

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 16947 of 2023

Cressanda Solutions Limited & Anr.

Vs.

Union of India & Ors..

For the petitioners	:	Mr. Ratnanko Banerjee, Mr. D.N. Sharma, Mr. Ratnesh Kumar Rai, Mr. A. Rai, Mr. S.N. Pandey Mr. Sayantan Das
For the respondent nos.1 to 4	:	Mr. Swatarup Banerjee, Mr. Sailendra Kumar Tiwari
Hearing concluded on	:	26.07.2023
Judgment on	:	02.08.2023

Sabyasachi Bhattacharyya, J:-

1. The respondent-companies, being shell companies having no real function and/or existence, were struck off from the register of companies. Some of them were revived later. All of them were shareholders of the petitioner no. 1-company.
2. The grievance of the petitioners is that despite having been struck off, the shell companies have been transacting with shares of the petitioner no.1, thereby adversely affecting the commercial interests of the petitioner no.1-Company, which amounts to financial fraud and corporate offence.

3. Despite the petitioners having complained repeatedly to the respondent-Authorities, no action has been taken on such behalf.
4. At the time of hearing, only the Registrar of Companies (ROC) is represented through counsel and the other respondents choose not to appear, despite service.
5. The ROC argues that its role, in the present context, is limited to Section 248 of the Companies Act, 2013 (hereinafter referred to as, “the 2013 Act”), pertaining to striking off companies after the enquiry as contemplated therein. Section 252 provides for a challenge to the National Company Law Tribunal (NCLT) against such striking off. If successful, such challenge culminates in a revival of the striking off company.
6. Learned counsel for the ROC contends that if the petitioners are aggrieved by the revival of some of the shell companies, the remedy lies in a challenge against the order of revival before the appropriate forum.
7. However, it is beyond the charter of the ROC to enquire as to whether the already struck off companies are further transacting business *de hors* the law.
8. Learned counsel for the petitioner places reliance on Rule 25B of the Companies (Incorporation) Rules, 2014 (for short, “the 2014 Rules”) to assert that it is the duty of the ROC also to check the registered offices of the companies concerned, and to take steps in the matter.
9. A perusal of Section 248 of the 2013 Act indicates that the same merely extends up to the striking off of a company if it is not carrying

on any business or operation for a period as stipulated in Section 248(1). Upon taking the steps as contemplated in sub-sections (1) to (4) of Section 248, the Registrar, under sub-section (5) thereof, may strike off the name of the company from the Register of Companies and publish a notice in the Official Gazette, upon which the company stands dissolved.

- 10.** However, there is nothing in the provisions of the 2013 Act which empowers the ROC to enquire into the antecedents and activities of a dissolved company. Section 250 of the 2013 Act provides that where a company stands dissolved under Section 248, it shall, from such date, cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from the said date, except for the purpose of realizing the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.
- 11.** Section 252 provides for an appeal to the Tribunal. If the Tribunal is of the opinion that the removal is not justified in view of the absence of any grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies. Such an order is appealable before the appropriate appellate forum, that is, the National Company Law Appellate Tribunal (NCLAT).
- 12.** The argument of the petitioners, that the petitioners cannot go on filing repeated appeals against the revival orders, is not acceptable, since it is the aggrieved party who has to prefer such an appeal.

- 13.** In the event the petitioners feel that they are aggrieved in any manner with the revival of any of the previously struck off companies which are the shareholders of the petitioner no. 1-company, it is open for the petitioners to prefer a challenge before the NCLAT. However, it is not for the petitioners to route their own grievances through other agencies, including the ROC, by avoiding the responsibility of preferring such challenges in due course of law.
- 14.** In the event the petitioners are not aggrieved by the revival, nothing in law can compel the investigating agencies to revisit the revival itself at the behest of the petitioners.
- 15.** Insofar as the Rule 25B of the 2014 Rules is concerned, the ROC is to check the registered offices of the companies. Such an exercise does not empower the ROC to go into a fact-finding investigation as to whether the struck-off companies are still functioning.
- 16.** If the companies-in-question are revived under Section 252 of the 2013 Act after having been struck off initially, there is no bar on the said companies to carry on functioning. Hence, the cause of action in respect of the revived companies, as argued by the petitioners, lies only in a challenge before the NCLAT.
- 17.** However, the petitioners are justified in arguing that in the event the struck off companies are still functioning, transacting the shares of the petitioner no.1-company or otherwise, it is definitely the prerogative and incumbent duty of the concerned authorities to look into the matter.

- 18.** Although the Securities Exchange Board of India (SEBI) is the appropriate authority to enquire into fraudulent and illegal share transactions, surprisingly, the petitioners have not impleaded the SEBI in the present writ petition.
- 19.** The petitioners, however, have written detailed complaints to the SEBI, which have also been annexed to the present writ petition. Since the SEBI is an autonomous statutory authority in its own rights, a direction on the concerned Ministry would not suffice. However, a further direction for impleadment of SEBI as respondent and awaiting service on the said authority would unnecessarily prolong the present litigation, which could be shortened by the directions as proposed.
- 20.** Insofar as the Ministry of Corporate Affairs, Government of India is concerned, the said Ministry has been arrayed as respondent no.4 herein. The Ministry of Corporate Affairs is duty-bound to find and punish shell companies in particular, with effect from August 18, 2022.
- 21.** That apart, it is well-known that the Ministry has been specifically sensitized to look into economic offences of the nature as complained of by the present petitioners, such as functioning of struck-off shell companies by transacting shares of companies like the petitioner no.1.
- 22.** Hence, the purpose of justice would be subserved if appropriate directions are passed on the said authorities.
- 23.** Accordingly, WPA No.16947 of 2023 is disposed of by granting liberty to the petitioners to file fresh complaints, pursuant to the present

order, giving all known particulars regarding the allegedly fraudulent transactions and share transfers being conducted by the struck-off shell companies, which are shareholders of the petitioner no.1, to the appropriate authority, including the respondent no.4-Ministry of Corporate Affairs and the SEBI.

- 24.** Upon such written complaints being made in terms of the present order, the respondent no.4 and the SEBI shall act on the same, if necessary upon giving further opportunity to the petitioners to elaborate on their complaints, by holding an appropriate enquiry into the allegations made in the complaints. If, upon such enquiry, it is found out that there is substance in such allegations, the respondent no.4 as well as the SEBI shall initiate proper investigation and will be free to depute appropriate investigating agencies to take corrective steps on such score.
- 25.** There will be no order as to costs.
- 26.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)