

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.415 OF 2023

1. Ascon Panits Pvt. Ltd., Mumbai

2. Jitesh Maganlal Naik

.. Petitioners

Vs.

Registrar of Companies, Mumbai

.. Respondent

Mr. Rahul Sarna, with Mr. Sharad Wakchoure, for the Petitioners.

Mr. Akash K. Kotecha, with Ms. Aarya More, h/f. Mr. Ashish Mehta, for the Respondent.

CORAM : A.S. CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ

DATE : 11TH DECEMBER, 2023.

P.C. :

1. Heard learned counsel for the parties.
2. Petitioner no.2 raises challenge to the action taken against the 1st petitioner under Section 248 of the Companies Act, 2013 (*for short “the Act of 2013”*). By the said action, the name of petitioner no.1–Company has been removed from the Register of Companies. The learned counsel for the petitioners submits that without complying with the mandatory procedure prescribed by Section 248 of the Act of 2013, this action has been taken. In that regard, the petitioners seek to rely upon various documents received under the provisions of the Right to Information Act, 2005.

3. In the affidavit-in-reply filed on behalf of the respondents, it has been categorically stated that the notice, as required by the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, was sent to the office of the petitioner no.1-Company and served as well as by publication of the name of the petitioner no.1-company on the website of the Ministry of Corporate Affairs and by publication in the Official Gazette.

4. We find that this Court would be required to record a specific finding of fact that the notice, as required under Section 248 of the Act of 2013, was never served on the petitioners. In the light of the documents on record, we find that this exercise can be more conveniently undertaken by the National Company Law Tribunal under Section 252 of the Act of 2013, which prescribes remedy of appeal. For this reason, we are not inclined to entertain this Writ Petition.

5. Accordingly, by keeping all points raised in this Writ Petition open for being raised in an appeal under Section 252 of the Act of 2013, the Writ Petition is not entertained. For a period of four weeks from today, the ad-interim order granted on 8th June 2022 is continued to enable the petitioners to invoke the statutory remedy. Thereafter, the petitioners are free to seek appropriate interim relief before the National Company Law Tribunal and the said Tribunal is free to consider such prayer without being influenced by the

grant of ad-interim relief by this Court. All points raised are kept open for being raised before the National Company Law Tribunal. In case such appeal is filed by the petitioners, the same be considered in accordance with law and be decided as expeditiously as possible, preferably within a period of three months from the date of it's presentation.

[FIRDOSH P. POONIWALLA, J.]

[A.S. CHANDURKAR, J.]