

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 47 OF 2017
WITH
MISC. CIVIL APPLICATION NO. 526 OF 2021(FILING)
IN
WRIT PETITION NO. 47 OF 2017
AND
WRIT PETITION NO. 48 OF 2017
WITH
MISC. CIVIL APPLICATION NO. 527 OF 2021(FILING)
IN
WRIT PETITION NO. 48 OF 2017

WRIT PETITION NO. 47 OF 2017
WITH
MISC. CIVIL APPLICATION NO. 526 OF 2021(FILING)
IN
WRIT PETITION NO. 47 OF 2017

FAR Pavilions Tours and Travels Pvt. Ltd.	... Petitioner
Thr. Director, Rep. By S. N. Gupta & anr.	
<i>Versus</i>	
Amit Roshan Kishore	...Respondent

AND
WRIT PETITION NO. 48 OF 2017
WITH
MISC. CIVIL APPLICATION NO. 527 OF 2021(FILING)
IN
WRIT PETITION NO. 48 OF 2017

FAR Pavilions Tours and Travels Pvt. Ltd.	... Petitioner
Thr. Director, Rep. By S. N. Gupta & anr.	
<i>Versus</i>	
Manish Pratik	...Respondent

Mr. V. A. Lawande, Advocate for the Respondents in Writ Petition Nos. 47 and 48 of 2017 and for Applicants in Misc. Civil Application Nos. 526 and 527 of 2021.

CORAM: PRAKASH D. NAIK, J
DATED: 3rd OCTOBER 2023

ORAL ORDER

1. None present for Petitioners in Writ Petitions and Respondents in Misc. Civil Applications. The Respondents in Writ Petitions had filed an application under Section 8 of the Arbitration and Conciliation Act, 1996, stating that the counter claim be referred for arbitration. The learned trial Court by Order dated 12.04.2016 allowed the said application and counter claim of the petitioners/defendants were referred to arbitration in the counter claim. The aforesaid order was challenged by the petitioners before this Court. Vide Order dated 11.04.2017, the Petition was admitted and the impugned order dated 12.04.2016 was stayed. The respondent in Writ Petition filed an application being MCA no. 533 of 2017 in Writ Petition No. 47 of 2017 and Writ Petition no. 48 of 2017 for early hearing, which was allowed. It was directed that the Petitions be listed for hearing in third week of January 2018. Subsequently, when the Petitions were pending for final hearing, this Court dismissed both the Petitions for default. Subsequently, the petitioners filed restoration application being MCA no. 271 of 2019 before this Court and vide Order dated 27.03.2019, the Petition was restored.

2. The respondents-applicants contend that the perusal of the application for restoration made by the Petitioners discloses that the

same is sworn by Mr. Manuel Paully as an authorized representative of the petitioners. The name of the petitioner no.1-company, has been removed from the Register of Companies under Section 248(5) of Companies Act vide notice dated 08.08.2018 under notice no. ROC/Delhi/248(5)/STK-7/4865 issued by the Office of Registrar of Companies, NCT of Delhi and Haryana, Ministry of Corporate Affairs, Government of India. The petitioner no.1-company figures at serial no. 6706. The Director of the petitioner no.1-company has been disqualified from 01.11.2014 to 31.10.2019. The records of Ministry of Corporate Affairs also show that the name of the petitioner no.1 has been struck off and petitioner no.1-company is shown as unlisted. Thus, it is clear that under Section 248(5) of Companies Act, 2013, has been made at least from 08.08.2018. In terms of Section 250 of the Companies Act, where a company stands dissolved under Section 248 of the Companies Act, shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of incorporation issued to it, shall be deemed to have been cancelled from such date except for the purpose of realizing the amount due to the company or for the payment or discharge of the liabilities or obligations of the company. Thus, the corporate status of the company ceased to subsists. All the Directors of petitioner no.1 were disqualified under section 164(2)(a) from 01.11.2014 for five years till 31.10.2019. The records of the Ministry

of Corporate Affairs shows their names as disqualified Directors at serial no. 10015-10018 which has been annexed to the application. It is further contended that the petitioners have falsely represented before this Court in their affidavit and in application for restoration viz MCA no. 271 of 2019 in Writ Petition no. 47 of 2017 and MCA no. 272 of 2019 in Writ Petition no. 48 of 2017 that Mr. Manuel Paully is the legal authorized representative of the petitioners. The name of the company-petitioner no.1 has been struck off from Registrar of Company at least on 08.08.2018. There could not have been any representative for petitioner no.1-company. The affidavit could not have been sworn as Director as authorized signatory of petitioner no.1-company when the petitioner no.1-company is struck off and company is unlisted. There can be no representative of petitioner no.1.

3. It is further contended that by preferring MCA no. 526 of 2021 and MCA no. 527 of 2021, the applicants-respondents in the Petition have prayed that the order dated 27.03.2019 for restoration of Writ Petition no. 47 of 2017 and Writ Petition no. 48 of 2017, may be recalled. The Order dated 21.02.2019 passed by this Court for dismissal for non-prosecution be retained. Writ Petition no. 47 of 2017 and Writ Petition no. 48 of 2017 be dismissed in view of Order dated 08.08.2018 issued by office of Registrar of Companies, NCT of

Delhi and Haryana, Ministry of Corporate Affairs, Government of India.

4. MCA no. 526 of 2021 and MCA no. 527 of 2021 were listed before this Court on 05.09.2023. The Advocate representing the petitioner with the Advocate holding for learned Advocate Mr. Galileo Teles, had appeared before this Court and submitted that Mr. Teles was appearing for the petitioners in both the Petitions however, there are no instructions from the original petitioners since last two years. Learned Advocate sought permission to withdraw appearance in Writ Petitions as he has no instructions to appear for the petitioners and respondents in this application. The learned Advocate was discharged from appearing in the proceeding. The Petitions were then listed on 13.09.2023. Learned Advocate for the applicants and respondents in the Petitions submitted that the Advocate representing the original petitioners were served who had sought discharge as stated earlier. Vide Order dated 13.09.2023, it was directed that Writ Petition no. 47 of 2017 and Writ Petition no. 48 of 2017 be listed along with the Misc. Applications.

5. None appears for the petitioners. In the light of the factual aspects as stated herein above and since none appears for the petitioners, both the Petitions are dismissed for want of prosecution.

6. Interim relief granted earlier stands vacated. Misc. Civil Applications stand disposed off.

PRAKASH D. NAIK, J

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