

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**NEW DELHI****COMPANY APPEAL (AT) NO.22 OF 2019**

(Arising out of impugned order dated 29.11.2018 passed by the National Company Law Tribunal, Kolkata Bench, Kolkata in Company Petition(Appeal) No.717/KB/2018)

In the matter of:

1. Jaishree Dealcomm Pvt Ltd,
Mercantile Building,
9/12, Lal Bazar Street,
A-Block, 1st floor, Kolkata-700001
2. Ushmesh and Akhilesh Enterprises Pvt Ltd,
Kapda Bazar
Jalna 431203
3. Abhijeet Jagannath Bangad
Modi Khana
Jalna 431203
4. Vinayak Kangaonkar
Bhavsar Galli College Road,
Jalna 431203

Appellants

Vs

ROC West Bengal
Nizam Palace
2nd MSO Building,
2nd floor, 234/4 AJC Bose Road,
Kolkata 700020

Respondents:

Present:

Mr. Abhay K. Das, Advocate for appellant
Mr Vikram Singh, Dy. ROC, WB.

JUDGEMENT
(29th November, 2019)**JUSTICE JARAT KUMAR JAIN, MEMBER (JUDICIAL)**

The appellants have filed this appeal under Section 421 of Companies Act, 2013 against the order dated 29.11.2018 passed by the National Company Appeal (AT) No.22 of 2019

Company Law tribunal, Kolkata Bench, Kolkata whereby dismissed the appeal and affirmed the order of striking of the name of the appellant company from Register of Companies, West Bengal.

2. Appellant No.1, Jaishree Dealcomm Pvt Ltd, is a company incorporated under the Companies Act, 1956 and having its registered office at Mercantile Building, 9/2, Lal Bazar Street, A Block, 1st floor, Kolkata. Appellant No.2 is a holding company of Appellant No.1. Appellants No.3 and 4 are directors of Appellant No.1 company. Appellants were served notice under Section 248(1)(c) of the Companies Act, 2013 on 22.3.2017. Thereafter a public notice was issued on 7.4.2017 and on 9.6.2017 the company's name was struck off from the register of companies.

3. The order was challenged in CP(Appeal) No.717/KB/2018 before NCLT, Kolkata. However, by the impugned order dated 29.11.2018 NCLT has dismissed the appeal on the ground of the maintainability that under Section 252(3) of the Companies Act, 2013, a company, or any member or creditor or workman can file application for restoration of name of the company. NCLT has also observed that as per Section 164(2)(a) of the Companies Act, 2013, appellants No.3 and 4, directors being disqualified cannot maintain the appeal. Being aggrieved the appellants have filed the present appeal.

4. Learned counsel for the appellant submits that the appellant No.2, Ushmesh and Akhilesh Enterprises Pvt Ltd company holds 113400 equity shares of the Appellant No.1 company and Dinesh Kanti Lal Rathi being a director of appellant No.2 company signed the memo of appeal filed before the NCLT Kolkata as well as before this Tribunal. Appellant No.2 company is a shareholder of the appellant No.1 company and in support a copy of the share

certificate and affidavit of Dinesh Kanti Lal Rathi are annexed with Memo of Appeal. Dinesh Kanti Lal Rathi being the director of appellant No.2 is competent to maintain the appeal.

5. Learned counsel for the appellants further submits that the appellant No.1 was regularly carrying on business as stated in the main object clause of Memorandum of Association of the company and was regularly filing income tax returns with the Income Tax Department. However, inadvertently the company failed to file its audited financial statement and annual returns since the financial year 2013-14 onwards which are annexed with the Memo of Appeal. From the Balance Sheets it is apparent that the Appellant No.1 is carrying on business. Learned ROC has not complied the proper procedure and has not served the notice with the appellant No.3 and 4, hence the order of ROC is liable to be quashed and the name of the company be restored to its original number.

6. Learned Dy. ROC, West Bengal submits that it is not pleaded that Mr. Dinesh Kanti Lal Rathi is director of Appellant No.2 company and he can maintain the appeal being a director of shareholder company i.e. appellant No.2. It is also submitted that the appellant company is gross negligent in not filing the annual returns and financial statements since financial year 2013-14. Thus the order of the NCLT/ROC be upheld.

7. Having heard learned counsel for the parties we have perused the record.

8. Memo of appeal filed before NCLT (in para 1(b)and (c)) it is pleaded that the Petitioner No.2 (appellant No.2 herein) is the holding company and shareholder of petitioner No.1(appellant No.1 herein) and petitioner No.2

holds 113400 equity shares of appellant No.1 company. This fact finds support from the share certificate (Annexure A-8, Page 149) and annual return of appellant No.1 company for the period 30.9.2013. Thus the appellant No.2 company is the shareholder of appellant No.1 company. Undisputedly Mr. Dinesh Kanti Lal Rathi has signed the memo of appeal being a director of appellant No.2 company.

9. Appellant No.3 is also shareholder of the company. In support of this fact they have filed the share certificate (Annexure A-8 Page 149) and annual returns of appellant No.1 company for the period 30.09.2013. Thus we find that the appellant No.3 being a shareholder is competent to file the appeal as per Section 252(3) of the Companies Act, 2013. The findings of NCLT Kolkata that the appeal is not maintainable is not correct.

10. We have considered the appeal on merit. Undisputedly the appellants have not filed the annual returns since the financial year 2013-2014 onwards. The appellant company is regularly carrying on its business, in support filed the Auditor Reports and financial statement for the year ended 31st March, 2014 to 31st March, 2017 (Annexure A-6 at Page 79 to 146). We have gone through these reports. It is apparent that the appellant company is carrying on its business continuously. Therefore, the order of striking of name of the company from the register of companies is certainly prejudicial to the shareholders of the company. The order is liable to be set aside and is hereby set aside.

11. From the above discussions and observations we have come to the conclusion that it would be just that the name of the company is directed to be restored. The following orders/directions are passed:-

(i) Impugned order is quashed and set aside. The name of Appellant No.1 company shall be restored to the Register of Companies subject to the following compliances:

(ii) Appellants shall pay costs of Rs.25000/- to the Registrar of Companies within 30 days.

(iii) Within 30 days' of restoration of the company's name in the register maintained by the Registrar of Companies, the company will file all their annual returns and balance sheets due for the period ending 2013-14 to date. The company will also pay requisite charges/fee as well as late fee/charges as applicable.

iv) In spite of present orders, ROC will be free to take any other steps, punitive or otherwise under the Companies Act, 2013 for non-filing/late filing of statutory returns/documents against the company and directors.

The appeal is accordingly allowed.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

New Delhi

Bm/