

Ct. 05
Item No.07
21.12.2022
(Suvendu)

WPA 26944 of 2022

M/s A. Chowdhury Construction

Private Limited & Anr.

Vs.

Union of India & Ors.

Mr. Kumar Jyoti Tewari
Mr. Sujit Banerjee
Mr. Aniruddha Tewari
.....for the petitioners

Ms. Shubhangini Singh
Ms. Paramita Dutta Naskar
.....for the respondent no. 4

Mr. Ajit Kumar Chaubey
.....for the respondent nos. 1-3

The petitioner seeks disbursement of approximately Rs. 35 lakhs from the West Bengal Financial Corporation . The difficulty which is now being faced by the petitioners, outlined in a letter of 24th November, 2022 is that the petitioners were unable to upload the particular Form being CHG -1 showing the Charge Creation Date on the MCA portal.

According to learned counsel appearing for the petitioners, the recurring message being

reflected on the portal is that the registration of creation/modification of charge is not allowed beyond 120 days from the date of creation/modification of charge. The petitioners' charge was registered on 6th June, 2022. The petitioners had crossed the limit of 120 days as reflected in the portal of MCA on 5th October, 2022. The technical difficulties faced by the petitioners in the matter of uploading the documents have been detailed in the writ petition.

The message appearing on the MCA portal, however, is contrary to Rule 3 of the Companies (Registration of Charges) Rules, 2014. Rule 3 provides for registration of creation or modification of charge. Rule 3(1) provides that the particulars of the charge together with a copy of the instrument for creating or modifying the charge has to be provided and filed with the Registrar in Form No. CHG -1 within a period of 30 days of the date of creation or modification of charge along with the fee. Rule 3(2) provides that if the particulars of a charge are not filed within the 30 days period under Rule 3(1), the same must be done within 300 days of the date of such creation or modification upon levy of additional fee. Rule 4 further provides for condonation of delay by the Registrar on being satisfied that the

company had sufficient cause for not filing the particulars and instrument of charge within a period of 30 days of the date of creation of the charge and allow the registration after 30 days but within a period of 300 days of the date of creation of the charge. Rule 4(2) provides for an application for delay to be made in the Form No. CHG -10 and supported by a declaration from the company in the manner provided under the said Rule that belated filing will not adversely affect rights of any other intervening creditors of the company.

At this stage, it should be clarified that the term “Registrar” has not been defined in the Companies (Registration of Charges) Rules, 2014. Rule 2(2) of the Companies (Registration of Charges) Rules, 2014 provides that the words and expressions used in the said Rules which have not been defined and defined in the Companies Act, 2013 or in Companies (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to these words and expressions in the Act and the Rules. The Companies (Specification of definitions details) Rules, 2014, as notified on 31st March, 2014, defines the “Act” in Rule 2(a) as “the Companies Act, 2013”. Hence, the definition of “Registrar”

would be the definition accorded in Section 2(75) of The Companies Act, 2013 to mean the Registrar having the duty of registering the companies and discharging various functions under the 2013 Act.

The definition part having been dealt with, this Court sees no reason as to why the Registrar of Companies would not take any action for registration of the charge under Rule 3 of the Companies (Registration of Charges) Rules, 2014 within the outer limit of 300 days as provided under Rule 3(2) and Rule 4 of the 2014 Rules.

This Court finds no reason for the petitioner being prevented from uploading Form CHG-1 on the ROC website by the recurring message that registration is not allowed beyond 120 days. The message is clearly contrary to the 2014 Rules and the ROC is directed to correct the portal.

WPA 26944 of 2022 is disposed of with a direction on the ROC to take required steps under the Companies (Registration of Charges) Rules, 2014 and register the charge as provided under Rule 3 of the said Rules within a period of three weeks from today. The West Bengal Financial Corporation /respondent no. 4 shall take requisite steps for disbursement of the balance amount to the petitioners within four weeks from the date of

communication of the fact of uploading of the form for registration of charge on the MCA Portal.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)