IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1292 OF 2024

The Khandesh Spinning & Weaving Mills Co. Ltd. ...Petitioner

Vs.

Union of India & Ors. ...Respondents

Mr. Vedchetan Patil a/w Ms. Sunayana Kashid, for Petitioner.

CORAM: G. S. KULKARNI & FIRDOSH P. POONIWALLA, JJ.

DATE: 3 APRIL, 2024.

P.C.

1. This petition under Article 226 of the Constitution of India is filed praying for the following reliefs:

> *"a. Be pleased to issue a writ of mandamus or any writ order or direction in the nature of mandamus and direct the Respondent No. 2 and 3 to issue fresh/duplicate Certificate of Incorporation dated 18th November 1873.*
>
> *b. Be pleased to issue a writ of mandamus or any writ order or direction in the nature of mandamus and direct the Respondent No. 2 and 3 to correct the Date of Incorporation of Petitioner from "18th November 1973" to "18th November 1873" in the company Master Data and all other records available with Respondent No. 2 and 3*
>
> *c. Be pleased to issue a writ of mandamus or any writ order or direction in the nature of mandamus and direct the Respondents to correct the name of the Petitioner from "Khandesh Spinning and Weaving Mills Company Ltd." to "The Khandesh Spinning and Weaving Mills Company Ltd" in the company Master Data and all other records available with Respondent No. 2 and 3.*
>
> *d. Pending the hearing and final disposal of the present Petition, be pleased to direct the Respondent No. 1, 4 and 5 to waive off the condition for submission of Certificate of Incorporation and deficiency arising out of mismatch of name of Petitioner on account of the missing term "The" in*

the records of the Respondent No. 2 and 3, for the purpose of opening the Trading Account of the Petitioner in any of the depository participants.

e. Ad-interim reliefs in terms of prayer clause (d).

f. Costs.

g. Be pleased to pass such other and further reliefs as this Hon'ble Court may deem fit and proper in the interest of justice and equity."

2. The case of the petitioner is that the petitioner was incorporated on 18 November 1873 under the Indian Companies Act, 1866. In 1984, Company Petition No. 59 of 1984 came to be filed against the petitioner under Section 433(e) of the Companies Act, 1956 which resulted in the petitioner going into liquidation. On 19 September 1984, this Court passed an order winding up the petitioner's Company. In 2004, dues of all the creditors were settled by way of settlement and with consent of the parties before the Debt Recovery Tribunal. In 2008, Company Application No. 547 of 2008 was preferred before this Court for staying winding up of the Company under the provisions of Section 466 of the Companies Act, 1956. On 14 July 2008, this Court passed an order allowing the Application, permitting the petitioner to conduct its business. On the aforesaid backdrop, the petitioner had made several requests to respondent No.3 to rectify the date of incorporation maintained in the database of the Ministry of Corporate Affairs. Insofar as the petitioner was concerned, on 15 July 2020 Ministry of Corporate Affairs deployed form PAS 6 i.e. Half years "Reconciliation of Share Capital Audit Report" to be filed by all the unlisted public companies. Petitioner contends that due to unavailability of Incorporation Certificate, petitioner was not in the position to avail the same and produce the same.

3. In these circumstances, the petitioner also approached the Stock Brokers appointed by NSDL and CDSL for opening of a demat account. However, due to wrong information of the company in the record of the Ministry of Corporate Affairs as also on its website and due to unavailability of Incorporation Certificate, the petitioner could not open the demat account, which was intended to be opened to access the securities market.

4. It is in these circumstances, the petitioner has contended that it neither able to admit the securities with the depository participant nor able to appoint the registrar and transfer agent resulting into monetary losses to the petitioner.

5. Learned counsel for the petitioner has also drawn our attention to the companies (Prospectus and Allotment of Securities) Third Amendment Rules 2018 and more particularly, the Amendment as incorporated in Rule (9A) in relation to issue of Securities in dematerialised form by unlisted public companies, which provide that every unlisted public company shall issue the securities only in dematerialised form and also facilitate the dematerialisation of all its existing securities in accordance with the provisions of Depository Act, 1996 and regulations made there under.

6. The respondents despite service, are not represented. Affidavit of service be placed on record within one week from today. However considering the nature of the orders as proposed to be passed we do not find that any prejudice would be caused to the respondents, if an order directing the respondent Nos.2 and 3 to issue fresh / duplicate certificate of incorporation dated 18 November 1973 after verifying the records as being presented by the petitioner and further consequential reliefs in that regard are granted.

7. We accordingly dispose of this petition by the following order:-

ORDER

Respondent Nos.2 and 3 are directed to take actions in accordance with law:-

i) to issue a fresh / duplicate certificate of incorporation to the petitioner dated 18 November 1873;

ii) to correct the date of incorporation from 18 November 1973 to 18 November 1873 after confirming the data and all other records available with respondent Nos.2 and 3;

iii) to correct the name of the petitioner from "Khandesh Spinning and Weaving Mills Company Limited" to "The Khandesh Spinning & Weaving Mills Company Limited" in the records of respondent Nos.2 and 3;

iv) all such actions be taken within a period of three weeks from the day the copy of this order is placed before the concerned officers of respondent Nos.2 and 3.

8. All contentions of the parties on any other issues as may arise from the actions as directed to be taken, are expressly kept open.

9. Disposed of in the above terms. No costs.

(FIRDOSH P. POONIWALLA, J.) (G. S. KULKARNI , J.)