

National Company Law Appellate Tribunal,
Principal Bench, New Delhi

Company Appeal (AT) No. 148 of 2020

(Arising out of order dated 29th January, 2020 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in CA No.310/252(3)/NCLT/AHM/2019)

IN THE MATTER OF:

1. **Vikas Sureshbhai Patel**
Director and Shareholder,
Hiraj Hospitality Pvt. Ltd.
S/o Sureshbhai Patel
R/o Hari Darshan Bunglow,
Opp. Vaibhav Tower, V.V. Nagar Road,
Anand – 388 001, Gujarat

2. **Hiraj Sureshbhai Patel**
Director and Shareholder,
Hiraj Hospitality Pvt. Ltd.
S/o Sureshbhai Patel
R/o Hari Darshan Bunglow,
Opp. Vaibhav Tower, V.V. Nagar Road,
Anand – 388 001, Gujarat

...Appellants

Versus

1. **The Registrar of Companies, Gujarat**
Having its Registered Office at:
ROC Bhavan, Opp. Rupal Park,
Near Ankur Cross Road,
Naranpura, Ahmedabad – 380 113 Gujarat

...Respondent

Present:

For Appellants:

Mr.Devesh R Desai, PCS.

For Respondent:

Mr. Vijay Joshi, Advocate for ROC.

J U D G M E N T
(21.06.2021)

KANTHI NARAHARI, MEMBER (TECHNICAL)

Preamble:

The Present Appeal arises out of the order dated 29.01.2020 passed by the National Company Law Tribunal (NCLT) Ahmedabad Bench, Ahmedabad whereby the NCLT dismissed the Appeal/Application filed by the Appellant Company.

Appellants Submissions:

2. The Learned Counsel for the Appellant submitted that the Company was incorporated on 20.06.2011 as a Pvt. Ltd. Company in the State of Gujarat. The Company filed Annual Accounts and Annual Returns with the ROC, Gujarat up to Financial Year 2015-2016 in compliance of the Companies Act, 2013 from time to time. However, due to some lack of knowledge of the Management of the Company and not having any professional guidance the Company could not file the Annual Accounts and Annual Returns for the Financial Year ended on 31.03.2017-31.03.2018 and 31.03.2019 in time. It is submitted that the Company has been active since incorporation and carrying on its business activities as per the Objects of the Company.

3. While so the ROC, Gujarat issued show cause notice in form STK-1 and form STK-5 respectively. The Director of the Company approached the ROC

Gujarat for obtaining three months time for compliance of filing of the Annual Returns for the aforesaid three years. However, no reply has been received from the ROC. The Company filed Appeal/Application before the Hon'ble NCLT Ahmedabad Bench, Ahmedabad praying the Hon'ble NCLT to restore the name of the Company to the Register of Companies maintained by the Registrar of Companies Gujarat, allow the Petitioner (Appellant Company) to file all outstanding statutory documents i.e. the financial statements and Annual Returns for the year 2016-2017, 2017-2018 & 2018-2019 in completion of Annual filings.

4. The Learned Counsel submitted that the Management of the Company unaware about statutory filings to be made to ROC and also lack of professional guidance to the Management. The non- filing of statutory documents was not deliberate but an inadvertent mistake on the part of the Management Company.

5. It is submitted that the ROC after issuance of notice in prescribed form struck off the name of the Company from the Register of Companies, Gujarat.

6. It is submitted that the Company remained continuous functional even during the period 2017-2019 and the revenue from operations and other income for the Financial Year ended 31.03.2017-31.03.2018 and 31.03.2019 were Rs. 93,12,565/-, Rs. 1,31,29,404/- and Rs. 1,35,20,818/- respectively.

Apart from the above the company having tangible and intangible assets as shown in the Annual Returns.

7. The Learned Counsel submitted that there are 22 to 25 employees are working with the company and the company has been paying regular salaries to its employees. He submitted that in support of the same he filed photocopy of the details of the employees and their attendance as Annexure 7 page 170 to 175, of the Appeal Paper Book.

8. The Learned Counsel submitted that the Hon'ble NCLT dismissed the Application on the ground that the Company did not generate any income/revenue from its operations since the financial year ending 31.03.2017 to 31.03.2018 and the company did not show TDS deduction as showing in Annual Accounts and having not provided future plan to revive the company.

9. In view of the aforesaid grounds the Hon'ble NCLT dismissed the Application seeking restoration of the company. The Learned counsel requested the Bench to allow the Appeal by setting aside the impugned order of the Hon'ble NCLT.

