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

\+ W.P.(C) 2482/2017

RAJSHIKHA ENTERPRISES PVT LTD AND ORS ..... Petitioners

Through: Mr Abhimanyu Garg, Mrs Preety Makkar and Ms Deepshikha Sharma, Advocates.

versus

REGIONAL DIRECTOR NORTHERN REGION MINISTRY OF CORPORATE AFFAIRS AND ANR ..... Respondents

Through: Mr Akshay Makhija, CGSC with Ms Seerat Deep Singh, Advocate for R-1 & 2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **30.10.2018**

1. Petitioner no.1 is a company incorporated under the Companies Act, 1956 and petitioner nos. 2 and 3 are its directors. The petitioners have filed the present petition impugning an order dated 15.09.2015 passed by the Adjudicating Authority (ROC) imposing a penalty of ₹1,00,000/- on each of the petitioners for violation of Section 12(1) read with Section 12(4) of the Companies Act, 2013 (hereafter 'the Act'). The petitioner also impugns the order dated 09.12.2016 passed by the Regional Director, Northern Region, Ministry of Corporate Affairs (hereafter 'RD') rejecting the appeal against the order dated 15.09.2015

2. The petitioners have been visited with the penalty on the ground that the petitioners had not maintained a registered office of petitioner no.1 as

required under Section 12(1) of the Act. It is the petitioners' case that the petitioner company does maintain a registered office at the premises bearing No. J-52, Second Floor, Saket, Delhi-110017 and the conclusion of the Adjudicating Authority to the contrary is erroneous.

3. The only controversy that needs to be addressed in the present petition is whether there was sufficient material before the Adjudicating Authority to conclude that the petitioners does not maintain a registered office.

4. The petitioner company had filed the petition for sanction of a scheme of amalgamation under section 391/304 of the Companies Act 1956, before this Court (Co. Petition No. 125 of 2015). Notice on the said petition was issued to the Central Government (RD) and it appears that in that context, the office of the RD had sent a query letter dated 05.05.2015 to the petitioners. The said letter was returned back undelivered with the remarks "Left". This was, thereafter, forwarded to the ROC.

5. On 28.07.2015, the ROC issued a show cause notice under Section 12(8) of the Act calling upon the petitioners to show cause why penalty should not be imposed for violation of the provisions of Section 12(1) read with Section 12(4) of the Act.

6. The petitioners claim that the said show cause notice dated 28.07.2015 was received by the petitioners. This is disputed by the ROC; according to the ROC, the show cause notice addressed to the petitioner company was also received undelivered. However, it is not disputed that the petitioners responded to the said show cause notice by a letter dated 14.08.2015. The said response was received by the ROC on 19.08.2015.

7. The petitioner company claimed that it had been receiving all communications at its registered office. The petitioner company claimed it had received its bank statements and income tax notices also at the registered office. The petitioner company stated that during the relevant time his office was under renovation, but a responsible person was available round the clock to receive all communications. The premises also had an electricity connection which was in the name of one of its directors.

8. The ROC issued a Notice for Inquiry dated 20.08.2015 and the petitioners were called upon to appear before the ROC on 09.09.2015. Pursuant to the said notice, the petitioners appeared before the ROC on 09.09.2015 through a practicing Company Secretary, who reiterated the contentions advanced by the petitioners.

9. The ROC rejected all of their contentions by simply stating that the same were "*not convincing and satisfactory as the Directorate's letter dated 05.05.2015 and this office SCN dated 28.07.2015 were received back undelivered*".

10. The petitioners disputes that show cause notice dated 28.07.2015 was received back undelivered. It is the petitioner's case that the show cause notice was delivered and the petitioner had responded to the same.

11. Aggrieved by the aforesaid decision of the ROC, the petitioners preferred an appeal before the RD, which was also dismissed by the impugned order dated 09.12.2016. It is stated that the appeal filed by the petitioners was deficient and a deficiency letter dated 17.03.2016 was sent, which was also received back undelivered. Therefore, the RD dismissed the

appeal preferred against the order dated 15.09.2015.

12. Before proceeding further, it would be relevant to refer to Section 12(1), 12(4) and Section 12(8) of the Act, which are set out below:-

> "12. Registered office of company.— (1) A company shall, on and from the fifteenth day of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.
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> * * * * * *
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> (4) Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within fifteen days of the change, who shall record the same.
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> * * * * * *
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> (8) If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees."

13. The allegation against the petitioners is that they have failed to maintain a registered office capable of receiving and acknowledging all communications and notices addressed to it, as it required under Section 12(1) of the Act.

14. It is apparent from the plain reading of the impugned order dated 15.09.2015 passed by the ROC that the only ground on which such a conclusion has been drawn is that two notices that were sent to the petitioner

no.1 had been returned back undelivered. There is some controversy with regard to the delivery of show cause notice as the petitioner contends that the said show cause notice was received by the petitioners.

15. The petitioners had also asserted that it has been receiving communication at the registered office and, in particular had referred to notices received from Income Tax Department and the Banks. However, the said contention was rejected as unsatisfactory. The petitioner's appeal against the said decision was also disposed of only on the ground that the discrepancy letter sent to the registered office of the petitioner no.1 was returned undelivered with the remarks "Left". The petitioner's appeal that the registered office of petitioner no.1 was being maintained was not entertained.

16. The question whether the petitioners have maintained the registered office as required under the Act is a question of fact. Plainly, if petitioner no.1 is maintaining a registered office, there would be sufficient material available to establish the same. It is relevant to mention that there is no dispute that petitioner no.1 had received the "Notice of Inquiry" dated 20.08.2015 at its registered office. This would also support the claim of the petitioners that petitioner no.1 was maintaining a registered office.

17. It does appear from the fact that communication sent to the petitioners has been returned undelivered, that the petitioners have failed to comply with the requirement of Section 12(1) of the Act. However, this Court is of the view that the petitioners ought to be given a full opportunity to pursue with the appeal which has been summarily dismissed without hearing the

petitioners. It is affirmed in the counter affidavit filed on behalf of the respondents that the petitioners appeal was dismissed as the deficiencies were not cured. Admittedly, the deficiency notice was also not served on the petitioners.

18. There is yet another aspect of the matter that requires consideration which is as to the quantum of penalty levied on the petitioners. In the impugned order dated 15.09.2015, the Adjudicating Officer (ROC) has observed that while adjudging the quantum of penalty, due regard is required to be given for following factors:-

> "(a) The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of default.
>
> (b) The amount of loss caused to an investor or group of investors as a result of the default.
>
> (c) The repetitive nature of default."

19. The petitioner no.1 company is a private company and there is no complaint made by any investor or group of investors. There is also no material to indicate that the petitioners have gained any unfair advantage on account of not maintaining a registered office. Further, this was the first instance where such proceedings had been initiated for default. Yet, the Adjudicating Authority has imposed a maximum penalty.

20. In view of the above, the impugned order dated 09.12.2016 passed by the RD is set aside and the matter is remanded to the RD to consider it afresh after giving the petitioners an opportunity of being heard.

21. It is clarified that all contentions of parties are reserved. It is further clarified that nothing stated in this order should be construed as an expression of opinion that the Adjudicating Authority has any discretion to reduce the penalty as provided under Section 12(8) of the Act.

22. The petition is disposed of.

VIBHU BAKHRU, J

OCTOBER 30, 2018
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