

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

COMPANY APPEAL(AT) NO.384 OF 2018

IN THE MATTER OF:

Infinity Film Holdings Pvt Ltd
605-608, Crystal Plaza,
A-Wing,
New Link Road,
Andheri West,
Mumbai 400053

Appellant

Vs

Registrar of Companies
Mumbai,
Everest Building,
5th floor,
100 Marine Drive,
Mumbai,
Maharashtra. 400002

Respondents

For Appellant:-Mr Anirudh Suresh, Advocate.

For Respondents: - None.

JUDGEMENT

25.03.2019 - Mr. Mehool Rasik Parekh, claiming to be the Director of Infinity Film Holdings Pvt Ltd seeks reversal of the impugned order dated 21.8.2018 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai, by virtue of which application of Infinity Film Holding Pvt Ltd to restore its name in the register of companies stands dismissed on the ground that the company was not in operation and carrying on any business. The finding recorded by the NCLT is assailed as being erroneous.

2. Heard learned counsel appearing for the appellant and perused the record. It emerges from the impugned order that the appellant company was incorporated on 13.1.2009 and having failed to file the financial statements and annual returns continuously for three financial years beginning 2014 and committing defaults in statutory compliances the appellant company was truck

off under Section 248 of the Companies Act, 2013. As the appellant company failed to file statutory returns, Registrar of Companies slapped statutory notices on the appellant which were not responded to by the appellant. Striking of the name of the appellant company from the register of Registrar of Companies was the inevitable consequence to which exception is taken by the appellant.

3. Learned counsel for the appellant relied upon a reply given by the Minister of State for Corporate Affairs to a question in Lok Sabha which essentially dealt with the action taken by the Government against the Directors of the Shell companies. The document relied upon is irrelevant for the purpose of disposal of instant appeal in as much as the issue arising for consideration relates to striking off the name of the appellant company from the register of Registrar of Companies and not the disqualification incurred by a director and his eligibility for re-appointment as Director. The undisputable legal proposition, as embodied in section 248 (1)(c) of the Companies Act, 2013 being that a company not carrying on any business or in operation for a period of two immediately preceding financial years is liable to be removed from the register of companies, the onus of proof that the appellant company was carrying on business and conducting operations during the aforesaid period lay on the appellant who failed to discharge the same by not even responding to the statutory notices. Even before us the learned counsel for the appellant, when asked to substantiate appellant's claim of being in operation during the aforesaid period, failed to lay any documentary proof regarding commencement of operations and business by the appellant company subsequent to its incorporation. Learned counsel for the appellant also failed to demonstrate that the appellant company had been conducting operations and going through financial transactions when confronted with the observations of the NCLT in the impugned order that the appellant company did not even open a bank account. In absence of any material to dislodge the finding recorded by the NCLT, such finding cannot be termed erroneous much less perverse. We are convinced that the instant case is one where the appellant company, pursuant to its incorporation, failed to carry on business. There is no documentary evidence on record to establish even a semblance of commencement of operations by the Appellant Company from its very inception. Viewed thus, the Appeal lacks merit.

4. In view of the foregoing discussions we find that the impugned order does not suffer from any legal infirmity. Since no ground for interference is made out, the Appeal is dismissed. There shall be no order as to costs.

(Justice Bansilal Bhat)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

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