Respondents Submissions:

10. The Learned Counsel appearing for the ROC submitted that the Company i.e. Hiraj Hospitality Pvt. Ltd. failed in filing of its statutory returns

for a continuous period of more than two years, the name of the company has been considered for striking off by the ROC, Gujarat in a suo-moto action under the provisions of Section 248(1) (c) of the Companies Act, 2013 and also in pursuance of a circular issued by the Ministry of Corporate Affairs, Government of India from time to time. The basis for striking off the name of the Company is continuous non-filing of statutory returns since 2017 and not carrying on any business or operations for a period of two immediate preceding financial years and has not made any Application within such period for obtaining the status of a dormant Company under Section 455 prior to its struck off.

11. The Learned Counsel submitted that the Office of the ROC had issued STK-1 notice on 17.07.2019 to the Company and its Directors informing the intention of ROC to strike off the name of the Company and requested to submit the cause contrary to the said action within 30 days. Further, the ROC published the name of the company on the website as per Rule 7 of the Companies (Removal of Name) Rules, maintained by the Ministry vide STK-5 notice dated 14.09.2019. The name of the Company was also published in Official Gazette and also public notice was issued in leading English newspaper (Indian Express) and widely circulated vernacular language newspaper (Divya Bhaskar- Gujarati) on 12.09.2019.

12. In absence of statutory filings for more than two years and in absence of any representation against the proposed strike off, the ROC Gujarat struck off the name of the company on 13.11.2019 and the dissolution order was passed on the website of the Ministry vide STK- 7 notice on 13.11.2019.

13. In view of the aforesaid reasons the Learned Counsel submitted that the Hon'ble NCLT rightly dismissed the Application of the Appellant and no grounds have been made out by the Appellant for revival of the Company and prayed this Bench to dismiss the Appeal.

Appraisal:

14. Heard the Learned Counsel for the respective parties. Perused the pleadings, documents filed by them.

15. The Learned NCLT vide order dated 29.01.2020 rejected the Application/Appeal of the Company whereupon the company moved before the Learned NCLT seeking directions to restore the name of the company to the Register of Companies maintained by the ROC Gujarat and allow the Company to file all outstanding statutory documents for the financial year 2016-2017, 2017- 2018 and 2018-2019 along with complete Annual filings.

16. The Learned NCLT after having considered the pleadings and documents of the Appellants and the Respondent, dismissed the Application/Appeal on the following reasons at paragraph 17,18,19,20,21 & 22.

“17. On perusal of the Balance Sheet for the F.Y.2016-17 and 2017-18, it is found that the Company is running in losses and also failed to produce any document with regard to the future prospect of business or any proposal for future business supported with any project report to show their bonafide.

18. Admittedly, as against Authorized Share Capital of Rs. 2,00,000/- and Issued, Subscribed & Paid Up Capital of Rs. 2,00,000/- , the company is incurring losses for the preceding last few financial years i.e. accumulated loss as on 31.03.2019 is Rs. 1,46,60,340/-.

19. The Appellant has failed to substantiate/justify the cause of the losses and has miserably failed to show their bonafide with regard to their future plan or prospects which may necessitate to revive the company.

20. On further perusal of the Income Tax Return Acknowledgment for the 3 years, which reflects ‘NIL’ income continuously, however, they are showing TDS deduction but no supporting documents has been filed to substantiate the TDS

deduction when the income is showing as 'NIL'. Further, why this TDS deduction is made, it is not clarified in the application.

21. Under the given circumstances, as narrated above, we find no bonafide reason, so as to, allow the application by giving an appropriate direction to the ROC for restoring the Company.

22. Accordingly, the instant application is dismissed. No order as to the cost.”

(emphasis supplied)

17. I have perused the financial statements filed by the Company for the years 31.03.2017, 31.03.2018 and 31.03.2019 where from it is evident that the Company was carrying on its business and the revenue generated from operations indicates that the company is in operations. Further, from the record it is evident that the company is having tangible and intangible assets. Apart from the above the company is having employees working with the company as per the pleadings and the documents filed by the Appellant. There is no denial from the ROC that the company is neither in operations nor having any employees. The only objection of the ROC is that the Company is failed to file the statutory returns for continuous period of more than two years. It is not the case of the ROC that the company is a defunct company.

18. From the perusal of the notice in form STK -1 dated 17.07.2019 issued by ROC Gujarat, Wherein it is stated that the company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any Application within such period for obtaining the status of dormant company under Section 455. It is stated in the notice that for the aforesaid reasons it intend to remove the name of the company from the Register of Companies and requested the Company to send any representation with the copies of the relevant documents. However, neither the Company nor the Directors have responded to the said notice even though the notices have been issued to the company and Vikas Patel and Hiraj Patel, the Shareholder and Directors of the Company.

