

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) No. 04 of 2020

[Arising out of Order dated 11th October, 2019 passed by the National Company Law Tribunal, Jaipur Bench in CA No. 125/252/JPR/2019]

IN THE MATTER OF:

1. Ramesh Kumar Chitlangia,
Flat No. 301, OK Plus Apartment,
Shiv Marg,
Jaipur – 302016.

2. Rajesh Chitlangia,
Vintage Flat No. 416, Aakar Marg,
Bani Park, Jaipur – 302016

Address 2:-
Flat No. 608, New Swastik Apartment,
Rohini Sector – 9,
New Delhi.

3. Ishwar Kumar Malpani,
M/40, Mahesh Colony,
Tonk Phatak, Jaipur – 302015.

Vs

...Appellants

1. The Registrar of Companies, Jaipur
Office: C/6-7, 1st Floor,
Residency Area, Civil Lines.
Jaipur – 302001.
Rajasthan.

2. Prabhu Dayal Chitlangia,
S/o Late Shri Bhanwar Lal Chitlangia,
R/o 1/1, Maharani Avenue,
5th Phase Extension, Thonda Muthur Raod,
Vadavalli, Coimbatore – 641041.

3. Alka Chitlangia

W/o Prabhu Dayal Chitlangia,
R/o 1/1, Maharani Avenue,
5th Phase Extension, Thonda Muthur Raod,
Vadavalli, Coimbatore – 641041.

4. M/s Trinity Combine Associate Pvt. Ltd.

A-51, Subhash Nagar, Shopping Centre,
Shastri Nagar, Jaipur – 302016.

....Respondents

Present:

For Appellants: Mr. Shubham Jain and Mr. Himanshu Dhawan,
Advocates.

J U D G M E N T

BANSI LAL BHAT, J.

‘M/s Trinity Combine Associate Pvt. Ltd.’ (Company) was struck off from the Register of Companies by Respondent No. 1 – ‘Registrar of Companies, Jaipur’ (ROC) vide notice dated 20th September, 2018 due to non-filing of Annual Returns and Financial Statements since its incorporation. The order was passed by ROC under Section 248 of Companies Act, 2013 (the ‘Act’).

2. On appeal by two shareholders of the Company, National Company Law Tribunal, Jaipur Bench (hereinafter referred to as the ‘Tribunal’) ordered restoration of the Company to the Register of Companies, holding

that the Company had not been struck off in accordance with Section 248 of the Act and allowed the appeal in terms of order dated 11th October, 2019 assailed in this appeal (impugned order). The fact that influenced the Tribunal in ordering restoration of name of Company has been noticed in Paragraph 10 of the impugned order, which reads as under:-

“Thus, taking into consideration the provisions under Section 252(3) of the Companies Act, 2013 which vests this Tribunal with a discretion where the Company whose name has been struck off and such Company is able to demonstrate that a running business was being pursued or its was in operation as on the date when the name was struck off, or otherwise it is just to do so, the Tribunal can restore the name of the Company in the Register of Companies. In the instant case the shareholder has enunciated and elaborated that some litigations are pending since long against the Company, its directors and shareholders whose continuity will be affected by striking off name of the Company. Therefore, in the interest of all stakeholders, including the Appellants themselves who seek restoration of the name of the Company in the Register maintained by Registrar of Companies, and in view of the forgoing facts and circumstances, the Company deserves to be restored.”

3. The impugned order has been assailed in appeal by the erstwhile Directors of the Company on the ground that while no business was going on and no operations were carried out in the subject premises, restoration of the Company had been sought by the erstwhile Managing Director of the Company only to harass the Appellants. It is contended that the aforesaid erstwhile Managing Director Namely Mr. Prabhu Dayal Chitlangia has withheld the relevant documents required for filing of statutory returns and there is an FIR lodged against him for the same. It is contended that the Appellants being the suspended Directors are helpless and the restoration of Company had been sought with malafide intentions.

