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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6004/2017**

NEELKANTH EQUITY CONSULTANTS LLP
& ORS

..... Petitioners

Through Mr Abhimanyu Garg, Advocate.

versus

REGIONAL DIRECTOR, NORTHERN REGION, MINISTRY
OF CORPORATE AFFAIRS AND ANR Respondents
Through Mr Rajesh Gogna, CGSC with Ms Vipra
Bhardwaj, Advocates for R1 and R2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **29.08.2017**

1. The petitioners have filed the present petition, *inter alia*, impugning an order dated 09.12.2016, passed by the respondent no. 1(hereafter 'the RD'), rejecting the petitioners' appeal under Section 454 of the Companies Act, 2013 (hereafter 'the Act').
2. The petitioners have also impugned an order dated 31.03.2017, passed by the RD rejecting the petitioners' application for reviewing the order dated 09.12.2017.
3. Briefly stated, the facts are that the petitioner no. 1 is a company registered under the Companies Act, 1956 and petitioner nos. 2 and 3 are its directors. A query letter was sent to the petitioner on 05.05.2015 in connection with an application which had been filed by the petitioner

company before this Court under Section 391 and 394 of the Companies Act, 1956. The said letter was returned back with a noting “*No Such Floor*”. This gave rise to doubt as to whether the petitioner was maintaining a registered office as required under the Act.

4. In the aforesaid context, respondent no.2 (hereafter ‘the ROC’) issued a show cause notice dated 28.07.2015 under Section 12(8) of the Act, calling upon the petitioners to show cause as to why penalty be not imposed. The petitioner company responded to the said show cause notice by a letter dated 08.08.2015, which was received by the ROC on 19.08.2015.

5. Thereafter, on 20.08.2015, the ROC issued a notice of enquiry calling upon the petitioners to appear before it, either personally or through the authorized representative on 09.09.2015. The notice of enquiry proceeded on incorrect basis that the petitioners had not replied to the show cause notice dated 28.07.2015 (as mentioned in para 5 of the inquiry notice).

6. Subsequently, the ROC passed an order dated 15.09.2015, where they imposed penalty on the petitioners for not maintaining the registered office of the petitioner company as required under the Act. In the said order, the ROC noted that the letter dated 05.05.2015 and the show cause notice dated 28.07.2015 were received back undelivered from the office of the petitioner company with the remark “*No such firm*”. This observation also seems to be incorrect as the letter dated 05.05.2015 was stated to have been received undelivered with the remark “*No Such Floor*”. There is also controversy as to whether the show cause notice dated 28.07.2015, was received back, as the petitioners claims that the said notice was received and the same was

also responded to.

7. The ROC also observed that the notice of inquiry issued on 20.08.2015 was also returned back with the postal remark “No Such Person”. On the basis of the aforesaid facts, the ROC had passed the order dated 15.09.2015.

8. Thereafter, on 12.11.2015, the petitioner company preferred an appeal against the order dated 15.09.2015 passed by the ROC. The said appeal was furnished in the prescribed form (Form ADJ) and indicated the petitioner’s address as “L-71, Ground Floor, Malviya Nagar, New Delhi, Delhi” which was the registered office of the Company at the material time.

9. The petitioners claim that after filing the said appeal, the petitioner company changed its registered office and filed the requisite form, Form INC 22, online on the Ministry of Corporate Affairs (hereafter 'MCA') Portal. It is claimed that the petitioner company also received the confirmation of the same, by an e-mail dated 05.03.2016 sent by MCA. However, since the petitioner company had not informed the changed address to the RD in the pending appeal, a notice dated 17.03.2016 was issued by the RD in connection with the appeal was also returned back with the noting “No Such Firm”. According to the RD this establishes that the petitioners were not maintaining the registered office as required under the Act, and taking this into account, the RD dismissed the pending appeal by the impugned order dated 09.12.2016.

10. Undisputedly, the petitioner had changed the registered office prior to 17.03.2016, and had also furnished the information of such change to the

ROC. Thus, the return of the notice dated 17.03.2016 could not have led to an inference that the petitioner had not maintained a registered office which is capable of receiving and acknowledging all communications and notices as may be addressed to it.

11. As noticed above, this was apparently for the reason that the petitioner had failed to inform the RD of the change in address in the pending appeal.

12. It has also been noticed from the impugned order dated 19.12.2015, that the RD has not addressed the petitioners' claim that the notices, which were alleged to have been returned unserved, were, in fact, served on the petitioners.

13. In the circumstances, the impugned orders are set aside and the matter is remanded to the RD to consider it afresh and pass a speaking order with regard to the contentions raised by the petitioners.

14. It is clarified that this Court has not expressed any opinion on the merits of the allegations raised against the petitioners and it would be open to the RD to take an informed view.

VIBHU BAKHRU, J

AUGUST 29, 2017

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