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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 16th January, 2023

\+ **W.P.(C) 1442/2022 & CM APPL.4193/2022**

AURBINDO CHAUDHURI MEMORIAL GREAT INDIAN DREAM FOUNDATION ..... Petitioner

Through: Mr. Vishal Gupta, Authorised Representative.

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Dev P. Bhardwaj and Ms. Anubha Bhardwaj, Advocates (9810118825).

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through hybrid mode.

2. An adjournment is again sought by the authorised representative, Mr. Vishal Gupta. It is noticed from the record that in the last two hearings dated 15th February, 2022 and 16th August, 2022 also, adjournments had been sought by the Petitioner. Notice has also not been issued in this matter.

3. The case of the Petitioner company- Aurobindo Chaudhuri Memorial Great Indian Dream Foundation (*hereinafter, 'the Foundation'*) is that the Foundation could not file the form AOC-4 which was required to be filed within 30 days of the Annual General Meeting (AGM) as per Section 137 of the Companies Act, 2013 (*hereinafter, 'the Act'*) read with Rule 12 of the Company (Accounts) Rules, 2014.

4. It is the case of the Petitioner that certain circulars were issued by the Respondent No. 1- Ministry of Corporate Affairs (MCA), i.e., General

Circular No. 11/2020 and 12/2020 dated 24th March, 2020 and 30th March, 2020, respectively to enable defaulting companies to file the required documents belatedly.

5. It has been contended that the Respondent No. 1 introduced the scheme called the Company Fresh Start Scheme, 2020 (CFSS- 2020) while exercising powers under Section 460 read with Section 403 of the Act to condone the delay in filing the above-mentioned documents. The said scheme was extended from time to time and was last extended till 31st December, 2022.

6. It is the case of the Petitioner that a corporate professional on behalf of the Petitioner company tried to upload the challan for uploading the documents on the last date i.e., 31st December, 2020. However, on the said date, the MCA website crashed and was not restored.

7. Thus, it is prayed by the Petitioner that an extension be given to the Petitioner for uploading the said documents without any additional fee of penalty.

8. Heard. It is seen from the record that the General Circular No. 11/2020 dated 24th March, 2020 gave an extension of time for filing documents, returns and statement etc. due to the outbreak of Covid-19 to various companies and limited liability partnerships for filing/uploading of the documents.

9. Thereafter, on 30th March, 2020 the Company Fresh Start Scheme, 2020 was also launched and in terms of the said scheme, the companies who had not yet filed documents on the MCA website were given permission to file the said documents, returns, statements etc. The said scheme was to initially, operate from 1st April, 2020 till 30th September, 2020 and

eventually extended till 31st December 2020.

10. An AOC-4 form which is claimed to have been prepared by the Petitioner is sought to be placed on record along with the screenshot of a tweet dated 2nd January, 2021 which claims that the MCA portal had crashed and not responding.

11. The Court has perused the record and notices that there is nothing on record to show that these forms were filled by the Petitioner or that there was any attempt to upload the said forms within the deadlines fixed. It has also been observed that in view of the representations received by the Respondent- MCA, a circular was issued dated 15th January, 2021 with a 'Scheme for condonation of delay for companies restored on the Registrar of Companies between 01 December 2020 and 31 December 2020, under Section 252 of the Act'. The stipulations in the said scheme are extracted as under:

> *"2. Representations have been received in this Ministry requesting for relief as some companies had preferred appeals under section 252 of the Act against the orders of striking off the names of the companies before the respective Benches of the National Company Law Tribunals [NCLTs] and the order(s) by NCLT Benches were issued during December, 2020. In view of this, such companies could not avail the benefit of filing under CFSS-2020 by 31st December, 2020 and are liable to be levied additional fees upon filing of overdue e-forms.*
>
> *3. The matter has been examined and it has been decided that the aforementioned companies may be provided the benefit of waiver of additional fees in respect of overdue filings to be made by them pursuant to the NCLT Order under section 252 of the Act, without any immunity from civil/criminal proceedings,*

etc.
4. Accordingly, the Central Government in exercise of its powers conferred under section 460 read with section 403 of the Act has decided to introduce the Scheme namely, "Scheme for condonation of delay for companies restored on the Register of Companies between 01 December 2020 and 31 December 2020, under section 252 of the Companies Act, 2013" for the purpose of condoning the delay in filing forms with the Registrar, insofar as it relates to charging of additional fees on account of delay in such filings.
5. The details of the Scheme are as under: -
(i) The Scheme shall come into effect from 01 February 2021.
(ii) Applicability: The Scheme shall be applicable in respect of companies in respect of whom the appeal filed under section 252 of the Act with the respective NCLT Bench for the restoration of the name of the company was disposed of between 01.12.2020 to 31.12.2020, with an order for restoration of the company.
(iii) Duration of the Scheme: The last date for filing of any overdue e-forms by such companies under the scheme shall be 31.03.2021
(iv) Forms for which the Scheme shall be applicable: The Scheme shall be applicable in respect of filing of all e-forms [except where any increase in authorized capital is involved (SH-and charge related documents (e-forms CHG-1, CHG-4, CHG-8 and CHG-9)] which are required to be filed with. the Registrar.
(v) Applicable Fees: Every company shall be required to pay normal filing fees under the Companies (Registration Offices and Fees) Rules, 2014 on the date of filing and no additional fees shall be payable for the forms for which the scheme is applicable."

12. By this circular, the overdue e-forms were allowed to be deposited by 31st March, 2021 without additional payments.

13. The Court observes that a further representation was made by the Petitioner on 3rd July, 2021 seeking waiver of the penalty/additional payment.

14. After perusing the said documents, it appears that the Petitioner was not ready to upload these documents either on 31st December, 2020 or even within the extended period of 31st March, 2021.

15. Under such circumstances, this Court does not see any merit in the prayer of the Petitioner for permitting to file the form AOC-4 or Form MGT-7 in respect of its AGM dated 28th September, 2019 without additional fee and penalty.

16. It is made clear that the Petitioner is free to upload its forms in accordance with law, including any other applicable penalty/additional payment.

17. In light of the above, the present writ petition is without any merit and is, accordingly, dismissed. All pending applications if any are also disposed of.

18. No order as to costs.

PRATHIBA M. SINGH
JUDGE

JANUARY 16, 2023
MR/AM