



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 28 May 2024**
Judgment pronounced on : 24 July 2024

+ **CO.PET. 96/2012**

KARMYOGI BUILDERS PVT LTD Petitioner
Through: **Mr.Trideep Pais, Sr.Advocate.**

versus

REGISTRAR OF COMPANIES Respondent
Through: **Ms.Shiva Lakshmi, CGSC with**
Mr.Rajdeep Saraf and Ms.
Anoushka Bajpai, Advocates.
Mr.Bineesh K.Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

CO. APPL. 950/2023

1. This application has been preferred under Rule 9 of the Companies (Court) Rules, 2009 seeking issuance of a direction to the respondent to revive/relist the petitioner company and accept the respective statutory returns sought to be filed by the petitioner company from 1996 onwards.

2. The said application has been moved in the present company petition, which was instituted under Section 560(6) of the Companies Act, 1956, seeking restoration of the name of the petitioner company to the Register of Companies maintained by the respondent/Registrar of Companies¹, which was initially struck off from the Register of

¹ ROC



Companies by way of a Notice issued by the respondent dated 29.06.2007 bearing No. ROC/Delhi/560(5)/SM/260.

3. It is stated that during the course of proceedings in the present petition, this Court *vide* order dated 28.05.2012 directed that the name of the petitioner company may be restored subject to the payment of costs and on the condition that the company files its pending Annual Returns as well as Balance Sheets. The relevant portion of the said order has been reproduced hereinbelow:

“.....Mr. K.S. Pradhan, Deputy Registrar of Companies appearing for respondent states that he has no objection to the name of the petitioner company being restored provided petitioner-company files the pending Annual Return and Balance Sheet from 1996 to till date, Form-32 for change in directorship and Form-18 for change in registered office of the company along with its requisite filing fee as prescribed under the law as well as no objection from other existing directors/shareholders.

Keeping in view the fact that the Annual Returns and Balance Sheets have not been filed by the petitioner-company for a period of nearly sixteen years, Mr. Vibhu Bhakru, learned senior counsel for petitioner- company and Mr. Amit Sibal, learned counsel for newly impleaded respondent state that they would pay in equal proportion additional costs of Rs. 1,00,000/- to the Ministry of Corporate Affairs.

Accordingly, upon payment of costs of Rs. 1,00,000/- within a period of one week, the name of the petitioner-company shall stand restored and its status would be changed from inactive to active company. Petitioner- company is granted six months' time to file the pending Annual Return and Balance Sheet from 1996 to till date, Form-32 for change in directorship and Form-18 for change in registered office of the company along with its requisite filing fee as prescribed under the law as well as no Objection from other existing directors/shareholders.”

4. Pursuant thereto, the petitioner company deposited Rs. 1,00,000/- with the Ministry of Corporate Affairs and consequently



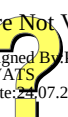


the respondent restored the name of the petitioner company and its status was changed from 'inactive' to 'active'. It is, however, stated that due to certain *inter se* disputes between the directors of the company, namely Shri Vishwa Nath Agarwal and Shri Dinesh Kumar Agarwal, the petitioner company was unable to file its Annual Returns and Balance Sheet, as was directed *vide* order dated 28.05.2012.

5. In this regard, it is submitted that the petitioner company preferred an application bearing CO.APPL. 2266/2012, seeking an extension of time to file its returns, which application was allowed *vide* order dated 30.11.2012, and a further period of four months was granted to the petitioner company to comply with the order dated 28.05.2012.

6. It is brought forth that the disputes between the directors of the petitioner company continued to persist and further time was sought by way of CO.APPL. 485/2013, to comply with the orders of this Court and file the relevant returns. In addition to this, CO.APPL. 525/2013 was moved by the intervenor/Shri Dinesh Kumar Agarwal praying that an Extraordinary General Meeting of the petitioner be convened. The impasse as amongst the directors of the petitioner company thereafter came to be noted by this Court in the order dated 18.07.2013. It is stated on behalf of the petitioner company that the directors have been at odds since 1992 and various proceedings are pending before this Court as well as the Supreme Court in respect of such disputes.

7. The principal grievance of the petitioner company, which constitutes the *raison d'être* of the present application, is that during





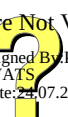
the pendency of the instant company petition, the name of the petitioner company was struck off from the Register of Companies by the respondent *vide* a Notice dated 01.09.2017 bearing No. ROC-DEL/248(5)/STK-7/5071. On becoming aware of this, the petitioner company addressed letters dated 25.02.2022 and 19.03.2022 to the respondent, bringing to their notice the pendency of this company petition and requesting them to restore/relist its name.

