

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.14009 of 2020

K.Sekar

H.Thenmozhi

... Petitioners

Vs.

1. The Registrar of Companies (RoC)  
Ministry of Corporate Affairs  
Shastri Bhavan  
Chennai 600 006.

2. V.Manohar

3. Ramasamy Arumugam

4. Tamil Nadu Small Industries Development  
Corporation Ltd.  
SIDCO Corporate Office  
Thiru. Vi. Ka. Industrial Estate  
Guindy  
Chennai 600 032.

.... Respondents

[R4 impleaded vide order dated 09.11.2020  
made in WMP No.19420 of 2020]

Prayer: Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records pertaining to the order dated 21.11.2019 of the National Company Law Tribunal, Chennai, passed in CA/1248/2019 and quash the same and further direct the first respondent to conduct an enquiry with respect to the complaint dated 28.08.2020 and 07.09.2020 filed by the petitioner and take appropriate actionn against the second and third respondents for falsification of returns and documents and to further restore the status of Thangam Fabricators Pvt. Ltd. to its status as on 2011.

For Petitioners

: Mr.AR.L.Sundaresan, S.c.  
or Mr.Hari Radhakrishnan

For Respondents

: Mr.S.Mahesh  
Addl. CGSC  
for respondent-1  
Mr.Arvinth Pandian, S.C.  
For Mr.C.V.Shailendran  
for respondents 2 and 3  
Mr.S.P.Prabhakaran  
for respondent-4

ORDER

(Made by the Hon'ble Chief Justice)

The challenge in the writ petition is to an order dated November 21, 2019 passed by the National Company Law Tribunal, Chennai, in effect, reviving a defunct company at the behest of the second and third respondents herein, without reference to the petitioners who claim to have been more legitimately or intimately associated with the concerned company and its properties prior to the name of such company being struck off the register under Section 248 of the Companies Act, 2013.

2. It appears that the fight pertains to an industrial plot of land owned by Thangam Fabricators Pvt. Ltd. and it is not surprising to note that in the affidavit filed by the third respondent, it has been indicated that he has transferred 3000 shares in the company in January 2021 to one Thomas and a further 3100 shares to Shantha Kumar Shyam Kumar. Such conduct may reflect the motive in seeking to revive the company and gain control of its assets.

3. The matter has to be gone into by the NCLT itself and for such purpose, the writ petitioners are given leave to approach the NCLT. The second and third respondents say that the question of limitation will not be raised.

4. It is all good to revive a defunct company, particularly after its creditors may have lost hope and their claims may no longer survive; but due care and caution must be taken to ensure that an application of an interloper is not entertained in such regard, so that a stranger may not come to obtain the valuable assets of a company which has gone defunct. That is not to suggest that the second and third respondents in this case may not have had any truck with the defunct company or may not have been entitled to maintain proceedings for resurrection of the corporate entity, but only that all others interested ought to have been ascertained and heard before revival at the behest of the second and third respondents, could be directed on the basis of public notices printed in unnoticeable corners of newspapers.

5. Since the petitioners herein, prima facie, indicate

substantial interest in the company, at least a right to have been regarded as permissible applicants to revive the defunct company on their own, the inter se rights between the petitioners and the second and third respondents need to be worked out, so that the revival of the defunct company does not result in immediate disputes relating thereto and an impasse over its assets.

6. Since an adjudication of the kind necessary may not be convenient in this extraordinary jurisdiction where matters are decided in a summary manner and on affidavit evidence, the petitioners are granted leave to approach the appropriate NCLT, with a prayer for recalling the order by which the company, Thangam Fabricators Private Ltd. has been revived and the exclusive control thereof made over to the second and third respondents herein.

7. It is made clear that this order is without prejudice to the rights and contentions of both sets of parties and the only effective order herein is that the writ petitioners have been granted leave to approach the NCLT for recalling the order dated November 21, 2019.

8. The company, Thangam Fabricators Private Ltd., and all its members and officers, including the petitioners herein and the second and third respondents, will remain restrained from creating any further encumbrance or third party rights in respect of all the fixed assets of such company.

9. In the light of the above order, the first respondent will no longer be required to take any further step in respect of the complaint of August 28, 2020 filed by the petitioners herein. However, it will be open to the petitioners to make such prayer before the NCLT, including by requesting for an investigation to be conducted by the Registrar of Companies or any other statutory authority.

10. W.P.No.14009 of 2020 is disposed of. There will be no order as to costs. WMP Nos.17396 and 17397 of 2020 and 6002 of 2021 are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

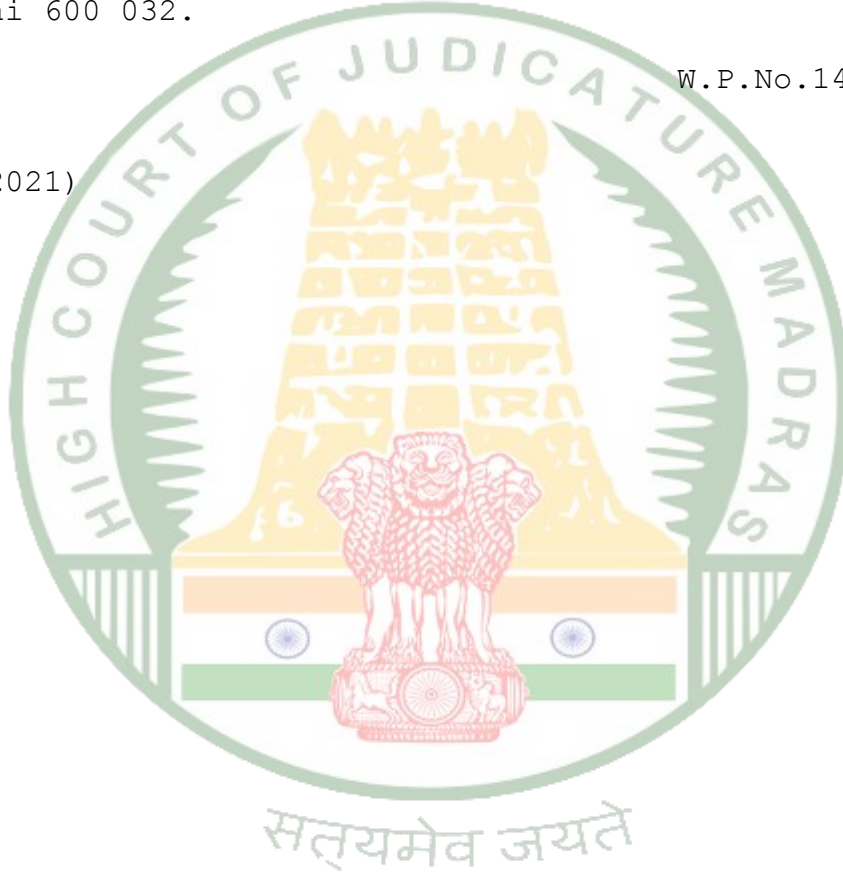
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To

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W.P.No.14009 of 2020

PL (CO)  
GN (05/05/2021)



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