2024:DHC:4992

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

Date of decision: 02nd JULY, 2024

IN THE MATTER OF:

\+ **W.P.(C) 3964/2021 & CM APPL. 12001/2021**

M/S. ARYAN CARGO EXPRESS PRIVATE LIMITED
..... Petitioner

Through: Mr. Vaibhav Dang, Advocate.

versus

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

Through: Ms. Nidhi Raman, CGSC with Mr. Zubin Singh, Advocate for R-1 and 2.

\+ **W.P.(C) 3999/2021 & CM APPL. 12075/2021**

M/S ARYAN CARGO AND EXPRESS LOGISTICS PRIVATE LIMITED ..... Petitioner

Through: Mr. Vaibhav Dang, Advocate.

versus

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

Through: Ms. Nidhi Raman, CGSC with Mr. Zubin Singh, Advocate for R-1 and 2.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant writ petitions have been filed for a direction to the Respondents to condone the delay on the part of Petitioners in filing of e-forms in respect of belated annual returns and balance sheets and permit the Petitioners to file e-forms in respect of belated annual returns and balance

sheets without charging additional fees.

2. Since the Petitioner in W.P.(C) 3999/2021 is the parent company and the Petitioner in W.P.(C) 3964/2021 is the subsidiary company and the reliefs as sought for in the both the writ petitions are identical, this Court is inclined to dispose of both the writ petitions by a common Judgment.

3. The facts in brief leading to the filing of the instant writ petitions are that the Petitioners are incorporated under the provisions of the Companies Act. The business of the Petitioner in W.P.(C) 3999/2021 i.e., M/s Aryan Cargo and Express Logistics Private Limited is being carried forward by the Petitioner in W.P.(C) 3964/2021 i.e., M/s Aryan Cargo Express Private Limited. Material on record indicates that due to financial constraints, the operations of the subsidiary company came to a standstill. A notice was issued to both the Petitioners under Section 248 of the Companies Act, 2013 stating that the name of the Petitioners has been struck off from the Registrar of Companies on 07.06.2017 for non-filing of returns. The Directors of the Petitioners were disqualified for a period of 5 years for defaulting in filing of annual returns and financial statements under Section 164(2)(a) read with Section 167 of the Companies Act and consequently, the Director Identification Number (DIN) and the Digital Signature Certificate (DSC) of the Directors were de-activated.

4. A writ petition being W.P.(C) 9088/2018 titled "Mukut Pathak and Ors. vs. Union of India and Ors" was filed by the Directors of both the companies. The writ petition was filed with a prayer that the disqualification of the Directors be revoked and DIN and DSC may also be re-activated. Similarly, another writ petition being W.P.(C) 11464/2018 was filed for

striking out Section 164(2)(a) of the Companies Act, 2013 as violative of rights guaranteed under Article 14 and 19(1)(g) of the Constitution of India. The W.P.(C) 9088/2018 was disposed of by this Court by Order dated 04.11.2019. This Court by the said Order had directed the Respondents to re-activate the DIN and DSC of the Directors in both companies. However, this Court held that the Petitioners would continue to be liable to pay penalties for late filing of the annual returns and balance sheets and other documents as prescribed under the Companies Act.

5. A Scheme called as "Companies Fresh Start Scheme, 2020" (CFSS, 2020) was brought in by the Respondents on 30.03.2020 for facilitating the companies to make a fresh start on a clean slate by filing a bleated documents without payment of additional fees. The Scheme was valid from 01.04.2020 to 30.09.2020. The Scheme was not applicable to those companies against whom a notice for striking off the name under Section 248 of the Companies Act had already been initiated. The period of the said Scheme was extended to 31.12.2020. Material on record indicates that another Scheme called as "Scheme for condonation of delay for companies restored on the Register of Companies between 01st December, 2020 and 31st December, 2020 under section 252 of the Companies Act. 2013" was brought in by the Respondents on 15.01.2021 for the purpose of condoning the delay in filing of forms with the Registrar of Companies. This Scheme was made applicable in respect of companies in respect of whom the appeal filed under section 252 of the Companies Act with the respective NCLT Bench for the restoration of the name of the company was disposed of between 01.12.2020 and 31.12.2020, with an order for restoration of the

company. The Scheme was valid till 31.03.2021.

