

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

**Company Appeal (AT) No.373 of 2018**

[Arising out of Order dated 10.09.2018 passed by National Company Law Tribunal, Allahabad Bench (in Company Application No.211/2018) in Company Appeal No.124/ALD/2018]

**IN THE MATTER OF:**

**Before NCLT**

**Before NCLAT**

1. Mr. Raj Narain Singh  
D-63/6B-38, Shivaji  
Nagar Colony,  
Mahmoorganj,  
Varanasi,  
Uttar Pradesh

Original Applicant No.1

Appellant No.1

2. Mr. Durgesh Kumar  
Singh  
L-3/27B,  
Gautam Budha Colony,  
Pahariya,  
Varanasi,  
Uttar Pradesh

Original Applicant No.2

Appellant No.2

**Versus**

1. The Registrar of  
Companies,  
Uttar Pradesh,  
37/17,  
West Cott Building,  
The Mall,  
Kanpur-208001,  
Uttar Pradesh

Original Respondent No.1

Respondent No.1

2. Mr. Rajiv Kumar  
Singh,  
141, Jawahar Nagar  
Extension,  
Varanasi,  
Uttar Pradesh

Original Respondent No.2

Respondent No.2

3. Mrs. Ratna Singh Original Respondent No.3 Respondent No.3  
R/o 141,  
Jawahar Nagar Extension,  
Varanasi,  
Uttar Pradesh

**For Appellants: Shri P.K. Mittal and Shri Vaibhav Tayal, Advocates**

**For Respondents: Ms. Prema Priyadarshini, Advocate (Respondent No.1)  
Shri Rohit Chaudhary, Advocate and Shri Nesar  
Ahmad, PCS (Respondents 2 and 3)**

### **J U D G E M E N T**

**(31<sup>st</sup> May, 2019)**

**A.I.S. Cheema, J. :**

1. The Appellants have filed this Appeal against Impugned Order dated 10<sup>th</sup> September, 2018 passed by National Company Law Tribunal, Allahabad Bench (NCLT – in short) in Company Application No.211 of 2018 in Company Appeal No.124/ALD/2018 vide which Order, the NCLT declined to extend period for compliance of filing Returns.

2. The Appellants had filed Company Appeal 124/ALD/2017 before the NCLT under Section 252(3) of the Companies Act, 2013 (Act – in short) for restoration of the name of the Company – Shree Narayan Developers Pvt. Ltd. which had been struck off by the Registrar of Companies, Uttar Pradesh under Section 248 of the Act. The Appellants pointed out to the NCLT in their petition that the Company had been incorporated with the object of being builder, etc. and the Appellants had 50% shareholding. The Appellants claimed that the present Respondents 2 and 3 and other Directors of the Company had been managing the Company for 15 years

and the books of accounts and other documents were in their control. Respondent No.2 had filed CP 25/2004 claiming oppression and mismanagement which was disposed of by CLB on 22.06.2009 and thereafter by Order dated 26.02.2010, a Chartered Accountant had been appointed as Investigating Auditor who submitted Report on 25<sup>th</sup> February, 2015 reporting that Respondent No.2 – Rajiv Kumar Singh had siphoned money. The Appellants claimed before NCLT that the original Respondents 2 and 3 who were managing the affairs, had not filed any Returns with ROC during the pendency of the Company Petition in CLB. According to the Appellants, the ROC had sent Notice dated 31<sup>st</sup> March, 2017 which was replied by the Company that litigation was pending but still the ROC struck off the name of the Company on 6<sup>th</sup> June, 2017.

3. Against such claims made by the Appellants before NCLT, the contesting Respondents 2 and 3 claimed that the original Respondent No.2 had been illegally removed as Director on 17<sup>th</sup> January, 2004 and his shares had been diluted. They denied wrong doing on their part.

4. It appears that the ROC claimed before NCLT that it had followed due procedure and when Notice was not replied, the name of the Company was struck off for not filing of financial Returns since 31<sup>st</sup> March, 2003.

