 2015-2016 to 2016-2017 to show that the Company is actively engaged in carrying on business, by impugned order dated 20th August, 2018 allowed the application restoring the name of the Company subject to payment of Rs.8 Lakhs as cost payable in favour of NCLT, Mumbai.

3. Learned counsel appearing on behalf of the Appellant submits that there is provision for penalty for non-compliance of the provisions of the Companies Act, which also includes penalty for non-filing of Financial Statements and Annual Returns. It is submitted that in addition to such payment in terms of Relevant Provisions, the Company has been ordered to pay a cost of Rs.8 Lakhs, which is uncalled for.

4. In spite of service of notice, the Registrar of Companies, Pune has not appeared; no objection has been raised with regard to the grievance raised by the Appellant.

5. Having heard learned counsel for the Appellant and taking into consideration the facts of the case in hand, we are of the view that imposition of cost of Rs.8 Lakh in favour of NCLT, Mumbai was uncalled for. In the circumstance, part of the impugned order dated 20th August, 2018 whereby cost of Rs.8 Lakh has been imposed on the Company is set aside. However, rest part of the order relating to restoration of the Company and other part is upheld. The appeal is allowed to the extent above. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

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

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