4. Heard learned counsel for the Appellant and perused the record on the file. The proposition of law as engrafted in Section 252(3) of the Act provides for satisfaction of either of the two conditions set out therein for exercise of jurisdiction vested in Tribunal to order restoration of Company back on the Register of Companies. Same are enumerated as under:-

(i) That the Company was carrying on business or in operation at the time of its name being struck off or

(ii) That it is otherwise just that the name of the Company be restored to the Register of Companies.

5. If either of these conditions is satisfied, the Tribunal may order restoration of Company to the Register of Companies and give such other directions and make such provisions as deemed fit so as to place the

Company and all persons concerned in the same position as obtained prior to striking off of the name of Company from the Register of Companies.

6. In the instant case though name of the Company has been struck off from the Register of Companies due to statutory non-compliances i.e. non-filing of Annual Returns and Financial Statements, the Tribunal, on appeal, directed restoration of name of Company in the Register of Companies after observing that litigation was pending since long against the Company, its Directors and Shareholders whose continuity will be affected by striking off the name of the Company. Pendency of such litigation was treated by the Tribunal as a just ground for ordering restoration. Though the Registrar of Companies has shown ignorance as regards any business being carried on by the Company, three suspended Directors of the Company (Appellants herein) appear to have opposed appeal preferred by Respondents No. 2 and 3 herein (Appellants before the Tribunal) and resisted their move to seek restoration of the Company. Pendency of litigation is in essence not even disputed by the Appellants herein by making a candid admission that Suit No. 15/2003 was decreed by Learned Additional District Judge – 1, Jaipur, which had been filed by Respondent No. 2 herein against the Company and application for execution of decree was pending in which warrants in terms of Order 21 Rule 30 CPC had been issued for execution of decree. It is stated that in appeal, the Hon'ble Rajasthan High Court has set aside the execution against private properties of the Appellants. This fact would at the most go to show that the mode of execution of decree was improper, if

the facts asserted by Appellants in this appeal are accepted as gospel truth. Appellants have also admitted the factum of ROC having filed a complaint being Case No. 12/1997 before Special Court, Economic Offence, Jaipur against the Company and Respondent 2 herein under Section 220(3) of the Companies Act, 1956, in which fine has been slapped on the Company and Respondent No. 2 was sent to jail for a month. This fact, if taken on face value, would also show that there has been litigation involving the Company and its management. Furthermore, some litigation has been pending before ADJ-13, Jaipur where Execution Appeal is stated to have been dismissed. Notwithstanding the merit in such litigations, it cannot be overlooked that the Company and its management was locked in litigation even involving one or the other party. This Appellate Tribunal has in similar situations ordered or upheld restoration of the name of struck off Company to the Register of Companies. Reference in this regard may be made to judgment rendered by this Appellate Tribunal in **'Adroit Trade (P) Ltd. Vs. Registrar of Companies, Chennai, Company Appeal (AT) No. 264 of 2018, decided on 29th April, 2019'** and the law laid down by Hon'ble High Court of Madhya Pradesh in the matter of **'UmedbhaiJhaverbhai Vs. Moreshwar Keshav and Ors. [MANU/MP/0117/1953: AIR 1954 MP 146]'**, wherein it was held, inter alia, in paragraph 8 thereof that:

"..... when a suit is actually pending against a company and is being contested by it at the time of the removal of its name from the register, it is proper to direct

restoration of the name of the Company particularly when the Directors were aware of the fact of the contested litigation and were actually taking part in it.”

7. In view of this settled position of law, we are of the considered opinion that in the wake of litigations involving the Company and its management a just ground existed justifying restoration of the struck off Company to the Register of Companies. The impugned order does not suffer from any legal infirmity in so far as exercise of power under Section 252(3) of the Act by the Tribunal acting as Appellate Authority against the order of ROC is concerned. The pendency of litigations, at whatever stage, warranted restoration of name of Company to the Register of Companies, so as to safeguard the interests of Company and the stakeholders.

8. There being no merit in the appeal, the same is dismissed. There shall be no orders as to cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

5th March, 2020

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