19. In response of the notice dated 17.07.2019 the company and the Appellants have made a representation to the ROC Gujarat dated 04.11.2019 stating that the company is in full operational since the date of incorporation and duly filed the financial statements and Annual returns up to financial year 2015-2016 in the prescribed form.

20. In the reply the company states that the financial statement for the Financial Year 2016-2017, 2017-2018 & 2018-2019 and Income Tax Acknowledgment for Assessment Year 2018-2019 shows that the company is carrying on its business activities as per the objects enumerated in the Memorandum of Association and it is fully operational. While so the ROC vide

order dated 13.11.2019 struck off the name of the company from the Register of Companies.

21. Section 248 of the Companies Act, 2013 deal with power of Registrar to remove name of Company from Register of Companies. Sub-Section 1 read as under

“where the Registrar has reasonable cause to believe that (a) a company has failed to commence its business within one year of its incorporation or (c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any Application within such period for obtaining the status of a dormant company under Section 455.”

(emphasis supplied)

22. There is no doubt that the ROC has power to remove the name of company from the Register of companies for the aforesaid grounds. However, the statute, provides Appeal to the Tribunal (NCLT) under Section 252 of the Companies Act, 2013. As per the said provision any person aggrieved by an order of the Registrar, notifying a company as dissolved under Section 248, may file an Appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the

removal of the name of the Company from the Register of Companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the Register of Companies. Further, Sub-Section 3 of Section 252 states that

“If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the Register of Companies, the tribunal on an application made by the company, member, creditor or workman before the expiry of 20 years from the date of publication in the official gazette of the notice under sub-section 5 of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company to be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.

(emphasis supplied)

23. From a bare perusal of the provisions of the Companies Act. The Registrar having the powers to remove the name of company from Register of Companies as per Section 248(1),(a),(c),(d),(e) & after due compliance of law. The name of the Company would be struck off and publish in the Official Gazette showing that the company stand dissolved as per Sub-Section 5 of Section 248. However, Section 252 provides Appeal to the NCLT and Sub-Section 3 of Section 252 states that the Company or any Member, Creditor or Workmen may file an Application to the Tribunal and the Tribunal after satisfying the grounds as made by the Appellant/Applicant be restored to the ROC and the Tribunal order the name of the company to be restored and give such directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the Company had not been struck off from the Register of Companies.

24. The Learned Counsel for the Respondent taken a stand before the NCLT that the Tribunal may pass an appropriate order or restore the name of the Company subject to the conditions, as stated in their reply filed before the Learned NCLT in its impugned order dated 29.01.2020 reproduced the condition as stated by the ROC in paragraph 15 where from it is seen that the ROC put the condition namely viz imposing the cost for their ignorance and negligence etc. However, the ROC has taken a different stand before this Tribunal.

Findings:

25. From the Pleadings it is evident that the company is carrying on business and it is in operational. However, the admitted fact that the company is not filed the Annual Returns for two preceding years and the same has been admitted by the Appellant and the Company for their default showing that they are ignorant of the law.

26. The main ground for the removal of the company from the Register of Companies is that if the company is not carrying any business or operation for a period of two immediately preceding years the ROC may issue notice to the Company calling explanation from the Company and thereafter take action in accordance with law. Non-filing of Annual Return is a default. The said default can be cured/rectified by imposing costs as per the provisions of the Companies Act, 2013. Whilst, the Company is carrying the business and if it is in operational however, non-filing the Annual Returns and the financial statement as required under law inadvertently may not be a ground for removing the name of the company. In the present case, I am of the view that the company is in operational and as per Section 252 of the Companies Act the Learned NCLT ought to have restored the name of the Company to the Register of Companies.

27. In view of the aforesaid reasons the impugned order of the Learned NCLT dated 29.01.2020 is set aside with the following directions:

Conclusion:

- (i) The Show cause notice issued in form STK-1 dated 17.07.2019, in form STK -5 dated 14.09.2019 and in form STK -7 dated 13.11.2019 any consequential order in respect of striking off the company are hereby set aside.
- (ii) The ROC is hereby directed to restore the name of the Company i.e. Hiraj Hospitality Pvt. Ltd. on the Register of Companies.
- (iii) The Company shall file all its financial statements, Annual Returns, Balance Sheet which the company was in default, with the ROC Gujarat.
- (iv) The ROC Gujarat is liberty to impose penalty and interest if any for the default in filing Annual Returns, Balance Sheet, Financial Accounts etc. in accordance with law.
- (v) The Company shall comply all the statutory requirements as per law.

28. With the aforesaid directions the Appeal is allowed. No order as to costs.

**[Kanthi Narahari]
Member (Technical)**

New Delhi

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