

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

(Arising out of Order dated (07.03.2019) passed by the (National Company Law Tribunal) Single Bench Chennai in CA/65/2019)

Company Appeal (AT) No.145 of 2019

IN THE MATTER OF:

**Registrar of Companies, Kerala,
Company Law Bhawan,
BMC Road, Thrikkakara,
Kochi – 682 021**

...Appellant

Vs.

**Ayoli Abdulla,
S/o Shri Ayoli Kunhammed,
Kunnakkad House, Oorakam,
Melmuri, Malappuram
District Malappuram - 676519**

...Respondent

Present:

For the Appellant: Mr.Kamla Kant Jha, Advocate for ROC.

**For the Respondent : Mr.Mushtaq Salim and Mr.Azhar Assees,
Advocates.**

J U D G M E N T

(4th December, 2019)

Dr. Ashok Kumar Mishra, Technical Member

1. The Appeal has been preferred by Registrar of Companies, Kerala ('for short ROC') under Section 421 of the Companies Act, 2013 R/w Section 248, 252 403 R/w Rule 12 of Companies (Registration Offices & Fees) Rules,

2014 and also Rule 87A(4)(d) NCLT Rules, 2016 by inter alia seeking to set aside the order dated 07.03.2019 passed by National Company Law Tribunal ('for short NCLT') Chennai Bench in CA 65/19 so far as it relate to waiver of additional fee in filing of balance sheet and Annual Return; to direct the Respondent to file all the pending statutory returns viz., Balance Sheets and Annual Returns with filing fee and additional fee as envisaged under Section 403 of the Companies Act, 2013 etc.

2. The NCLT has disposed the CA No.65/2019 vide impugned order dated 07.03.2019, by directing the RoC to restore the name of the Company in the Register of Companies and the Applicant is directed to file all the pending annual returns and balance sheets and also directed the Registrar of Companies to waive the amount of additional fee.

3. The Appellant i.e. Registrar of Companies, Kerala has preferred the Appeal and the Appellant has no objection in restoring the name of the company as ordered by the said NCLT but the Appellant is aggrieved by waiver of the additional fee in filing of the pending statutory returns of the Company viz., Balance Sheets and Annual Returns.

4. As per Section 403 (1) of the Companies Act, 2013 it says that any documents required to be filed under the Act shall be filed within the time specified in the relevant provisions on payment of such fee as may be

prescribed and also provided for payment of such additional fee which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of Companies. Similarly, Rule 12 of Companies (Registration Offices & Fees) Rules, 2014 also states similarly.

5. The Respondent Company was under the management dispute in the year 2011 onwards and the same was settled before the NCLT Chennai Bench vide order dated 07th August, 2017 in CP No.100 of 2011 in TCP No.234 of 2016. The Respondent in the present case was reinstated as Managing Director of the Company as mentioned in the order of NCLT Chennai Bench. The NCLT reinstated the Respondent as the Managing Director of the Company and declared all documents filed on or after 27.04.2011 as null and void which included the Annual Financial Statements and Annual Returns for the Financial Years of the Company viz. 2003-2004 to 2010-2011 filed on 7th October, 2011 under the Company Law Settlement Scheme (in vogue at the time).

6. As per Section 403 of the Companies Act, 2013 specifically mentioned that any documents required to be submitted, filed, registered or recorded within the time specified in the relevant provisions on payment of such fee as may be prescribed and also says that if the documents have not submitted, filed, registered or recorded as the case may be within the period provided in the relevant sections then the same can be filed, registered or recorded on payment

of such additional fee as may be prescribed. Section 403 of the Companies Act, 2013 which reads as under:

Section 403- (1) Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorized to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed:

“Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 92 or 137 is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, without prejudice to any other legal action or liability under this Act, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies:

Provided further that where the document, fact or information, as the case may be, in cases other than referred to in the first proviso, is not submitted, filed, registered or recorded, as the case may be, within the period provided in the relevant section, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded as the case may be, on payment of such additional fee as may be prescribed and different fees may be prescribed for different classes of companies:

Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of the document, fact or information, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of a higher additional fee, as may be prescribed and which shall not be lesser than twice the additional fee provided under the first or the second proviso as applicable.”

“(2) Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the relevant

section, the company and the officers of the company who are in default, shall, without prejudice to the liability for the payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.”

7. Similarly Rule 87-A(4) of the NCLT (Amendment) Rules, 2016 it is very clear that the Appellant or Applicant do pay to the Registrar of Companies his costs along with Additional Fees. Rule 87-A(4) of the NCLT (Amendment) Rules, 2016 which reads as under:

“a. The Appellant or Applicant shall deliver a certified copy to the Registrar of Companies within thirty days from the date of the order;

b. on such delivery, the Registrar of Companies do, in his official name and seal, publish the order in the official Gazette;

c. The Appellant or Applicant do pay the Registrar of Companies his costs, and occasioned by, the Appeal or application, unless the Tribunal directs otherwise; and

d. The Company shall file pending financial statements and annual returns with the Registrar and comply with the requirements of the Companies Act, 2013 and rules made thereunder within such time as may be directed by the Tribunal.”

8. Heard learned Counsel for both the parties. We have carefully perused the pleadings of both the parties and extant provisions of the Companies Act, 2013, and related Rules.

9. We have considered the various submissions as stated above including the provisions of the relevant Act and Rules. We are of the considered view that NCLT per se has no power to waive the filing fee & additional fee.

10. Hence, we set aside the order dated 07th March 2019 passed by the NCLT to the extent of waiver of additional fee for filing of Balance Sheet and Annual Return. The Appellant i.e. Registrar of Companies, Kerala is directed to charge minimum additional fee in view of the circumstances described above. The Respondent is directed to file all the pending statutory returns viz., Balance Sheet and Annual Return with filing fee and additional fee within a period of 30 days from the date of receipt of this order and RoC, Kerala is directed to accept the same with minimum additional fee.

The Appeal stands disposed of with the aforesaid observations. No order as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

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New Delhi