6. It is pertinent to mention that this Court vide Order dated 04.11.2019 passed in W.P.(C) 9088/2018 titled "Mukut Pathak and Ors. vs. Union of India and Ors" had only revoked the disqualification of the Directors and this Court had directed that Respondents to re-activate the DIN and DSC of the Directors and there was no direction for the name of the Petitioners to be restored.

7. In view of the fact that the aforesaid Schemes had been floated by the Respondents, the Petitioner approached this Court by filing writ petitions being W.P.(C) 5803/2020 and W.P.(C) 5831/2020 for restoring the names of the Petitioners. This Court by Order dated 11.02.2021 disposed of the writ petitions directing the name of the Petitioners to be restored, however, the same was subject to the Petitioners filing their annual returns and balance sheets along with requisite fees in accordance with law within a period of three months. The period of three months lapsed on 11.05.2021. Material on record also indicates that the Petitioners, thereafter, moved applications being CM APPL. 16149/2021 in W.P.(C) 5803/2020 and CM APPL. 16152/2021 in W.P.(C) 5831/2020 for extension of time to comply with the Order dated 11.02.2021. The said applications were disposed of by this Court vide Order dated 07.09.2021 by granting Petitioners further three weeks' time as a last opportunity to comply with the directions in the Order dated 11.02.2021, failing which it was open for the Respondents to once again strike off the name of the Petitioners from the Register of Companies. It is stated that the said Order has also not been complied with the Petitioners.

8. It is stated that the Petitioners on 16.03.2021 tried to file their overdue annual returns and balance sheets by paying normal fees which was not allowed by the portal and additional fees was demanded. The Petitioners also gave a representation on 17.03.2021 seeking waiver of additional fees which has not been considered by the Respondents, and therefore, the Petitioners have approached this Court by filing the instant writ petitions primarily for waiver of additional fees.

9. It is the contention of the learned Counsel for the Petitioners that this Court on 11.02.2021 had permitted the Petitioners to file their annual returns and balance sheets and therefore, the Petitioners are covered by the Scheme "Companies Fresh Start Scheme, 2020" and also the "Scheme for condonation of delay for companies restored on the Register of Companies between 01st December, 2020 and 31st December, 2020 under section 252 of the Companies Act. 2013" floated by the Respondents.

10. It is the contention of the learned Counsel for the Petitioners that the effect of the Order dated 11.02.2021 was that the Petitioners were entitled to the benefit of the Scheme for condonation of delay for companies restored on the Register of Companies between 01st December, 2020 and 31st December, 2020 which was brought in by the Respondents on 15.01.2021. It is contended that this Scheme was made applicable to such of those companies whose name had been directed to be restored by the NCLT. It is contended that the reason for allowing the W.P.(C) 5803/2020 and W.P.(C) 5831/2020 was that the Respondents had no objection if the name of the Petitioners would be restored and therefore, the Petitioners were entitled to the same benefits as of those companies whose name had been restored by

the NCLT in exercise of the powers conferred under Section 252 of the Companies Act. It is stated that the Petitioners also could not file the applications in view of the COVID-19 pandemic.

11. *Per contra*, learned Counsel for the Respondents contends that the benefit of the Order dated 11.02.2021 is not available to the Petitioners because the companies which were entitled to the Scheme for condonation of delay for companies restored on the Register of Companies between 01st December, 2020 and 31st December, 2020 were those companies which had already got Orders from NCLT and despite being the beneficiaries of the Orders of the NCLT they were not in position to avail of the benefit of the Orders of the NCLT because of the ongoing COVID-19 pandemic, whereas the Petitioners got the Order by this Court in their favour only on 11.02.2021 i.e., after the Scheme expired and therefore, the Petitioners are not entitled to the benefit of the Scheme for condonation of delay which was brought in by the Respondents on 15.01.2021.

