

DICTUM

“Summary of Judicial Pronouncements”

RESTORATION APPLICATION AIMED AT ENABLING COMPANY’S WINDING UP: HELD NON PERMISSIBLE

- Valuefab Solutions Pvt. Limited v. ROC, Karnataka

[National Company Law Appellate Tribunal, New Delhi, Company Appeal (AT) No. 147/2018]

[May 22, 2018]

BACKGROUND

‘Slaying the slain, the recent massive clean up operation adopted by Registrar of Companies (ROC) is buzz of city today.’ Sec. 248 of the Companies Act, 2013 (‘the Act’) empowers the ROC to strike off defunct and shell companies in specified circumstances. These actions of government have caused a massive upheaval to the companies which were carrying on the bonafide business (but have not done their statutory filings). However, to such aggrieved companies, the remedy lies under Sec. 252 of the Act which provides the mechanism for appeal to National Company Law Tribunal (NCLT) against ROC’s order for striking off a Company’s name. If the Tribunal is of the opinion that removal of the Company’s name is not justified, in view of absence of any of the grounds on which the order was passed by the ROC, it may order restoration of Company’s name.

However, a recent judgement by the National Company Law Appellate Tribunal (NCLAT) enlighten the existing regulatory provisions and judicial position, and opines that object of Sec. 252 of the Act is to safeguard Companies, which were carrying on business or were in operation so that they get an opportunity to be restored, and assert that restoration for the purpose of winding up isn’t justified.

In the case *Valuefab Solutions Pvt. Limited v. ROC, Karnataka*, the NCLAT upheld the decision of NCLT, and ruled that the where the Company was non-functional at the time of strike off and that the process for striking off was duly followed by ROC, there arises no question of restoration of name of Company only for the cause that Company shall go through winding up process and have an honourable exit. In such case, the order of strike off of the Company for non-compliance shall not be set aside.

Issues of the Case

1. Is it justified for the Tribunal to restore the name of the Company to the Register of Companies, only for the purpose of winding up of the Company?
2. Whether the advice received from online portal, misleading the Company, be considered as an excuse for non- filing of the Financial Statements and Returns?
3. Whether the distress caused to Directors due to blocking of their DINs under the process of striking off, be raised as a ground for restoration of name of Company?

Tribunal’s Ruling

NCLT in Valuefab Solutions Pvt. Limited v. ROC, Karnataka (‘Case’) held that:

1. Where Company and Directors neither responded to the show cause notices or newspaper notices of strike off nor did they file Financial Statements and Annual Returns by the time the list of defaulting companies were crystallized, the ROC’s action of striking off of the name of Company was justified.
2. Where Company had commenced its product development after inception, however, could not generate any revenue and was not conducting any business thereafter, had no assets other than nominal cash balance in current liabilities and further where the Board of Directors of Company had also decided to wind up the Company since there was no potential for business, there was no justification for restoring the name of the Company. ***If restoration of the name of Company was to be allowed only for the purpose of winding up, it would defeat the very purpose of striking off the Company.***

3. The advice by any online portal such as ‘Vakil Search’ etc, misleading the Company that the filing of returns was not necessary, cannot be an excuse for such failure on part of Company.

Appellate Tribunal’s Ruling

Upholding the decision of NCLT in case, NCLAT held that:

1. The object of Sec. 252 of the Act is to safeguard Companies, which were carrying on business or were in operation so that they get an opportunity to be restored. Hence, restoration of the Company for the purpose of winding up isn’t justified.
2. Distress of Directors whose DIN are blocked under the process of Strike off of the name of Company even in a scenario where they are connected with other Companies as well, is not considered a ‘just’ cause under Section 252(3) of the Act.

Our Views

Striking-off of defunct companies is a provision in law for chopping dead wood – if company has lost its substratum, and there is nothing in company, then the long process of winding up is not relevant for company, and ROC can strike off the name of company as if company never existed.

Let’s Talk

For a deeper discussion on how this issue might affect your business, please contact:

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