5. The parties were heard before NCLT and by its initial Order dated 3<sup>rd</sup> August, 2018, NCLT found that the Company had not filed Statutory Returns including Balance Sheet and Annual Returns, etc. after 2003. It

found that the original Respondent No.2 had been removed from Directorship on 17<sup>th</sup> January, 2004. The original Order shows that NCLT found that the Company Petition was still pending and it was observed in para – 6.2 of the original Order as follows:-

“6.2 The books and records for the Investigation Auditor, directed by CLB were made available by the respondents making it clear that the records of the company till the removal of R-1 from Directorship were with respondents. The books & records may be obtained by the appellants from the respondents to make statutory compliances after 2003 to date. Respondents are also directed to hand over the books and records of the company available with them to the appellant to enable them to make all statutory compliances.”

NCLT was of the view that as there were serious allegations of financial mismanagement and fraud and that, the merits required that the Company should be revived. NCLT passed following Orders:-

- “7. In view of the CP No.25/2004 pending against the company, wherein interalia serious allegations of financial mismanagement, fraud have been alleged, company merits revival. Accordingly, the respondent ROC is directed to restore the name of the company subject to the condition that the company will file all statutory returns within 30 days and with requisite charges/fees as well as additional fees/late charges.
- 7.1 Respondents are directed to hand over the books & records of the company in their possession to appellants to make good statutory compliances.
- 7.2 Further, appellant is directed to deposit a sum of Rs.50,000/- (Rupees Fifty Thousand Only) as a cost with ROC to defray the cost & expenses

along with late filing fees and additional fees as applicable under the Law within a period of 30 days from the date of receipt of this order, failing which this order will stand vacated automatically.

7.3 The appeal is disposed of accordingly.”

6. Thus, the Appellants required co-operation of the Respondents. Now, it is the grievance of the Appellants that although in the above initial Order, the NCLT had directed the original Respondents to handover the books and records of the Company to the Appellants, the Respondents 2 and 3 did not comply and went on playing tricks on them to ensure that the Annual Accounts and Annual Returns could not be finalized for filing with ROC. The Appellants claimed that they did deposit Rs.50,000/- with the ROC in August, 2018. According to them, they requested the Respondents for the books, records, registers and other documents but the Respondents 2 and 3 did not oblige. Consequently, according to the Appellants, they moved the NCLT again with an application on 5<sup>th</sup> September, 2018 to extend the time for finalization of the accounts and to file the same with ROC. The NCLT, however, passed following Order:-

**“C Appeal No.124/ALD/2018, CA No.211/2018**

Sh. S.K. Gupta along with Sh. Ankit Kumar Singh, PCS(s) for applicants and Sh. Pradeep Singh Sisodia, CGSC for the ROC, Kanpur is present.

This CA No.211/2018 has been filed by the applicant seeking extension of the period for filing of pending Financial Statements and Statutory Returns by a further period of 90 days.

Applicant has filed this application under Rule 11 of the National Company Law Tribunal Rules, 2016 seeking directions from this Tribunal for extension of time for making compliance with the directions issued by this Tribunal vide order dated 3<sup>rd</sup> August, 2018, while disposing of Company Petition No.124/2017 filed by the appellant under Section 252 of the Companies Act, 2013 for restoration of the name of Shree Narayan Developers Pvt. Ltd. It appears that this Company Petition was decided by this Tribunal vide order dated 3<sup>rd</sup> August 2018, whereby Company Petition was allowed on cost of Rs.50,000/- with a further direction to the respondent to handover the Books and Records of the company in their possession to appellants to make good statutory compliances. Further, 30 days time was granted for statutory compliances, but applicant has not done the compliances and moved this application for extending further period of 90 days for doing compliances of the order. This amount to modification of our earlier order passed on 3<sup>rd</sup> August 2018. We have decided this appeal by our order dated 3<sup>rd</sup> August 2018, after that we do not have any jurisdiction to modify that order. Applicant wants extension of time, this amount to modification of our earlier order, which is not in our jurisdiction. The CA is not maintainable. Hence rejected.”