12. Heard learned Counsel appearing for the Parties and perused the material on record.

13. The entire case of the both the Petitioners revolves around the Order dated 11.02.2021 passed by this Court. The paragraph Nos.4, 5, 6, 7 and 8 of the Order dated 11.02.2021 reads as under"

> *"4. It is submitted by Mr. Vaibhav Dang, ld. counsel appearing for the Petitioners that under Section 248(1)(c) of the Act, if a company is not carrying on its business for a period of two immediately preceding financial years and has not applied for obtaining the status of a dormant company under Section 455 of the Act, the ROC is expected to issue notice to the company*

and its directors and also pass a specific order under Sections 248 (5) and (6) striking off the name from the Register.

5. On the last date, it was submitted by Mr. Vaibhav Dang, ld. Counsel that the data in the ROC website itself shows that the balance sheets till 2018 have been filed in W.P(C) 5803/2020. However, Mr. Santosh Kumar, ROC, had submitted that the front portal was earlier showing that the balance sheet has been filed till 2018. However, after verification, it was found that in W.P(C) 5803/2020, no balance sheet has been filed by the Company after 2013 and in W.P(C) 5831/2020 no balance sheet has been filed since incorporation of the Company. Mr. Dang, ld. counsel was directed to clarify this issue on the next date of hearing.

6. Mr. Chetan Sharma, ld. ASG has made his submissions and has shown to this Court that under the provisions of Section 248 of Act read with the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, the ROC has complied with all the requisite formalities by publishing the form STK-7, striking off the name of the Petitioner companies from the Register of companies.

7. Mr. Vaibhav Dang, ld. counsel appearing for the Petitioners has reverted with instructions about filing of the balance sheets and financial returns, as also the annual returns. He admits that the annual returns were filed in 2018 in W.P.(C) 5803/2020, however the financial statements and balance sheets were not filed since 2013. In W.P.(C) 5831/2020, the same was never filed.

8. Considering that the remedy for the Petitioners is to approach the NCLT, which is merely an alternative *remedy and in the factual background of these cases wherein the ROC has no objection to restoring the companies if the Petitioners are willing to make good the said returns and balance sheets and file the same in accordance with the procedures prescribed under the Companies Act, 2013, it is directed that the names of the companies be restored. The same shall be subject to the Petitioners filing their annual returns and balance sheets, along with the requisite fee, in accordance with law, within a period of three months from today."*

14. On 11.02.2021, the Scheme dated 15.01.2021 was floated by the Union of India for condonation of delay for companies which has been restored on the Register of Companies between 01st December, 2020 and 31st December, 2020. Despite the fact that the Scheme for condonation of delay was already in existence, this Court did not extend the benefit of the Scheme to the Petitioners herein. Meaning thereby, this Court while exercising its jurisdiction under Article 226 of the Constitution of India only directed that the name of the Petitioners to be restored subject to the payment of requisite fees by the Petitioners which actually meant that the Petitioners had to pay the late fees. It was open for the Respondents to move an application for clarification of the Order dated 11.02.2021 which the Petitioners did not do so, rather they moved applications for extension of time for payment of money and this Court vide Order dated 07.09.2021 granted further three weeks' time. Even in the applications for extension of time, no clarification had been sought by the Petitioners that the benefit of the Scheme for condonation of delay which was floated by the Respondents on 15.01.2021 should be given to the Petitioners. The Petitioners, therefore, by way of the present writ petitions cannot now seek the relief which this

Court had not given in the Order dated 11.02.2021. The Petitioners will have to pay the late fees in order to get the name of the Petitioners restored.

15. Resultantly, the writ petitions are dismissed, along with pending application(s) if any.

SUBRAMONIUM PRASAD, J

JULY 02, 2024
S. Zakir