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

Date of decision: 28th March, 2023

\+ **W.P.(C) 3899/2023 and CM APPL. 15126/2023**

URMIL PROPERTIES AND INVESTMENT PVT LTD ..... Petitioner

Through: Mr. Ravi Sikri Sr Adv. with Mr. Zeeshan Diwan Adv (M: 9810999490).

versus

REGISTRAR OF COMPANIES & ORS. ..... Respondents

Through: Mr. Vineet Dhanda, CGSC with Ms. Archana Surve, GP., Mr. Hussain Taqvi, Mr. Shubham Prasad, and Ms. Shruti Gupta, Advs for UOI (M: 9712533333).
Ms. Archana Surve (GP) (M: 9921498000).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition challenges two impugned orders dated 31st January, 2023 passed by the ROC by which costs to the tune of Rs.2,00,000/- have been imposed on the Petitioner while allowing Petitioner's application filed under Section 77(1) read with Section 87 of the Companies Act, 2013. The costs constitute Rs.1,00,000/- *qua* each charge for delay of 505 days in filing the particulars of the charge.

3. The submission of Mr. Sikri, ld. Sr. counsel for the Petitioner is that the Petitioner-Company had obtained two loans from the ICICI Bank. Charges in respect of the same were created and filed with the ROC. The

Petitioner had repaid both the loans on 10th June, 2021 and obtained no dues certificate. However, unfortunately, on 1st February, 2022, the founder/director Shri Lokesh D. Multani, who had contracted Covid-19, passed away. His son Mr. Puneet Multani thereafter took over charge of the company and started managing day to day affairs. The CHG-4 form was to be filed within a period of 30 days from the date of payment i.e., by 10th July, 2021. However, due to the death of the Founder-Director, there was a delay and the same could only be filed on 28th November, 2022. In view of this delay, costs have been imposed by the ROC by way of the impugned orders.

4. Ld. Sr. counsel submits that the matter needs to be empathetically viewed inasmuch as it is due to the death of the Founder-Director that the delay occurred and there was no deliberate intention to delay. Moreover, even the loans have been paid in full and it was only the filing of the Form which was inadvertently delayed.

5. Reliance is placed upon the order of the Supreme Court dated 10th January, 2022 passed in ***Suo Moto Writ Petition (C) No.3/2020*** titled ***In Re: Cognizance For Extension of Limitation*** and the order of the High Court of the Madhya Pradesh in ***Writ Petition No. 2962/2018*** titled ***M/s Shalini Plastic Pvt. Ltd. v. Union of India*** where under similar circumstances, costs were reduced.

6. Mr. Dhanda, ld. Counsel appearing for the Respondent-ROC submits that on both the charges, the delay is admitted and hence the cost is valid.

7. Heard. Under Sections 82 of the Act read with Rule 8(1) of the Companies (Registration of Charges) Rules 2014, there exists an obligation on the Company to record satisfaction of charge within a period of 30 days

from the date of such payment. The relevant provisions read:

> *"82. **Company to report satisfaction of charge.** – (1) A company shall give intimation to the Registrar in the prescribed form, of the payment or satisfaction in full of any charge registered under this Chapter **within a period of thirty days** from the date of such payment or satisfaction.*
>
> *xxx xxx xxx*
>
> ***Rule 8(1)** – For the purposes of sub-Section 1 of 82, a company shall **within thirty days** from the date of the payment of satisfaction in full of any charge registered under Chapter VI, give intimation of the same to the Registrar in e-Form CHG-4 along with the fee."*

8. As per Section 87 of the Act, the Central Government has the power to extend the time for filing of memorandum of satisfaction. The said provision reads as under:

> ***87. Rectification by Central Government in Register of charges-** The Central Government on being satisfied that-*
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> *(a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this chapter; or*
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> *(b) the omission or misstatement of any particulars, in any filing previously made to the Registrar with respect to any charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,*
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> *was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as it deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified.*

9. A perusal of the order of the Hon'ble Supreme Court in ***In Re Suo Motu (supra)*** clearly shows that the entire period between 15th March, 2020 till 28th February, 2022 was excluded from computation of limitation. The relevant portion of the said order reads as under:

> *"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:*
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> *I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021,* ***it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi- judicial proceedings****.*
>
> *II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
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> *III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply."*

10. In the present case, the usual period of limitation is thirty days. Thus, a period of thirty days would be added from 28th February 2022, meaning thereby that the limitation would have expired only on 28th March 2022.

11. The filing of the Form in the present case has been made on 28th November, 2022 which would be a total delay of eight months.

12. The observations of the Madhya Pradesh High Court in ***WP No. 2962/2018*** are also relevant in the present case, wherein the Court observed as under:

> *"7. In the present case the petitioner has disclosed that delay had taken place because there was change in entire management of the company, therefore, the default had taken place for the bonafide reason.*
> *8. The impugned orders reveal that respondent no. 1 has also reached to the conclusion that delay was caused due to inadvertence and has found it to be just and equitable to grant relief of condonation of delay and has accordingly condoned the delay. But while condoning the delay the respondent no. 1 has imposed the condition of payment of Rs. 94,000/- in a case where the loan was of Rs 10,00,000/-, Rs. 94,000/- in another case where the loan was of Rs. 6,00,000/- and Rs. 54,000/- where the loan was of Rs. 3,00,000/-.*
> *9. Undisputedly the loan amount was already repaid in the year 2006 itself and there was only a default in non complying with the requirement of filing of e-forms for satisfaction of the charge. In these circumstances the condition of payment of such a high amount imposed by respondent no. 1 is not reasonable in terms of Section 87 of the Act.* ***Under Section 87, the condition which is required to be imposed should be just and expedient.***
> *10 The impugned orders further reveal that for default in respect of loan of Rs. 10,00,000/- and for another default for loan of Rs. 6,00,000/- same condition of*

payment of Rs. 94,000/- has been imposed where the same should have been proportionate to the nature of default. <u>Hence this court is of the opinion that the amount which is required to be paid in terms of the impugned orders is to be rationalized and to be made just and proper by reducing it.</u>

11. In the considered opinion of this court in the case of default where the loan was of Rs. 10,00,000/- just and proper condition would be to condone the delay subject to payment of Rs. 45,000/-; in the case where the loan was of Rs. 6,00,000/-, to condone the delay, subject to payment of cost of Rs. 30,000/-; and in the case where the default was of Rs. 3,00,000/- to condonue the delay, subject to payment of cost of Rs. 20,000/-. Hence the impugned orders to that extent stand modified and the writ petition is disposed off.

13. In this view of the matter, and keeping in mind orders passed by the ld. Supreme Court as also the order of the ld. Single Judge of Madhya Pradesh, the delay cannot be held to be deliberate. The demise of the Founder-Director due to COVID-19 is a genuine cause for the delay. The costs are accordingly reduced to 25,000/- *qua* each of the charges. Thus, the total costs payable by the Petitioner would be Rs.50,000/-. The impugned orders are modified to this extent. The amount shall be deposited within four weeks.

14. With these above observations, the present petition with all pending applications, if any, is disposed of.

PRATHIBA M. SINGH, J.

MARCH 28, 2023
mr/sk