

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Foreign Exchange)
ORIGINAL SIDE

FEA/5/2010

UNION OF INDIA & ANR.
VS
M/S. VACO PLAST (P) LTD. & ORS.

BEFORE :

THE HON'BLE JUSTICE DEBANGSU BASAK

And

THE HON'BLE JUSTICE MD. SHABBAR RASHIDI

Date : 15th June, 2023.

Appearance :

Mr. Vipul Kundalia, Adv

Mr. Arijit Chakrabarti, Adv.

Mr. Anurag Roy, Adv.

Mr. Dipak Sharma, Adv.

...For the Respondent Enforcement Directorate

The Court : The appeal is at the behest of the department assailing an order of the appellate authority holding that the appeal before the appellate authority abated in view of the appellant which was a company incorporated under the Companies Act, 1956 being struck off from the Register of Companies.

There is an order of adjudication. The Department did not prefer any appeal therefrom. As noted above, the appeal was at the behest of the company who was subsequent to the filing of the appeal struck off from the Register of the Companies.

In the present appeal, the Co-ordinate Bench noted the factum of the original respondent being struck off from the Register of Companies. It directed impleadment of the Directors of such companies.

Pursuant to the order dated August 2, 2010 directed impleadment of the Directors of the Original respondent, respondent Nos. 2 and 3 were added as ex-directors of the Original respondent.

None appears for any of the respondents.

Section 43 of the Foreign Exchange Management Act, 1999 deals with death or insolvency in certain cases. It specifies that any right, obligation, liability, proceeding or appeal arising in relation to the provision of Section 13 shall not abate by reason of death or insolvency of the person liable under that Section and upon such death or insolvency, such rights and obligations shall devolve upon the legal representatives of such person or the official receiver or the official assignee, as the case may be. It also provides that a legal representative of the deceased shall be liable only to the extent of inheritance or estate of the deceased.

In the facts of the present case, the appellant before the appellate authority was a company incorporated under the Companies Act, 1956. Its name was struck off from the register of companies for non filing of annual returns under the Act of 1996.

The appeal was disposed of as abated, since the appellate company did not take up any steps for substitution.

We need not enter into the issue as to whether, the appellate authority was correct in embarking on the approach as recorded in the impugned order, in the peculiar facts and circumstances of the present case.

Since the appellants before us did not prefer any appeal before the appellate authority challenging the order of adjudication, we dispose of the present appeal by permitting the appellants to implement the original order of adjudication,

in accordance with law. The order in original is capable of execution in view of Section 43 of the Act of 1999.

Interim order, if any, stands vacated.

FEA No. 5 of 2010 is disposed of accordingly.

(DEBANGSU BASAK,J.)

(MD. SHABBAR RASHIDI, J.)

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