

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) No. 355 of 2019**

[Arising out of Order dated 23<sup>rd</sup> October,2019 passed by the Adjudicating Authority (National Company Law Tribunal) Cuttack Bench, Cuttack in TP No. 68/CTB/2019 in CP(Appeal) No. 02/KB/2018]

**IN THE MATTER OF:**

**Sarada Prasad Rath**

**Plot No. 10, Brundaban Garden, Samantarapur,  
Bhubaneswar-741002, Odisha**

**Vs.**

**.....Appellant**

**Registrar of Companies,**

**3<sup>rd</sup> Floor, Corporate Bhawan, Plot No. 9(P), Sector 1,  
CDA, Cuttack, Odisha**

**.....Respondent**

**Present :**

**For Appellant:                    Mr. Sameer Gupta, Advocate**

**For Respondents:                Mr. Abhishek Kumar Rao, Ms. Bhavya Bharti,  
Advocates**

**Mr. Kamal Kant Jha, Sr. Panel Counsel, Govt. of  
India, Advocate for ROC**

**O R D E R**

**03.03.2020** - Advocate Shri Kamal Kant Jha, Sr. Panel Counsel, Government of India, is present for Respondent – ‘Registrar of Companies’ [ROC]. The Counsel states that the ROC does not want to file a separate reply to the appeal and is relying only on Annexure (page-342) which is the copy of the report

which was submitted before the Learned 'National Company Law Tribunal' [NCLT] when the matter was pending before the 'NCLT'.

2. Heard Advocate Shri Abhishek Kumar Rao for the Appellant and Advocate Shri Kamal Kant Jha, Sr. Panel Counsel, Government of India, for Respondent – 'Registrar of Companies' [ROC] and perused the record. It is stated that the Company was incorporated on 20.04.2012. The Company thereafter could not file any of the balance sheets and Annual returns with the ROC from the date of its incorporation. Ultimately, the Company was struck off by the Learned ROC on 21.06.2017. The Appellant Company then moved the Learned 'National Company Law Tribunal' [NCLT], Cuttack Bench, Cuttack in appeal u/s 252 of the Companies Act, 2013. The prayer of the Appellant made in the appeal was to restore the name of the Company as if the same had not been struck off from the rolls of the register and to direct the ROC not to initiate penal action against the Company and its Directors.

3. Learned 'National Company Law Tribunal' ('NCLT') considered the appeal filed by the Appellant and also kept in view report of the ROC, copy of which is at page-342 of the appeal, and rejected the Appeal.

4. The Learned Counsel for the Appellant is submitting that the Appellant does concede that since incorporation it did not file any returns till the name was struck off and it has been a default. Learned Counsel states that the Appellant Company was trying to establish the infrastructure Company and in the initial stages in order to come up in the business it entered into a partnership

with *M/s. Laxmi Real Infra Pvt. Ltd.* for which '*Deed of Partnership*' dated 11.04.2013 was executed. The document is at page-126 of the appeal. Learned Counsel states that the Company itself become partner with another company which was already established Company. Learned Counsel states that by becoming a partner in this manner, the Appellant jointly with the other Company in the name of '*AML Homes*' started business and even Auditor's Report is available of '*AML Homes*' at page-137 for year ending 31.03.16 regarding the business being done by the Appellant Company in partnership in the name of '*AML Homes*'.

5. Learned Counsel for ROC has not filed any separate reply and refers to the report which was filed before ROC which indicated that when the returns were not filed, the ROC u/s 455 of the Companies Act issue notice in form No. STK-1 u/s 248(1)(c) of the Companies Act, 2013 and as there was no reply, a Show Cause Notice was issued. There was publication made in newspaper as well as the Official Gazette regarding striking off the name of the said Company in Form No. STK-5/5A and finally the name of the Appellant Company along (with the others) was struck off by official gazette in Form No. STK-7 dated 22.07.2017. Learned Counsel states that the Appellant Company thus stood dissolved on 21.06.2017.

6. Learned Counsel for Appellant does not want to dispute that the ROC did follow the procedure though he states that notice issued was not received. It is further stated that although the Appellant had pointed out the fact that the

Appellant entering into partnership and was doing business through the partnership, according to the Learned Counsel 'NCLT' wrongly rejected the application.

7. Learned Counsel for ROC states that the Learned 'NCLT' found that the Appellant had filed no returns and there was no stock or employees or record maintained and no income tax returns were also filed. According to the Learned Counsel these were the factors required to be considered.

8. Having gone through the material and having heard Learned Counsel for both sides, we are unable to agree with the learned 'NCLT' that the Appellant was not justified in referring to the business which it was doing through the partnership and ignoring the aspect. The Learned Counsel states that the Company was still trying to settle and come up with the business and committed errors in not submitting returns but the Company was in operation and may be given an opportunity.

9. We find that the Appellant Company committed default in not submitting the returns and not responding to the notice but as it is shown that it was in operation, it would be appropriate to restore the name of the Appellant Company.

10. The appeal is thus allowed. The impugned order is *quashed and set aside*. The ROC is directed to restore the name of the Appellant Company to its Register subject to (1) payment of costs of Rs. 2,50,000/- to U.O.I through ROC; (2) the Appellant Company files relevant returns for the years it is found to have been in default; (3) makes payment of fines and other penalties as may be applicable.

The ROC would be at liberty to take any penal action as may be permissible in law.

With these directions, the present appeal is disposed of. No costs.

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

[Justice Anant Bijay Singh]  
Member (Judicial)

[Kanthi Narahari]  
Member (Technical)

ss/m