8. Presently, it is urged on behalf the petitioner company that the directors of the company have prepared the accounts of the company pursuant to the order of this Court dated 29.08.2023, granting them two months' time for the same. Therefore, it is prayed that this Court issue appropriate directions to the respondent to accept the delayed statutory returns sought to be filed and also revive/relist the petitioner company.

ANALYSIS & DECISION:

9. Having heard the learned counsel for the petitioner and on perusal of the record, this Court finds that the remedy does not lie with this Court but with National Company Law Tribunal [“NCLT”] in terms of Chapter-XVII of the newly enacted Companies Act, 2013.

10. To cut the long story short, even after passing of the order dated 28.05.2012, which was purportedly in terms of Section 560 of the old Companies Act of 1956, the petitioner has not been able to run its business for a long time. While, the petitioner has advanced certain reasons for not being able to run its business due to *inter se* disputes as amongst the Directors and/or shareholders, the impugned notice dated 01.09.2017, whereby the Registrar of Companies has proceeded to





strike off the name of the petitioner from the Register of Companies has been passed in exercise of its powers under Section 248(5) of the Companies Act, 2013.

11. At this juncture, it would be appropriate to refer to Section 465 of the Companies Act, 2013, which reads as follows:

“465. Repeal of certain enactments and savings.- (1) The Companies Act, 1956 (1 of 1956) and the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961) (hereafter in this section referred to as the repealed enactments) shall stand repealed:

Provided that the provisions of Part IX A of the Companies Act, 1956 (1 of 1956) shall be applicable mutatis mutandis to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies:

Provided further that until a date is notified by the Central Government under subsection (1) of Section 434 for transfer of all matters, proceedings or cases to the Tribunal, the provisions of the Companies Act, 1956 (1 of 1956) in regard to the jurisdiction, powers, authority and functions of the Board of Company Law Administration and court shall continue to apply as if the Companies Act, 1956 has not been repealed:

Provided also that provisions of the Companies Act, 1956 (1 of 1956) referred in the notification issued under section 67 of the Limited Liability Partnership Act, 2008 (6 of 2009) shall, until the relevant notification under such section applying relevant corresponding provisions of this Act to limited liability partnerships is issued, continue to apply as if the Companies Act, 1956 has not been repealed.

(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments,—

(a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) **Not applicable**

(c) **Not applicable**





(d) **Not applicable**

(e) **Not applicable**

(f) **Not applicable**

(g) **Not applicable**

(h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;

(i) **Not applicable**

(j) **Not applicable**

(k) **Not applicable**

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal of the repealed enactments as if the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961) were also a Central Act.”

12. On a careful perusal of the aforesaid provision, it is manifest that the action that was earlier taken by the Registrar *vide* order dated 29.06.2007 was pursuant to and issued in terms of Section 560 (1) (6)² of the old Act, which provision is effectively *pari materia* with Section 248³ of the new enactment. Under the old Act, the Registrar

²(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the [Tribunal], on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register ; and the 2 [Tribunal] may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

³248. Power of Registrar to remove name of company from register of companies.— (1) Where the Registrar has reasonable cause to believe that—

(a) a company has failed to commence its business within one year of its incorporation;

* * * * *

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455,



had the power to proceed with striking off the name of a company from the Register on finding reasonable cause to believe that the company is not carrying on business or is otherwise not in operation. Likewise, under Section 248 of the new Act, where the company is not carrying on any business operation for a period two immediately preceding financial years, the Registrar has the power to proceed with striking off the name of the company from the Register of Companies.

he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

(2) Without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

(3) Nothing in sub-section (2) shall apply to a company registered under section 8.

(4) A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.

(5) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

(6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:

Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.

(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.

(8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.



13. It is clearly brought forth that the provisions under which action was earlier taken under the old Act, as also the action subsequently taken under the new Act, are not inconsistent with one another. The new enactment rather provides for a more detailed procedure for striking off the name of a company as also an effective remedy for dealing with the de-registration of a company, which is not running its business or in operation. Further, the registers maintained under the old Act are also deemed to be registers maintained under the new Act and can be relied upon for seeking any legal remedy.

14. In view of the foregoing discussion, the remedy of the petitioner lies with the National Company Law Tribunal in view of Chapter XXVII of the Companies Act, 2013. Therefore, the application moved by the petitioner is hereby dismissed. The petitioner shall be at liberty to approach the NCLT for redressal of its grievances, in accordance with law.

DHARMESH SHARMA, J.

JULY 24, 2024

Sadiq

