Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 49 OF 2022

Savita Mahajan & Ors ...Petitioners
Versus
The Registrar of Companies & Ors ...Respondents

Mr Rutvij Solanki, *i/b Shashank Shubham, for the Petitioners.*
Mr Aditya Thakkar, *with Ashish Mehta & Harshika Makwana, i/b Ethos Legal Alliance, for the Respondents.*

CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 4th April 2022

PC:-

1. Rule. There is an Affidavit in Reply. We make Rule returnable forthwith and take up the Petition for hearing and final disposal.

2. There is a very old legal adage that hard cases make for bad law. This is a particularly hard case, and only for that reason we do not propose by the present order to lay down any law or to decide finally on questions of interpretation of the provisions of Sections 164 and 167 of the Companies Act 2013 or the Appointment and Qualification of Directors Rules 2014.

3. Very shortly stated, on account of a severe health illness of 1st Petitioner, the Petitioners were unable to look after a company that they founded. This has triggered a series of events of quite unfortunate consequences. The Petition seeks to quash and set aside the disqualification of the Petitioners to act as directors for five years of a company named Kanupriya Body Care Cosmetics and Ayurvedic Private Limited ("**Kanupriya Body Care Cosmetics**"). The Director Identification Numbers ("**DINs**") of the Petitioners have been deactivated and these are sought to be reactivated under an order of the Court. The third relief is to allow to the Petitioners to pursue a Fast Track Exist ("**FTE**") application originally filed on 23rd November 2015 for voluntarily striking off the name of the Company from the Registrar of Companies ("**RoC**").

4. That the Petitioners incorporated Kanupriya Body Care Cosmetics is not in dispute. This was done on 13th September 2014 with Registration No. 258098 and Kanupriya Body Care Cosmetics was assigned a Corporate Identification Number ("**CIN**") U74900MH2014PTC258098. The Petitioners were assigned their respective DIN numbers.

5. That company did no business. It did not even open a bank account. The reason was that within a one month of incorporation the 1st Petitioner was detected with an aggressive form of cancer and advised to undergo chemotherapy. She did not respond well to this line of treatment, and in January 2015 had to go a surgery. This treatment went on for nearly two years. The 1st Petitioner has multiple surgeries and was in and out of various hospitals until 2016.

It was during this period that the 1st Petitioner and her family realised that there was no reason to continue the company, Kanupriya Body Care Cosmetics, on the Register of Companies. Therefore, in November 2015 the Petitioners decided to apply to the 1st Respondent for a voluntary striking out of the name Kanupriya Body Care Cosmetics. To this end, the Petitioners' consultant, the 2nd Respondent filed an application SRN No.C70417621 dated 23rd November 2015 under a FTE mode to get the name of Kanupriya Body Care Cosmetics struck off the register under Section 560 of the Companies Act 2013. The application included a categorical statement that the company did not intend to do any business or commercial activity, that the company was defunct and the 1st Respondent was requested to strike off the name of the company from the register.

6. There appears to have been some miscommunication between the Petitioners and their consultants as set out in paragraphs (h) to (j). They realised that the company's name had not been struck off when they received an income tax notice addressed to the company for non-filing of income tax returns for the Assessment Years 2015-2016, 2016-2017 and 2017-2018. When the 1st Petitioner contacted her consultant, the 2nd Respondent, she learnt that the 2nd Respondent's practice had been taken over by the 3rd Respondent but there had been a slip up. It was then that the Petitioners found out the FTE application was still pending and that the RoC had in fact responded earlier on 25th July 2016 saying that the application was defective or incomplete. This communication had been missed in all this confusion and miscommunication.

7. In March 2020, the Petitioners wanted to start another company. They were then informed that the 1st Respondent, the RoC, had published a list of 3rd February 2020 and that the Petitioners stood disqualified from acting as directors for a period of five years. They approached the 1st Respondent for justice. It was then that they learnt of the communication of July 2016 and also learnt that they had earned a statutory disqualification under Section 164 of the Companies Act 2013. They learnt that their DIN have been deactivated under Section 164(2) of the Companies Act 2013.

8. The Petitioners filed a complaint under Section 21 of the Companies Secretaries Act 1980 before the Disciplinary Committee of the Institute of Company Secretaries of India but we will pass over that.

9. On 29th July 2021, the 1st Petitioner approached the RoC about this situation and requested a removal of the disqualifications of the directors. There was no response. The Petitioners sent a reminder on 18th August 2021. This to has met with no response.

10. Hence this Petition.

11. As we noted at the beginning, the facts are extraordinary. The Petitioners themselves applied for a FTE voluntary striking off from the register of the name of their own company. The company that they had set up did no business at all. It did not even have a bank account. Then there was the miscommunication and mix up with their company secretary and consultant. The 1st Petitioner herself was struck by very serious ailment. Nearly two and half years went in that treatment.

12. We do not in this matter therefore propose to interpret the law under Sections 164 and 167 to examine whether or not the Petitioners were disqualified. We believe it would be prudent in the narrow facts and circumstances of the case, and which can obviously not serve as precedent, to exercise our equitable and extraordinary discretion on the basis that since November 2015, the Petitioners have applied for a striking off from the register of the name of the their enterprise, Kanupriya Body Care Cosmetics. They have not functioned as directors in that or any other company from 2015 right till today. It is now that they seek to set up another venture. Even the statutory period is five years. It is true that five years would technically be reckoned from 2018 and would end sometime in 2023 However, in the peculiar facts and circumstance of the case, the Petitioners have all not functioned as directors for a period of seven years already.

13. We believe this is an appropriate case where without finding fault with the Respondents, we may issue an appropriate Writs to the Respondents directing the reactivation of the DIN, permitting the Petitioners to pursue their application forthwith and allowing the Petitioners therefore the right to a establish another company.

14. As a matter of procedure the Petitioners will need to file a fresh application for striking off the name of Kanupriya Body Care

Cosmetics. This will not be a FTE application any longer but will be a routine application for striking off the name of Kanupriya Body Care Cosmetics.

15. We permit the Petitioners to file an application for striking off the name of Kanupriya Body Care Cosmetics from the register. That application is to be filed within four weeks from today.

16. We direct the RoC to activate or reactivate the DIN of the Petitioners. This is to be done within two weeks from today.

17. The 1st Respondent is not to levy any penalties for any delay or for any other reasons.

18. The Petition is disposed of in these terms. There will be no order as to costs.

(Madhav J. Jamdar, J) **(G. S. Patel, J)**