7. We have heard the Counsel for both sides. The Counsel for Appellants has pointed out the above facts from the records to argue that the NCLT should have extended time for filing of the Returns. The Respondents 2 and 3 have filed Reply and they are arguing to put the blame on the Appellants and claimed that it is the Appellants who failed to discharge their statutory duties as Directors and they claimed that there was no default on their part. In the Reply, the Respondents are trying to answer the various allegations made by the Appellants with regard to the disputes between the parties (with which we are not concerned here). The

learned Counsel for the contesting Respondents 2 and 3 has submitted before us that it is the Appellants who are in management and thus, wants the Appeal to be dismissed.

8. At the time of arguments, the learned Counsel for the Appellants submitted that they may be given opportunity so that the Appellants can take necessary steps for filing the Returns, may be by reconstructing the records or may be by filing Returns on provisional basis if permissible. The Counsel went on insisting that the original records are with the Respondents 2 and 3 and they are not sharing the same with the Appellants. Respondents on the other hand keep denying that they have the records.

9. At the time of arguments, the learned Counsel for the Respondents tried to oppose the Appeal claiming that the NCLT had no right to extend the time once it had passed Peremptory Order that if the compliance is not done, the Order passed would stand vacated automatically. It has also tried to argue that for NCLT to extend time, would be in the nature of review of the earlier Order which is not permissible once the final Order has been passed.

10. Going through the material on record, we find that the peremptory operation of the initial Order dated 3<sup>rd</sup> August, 2018 was in para – 7.2 reproduced above, which related to deposit of sum of Rs.50,000/-. Before us, there is no dispute that the Appellant did deposit Rs.50,000/- in

August, 2018 itself with ROC. Apart from this, although NCLT had directed filing of the Statutory Returns within 30 days in para – 7, in view of existence of specific provision in the form of Rule 153 of the National Company Law Tribunal Rules, 2016, the NCLT had sufficient powers to extend time. Rule 153 of the National Company Law Tribunal Rules, 2016 read as under:-

**“153. Enlargement of time.—** Where any period is fixed by or under these rules, or granted by Tribunal for the doing of any act, or filing of any document or representation, the Tribunal may, in its discretion from time to time in the interest of justice and for reasons to be recorded, enlarge such period, even though the period fixed by or under these rules or granted by the Tribunal may have expired.”

Apart from this specific provision, Rule 11 of the Rules gives Inherent Powers to the NCLT to pass such Orders as are required to meet the ends of justice. Thus we need not burden this Judgement by referring to Rulings referred to by parties on the subjects of Review, or Peremptory Orders. In the present matter, where clearly there was litigation going on between the parties and even Investigating Auditor had been involved and gave Report, and the Company Petition was pending, it was wrong on the part of ROC in the first place to have struck off the name of the Company in set of present facts. Looking to the period from 2003 till 2017, and the fact that NCLT itself accepted that it was necessary for the Appellants to have the records from the Respondents, the interest of justice required that NCLT should have extended the time which power it had under Section 153 of the Rules. For such reasons, we are proceeding to allow this Appeal. We

are keeping in view the submissions made by the learned Counsel for the Appellants that the Appellants would take necessary steps so as to reconstruct records for the purpose of filing and/or filing provisional Returns, if permissible under the law or resort to alternative modes in a situation like the present one where the records are claimed to be with the opposite party who would not cooperate.

11. For the above reasons, we allow this Appeal. We set aside the Impugned Order dated 10<sup>th</sup> September, 2018. We direct the Appellants to do the necessary compliances as were directed by NCLT in its Order dated 3<sup>rd</sup> August, 2018 for the purpose of filing Statutory Returns. The 30 days, for the purpose of compliances, would be counted from the date of service of free copy of the present Order on the Counsel for Appellants, by Registry of this Tribunal. In case of any further difficulty, we give liberty to the Appellants to further request NCLT for time for the purposes of filing Returns and NCLT will be at liberty to extend time as per Rule 153 referred above in the interest of justice.

No Orders as to costs.

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

[Balvinder Singh]  
Member (Technical)

/rs/nn

