

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.304
Appeal/2(AHM)2022

Order under Section 252(3)

IN THE MATTER OF:

Jitendra Harilal Mehta & Ors
(Index India Pvt Ltd)
V/s
Registrar of Companies, Gujarat & Anr

.....Applicant

.....Respondent

Order delivered on: 16/05/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

SD/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

SD/-

CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT-II**

Company Appeal/2(AHM)2022

[An Application filed under Section 252 of the Companies Act, 2013
for restoration of the name of struck off Company]

Jitendra Harilal Mehta & Ors
(Index India Pvt Ltd) ...Applicant

Versus

Registrar of Companies,Gujarat & Anr.Respondent

Memo of Parties

Jitendra Harilal Mehta
Minakshi Jitendra Mehta
Mohit Jitendra Mehta
Creditors of INDTEX INDIA PVT LTD
Address of Registered Office:
19, Vijaynagar Society,
Amroli, Surat- 394107Applicant

1. Office of Registrar of Companies
Gujarat
ROC Bhawan, Opp. Rupal Park Society,
Behind Ankur Bus Stop, Naranpura,
Ahmedabad-380013
2. Ravi Avinashbhai Suthar &
Nayna A Suthar, Directors of Strike off company
B-703, Vasupujya Residency,
Near Madhuvan Circle, L P Savani Road,
Adajan, SURAT-395009 ...Respondents

Order Pronounced on 16.05.2024

Coram: Mrs. Chitra Hankare, Member(J)

Dr. Velamur G Venkata Chalapathy, Member(T)

Appearance:

For Applicants : Mr. Dhiren Dave, Advocate

For Respondent : Mr. Kunjal Dalal, PCS for R-2

For the RoC : Ms. Rupa Suthar, Dy. RoC

J U D G M E N T

1. The Appeal is filed by the Creditors of Indtex India Pvt. Ltd. having CIN : U74900GJ2015PTC081807 registered office at 310, Royal Trade Centre Opp. Star Mall , Hajira Road, Surat- 395009 under Section 252 of the Companies Act, 2013 to restore the name of the company in the Register maintained by the Respondent / RoC.
2. The Appellants submits that the company and its Directors entered into an agreement on 18 March 2017 & 27.11.2017 to ensure the company make payment of outstanding amount payable to them (appellant). The company was struck off by the ROC on 25.10.2019 as the directors remained negligent in compliance of the law and allowed the company to be struck off due to which the creditors are still to be paid and they have filed this application under section 252(3) for restoration of the

company. The master data of strike off company is enclosed to this application.

3. The Company was incorporated on 08.01.2015 with an object of doing trading of various materials as per MoA. The Appellants further states that the Respondent No. 2 has cheated them, also Respondent No. 1 and other creditors by not filing timely returns as required under the applicable provisions of law and have not taken action to restore the company.
4. The name of the Company has been struck off by the ROC, Gujarat pursuant to Form No. STK-7 (sub-Section (5) of the Section 248 of the Companies Act, 2013 and Rule 9 of the Companies (Removal of Names of Companies from the ROC) Rules on 25th October, 2019.
5. The details of an agreement are as follows:
The first party:
 - (1) Jitendra Harilal Mehta,
 - (2) Minaxi Jitendra Mehta,
 - (3) Mohit Jitendra Mehta,The second party :-
 - (1) Ravi Avinash Suthar, Director on behalf of Indtext India Pvt. Ltd.
 - (2) Avinashbhai Chimanlal Suthar,
Aged: 50, Hindu by caste, Occupation: Business,

Residing at: 703, Vasupujya Residency, Madhuvan Circle, L. P. Savani Road, Adajan, Surat.

(3) Ravi Avinashbhai Suthar,

Aged: 24, Hindu by caste, Occupation: Business,

Residing at: As above.

Whereas executing the M.O.U are as follows :-

“Mohit Jitendra Mehta from the first party and Ravi Avinash Suthar from the second party, from us had started the business of purchase and sell of oil and allied things by creating Indtext India Pvt. Ltd., together. The first party has made investment in this business.

Mohit Jitendra Mehta is retiring as Director from dt. 01-10-2016 by mutual understanding and the second party approved to pay Rs.72,00,000/- in words rupees Seventy Two Lakh only from the amount to be paid to his group of the first party and decided to give cheques of Rs.3,00,000/- in words Three Lakh only every month, as per the investment of the first party, in the name say by them and both the parties admitted the same.

Our company Indtext India Pvt. Ltd. purchased Mercedes 'E' class DAIMLER Car. by loan. Jitendra H. Mehta paid margin money and three installment, total Rs.11,80,000/- in words Rupees Eleven Lakh Eighty Thousand only for the same and other remaining installments of Rs.88,000/- in words Rupees Eighty Eight Thousand per month shall be paid by above named co. The said loan has been taken in the name of Jitendra H. Mehta. But the vehicle has been used by the company. Hence, the company has to pay the said amount of installment regularly in the account of Jitendra H. Mehta. Avinashbhai and Ravibhai gave consent for the same and the vehicle shall be transferred in the name of Indtext India Pvt. Ltd. or in the name say by Ravibhai after paying the loan....”

6. The Appellants submits that they are creditors of the Company and they have to recover the amount from this Company and Directors need to be punished for taking benefit of their own inaction of not filing returns and with full knowledge they have taken action for restoration of Company, hence, this application.
7. The Respondent No. 1 filed its detailed affidavit-in-reply, wherein ROC R-2 has submitted that due to continuous non filing of the statutory returns since 2018 (which are required to be filed under the Companies Act, 1956 and/or the Companies Act, 2013) and company is not carrying any business activities for a period of two immediate preceding Financial year and has not made any application within such period for obtaining the status of a dormant company under Section 455, prior to struck off.
8. The ROC has raised certain objections on the application, its maintainability, the relevant section under which the have been filed as the decision of the ROC to strike off the company was due to acts of non-filing of statutory returns for a continuous period of more than 2 years, action was taken under the provisions of Sec 248(1) (C) of companies Act 2013, in pursuance of the circulars issued by Ministry

of Corporate Affairs, GoI from time to time. Further it has also stated that as per Sec 164(2) of the Act read with Sec 167(1)(a), the office of the director who incurs disqualification, as per the operation of law under Section 164, shall stand vacated immediately and be ineligible to be re-appointed in that company for a period of 5 years from the date on which 3rd consecutive default is committed by the company. Hence it has stated that the application is not maintainable and has wrongly been filed under Sec 252(3) of the Companies Act, 2013 and could have been under Sec 252(1). They have no objection of revival of company subject to make all the pending statutory compliances under various provisions of the companies Act, impose an exemplary costs and to furnish detail inventory of all movable and immovable assets of the Company and its Directors/related party and the latest KYC verification report and succession certificate (if applicable) to the Tribunal.

9. The Respondent No. 2 has filed affidavit in reply stating that the Petition is erroneously filed under wrong section. The Applicant has filed an appeal U/s. 252(3) which is not envisaged in the Act. The reply of ROC at page no. 8 also

states that “ *the instant petition has been filed erroneously under wrong section i.e. 252(1) instead of Section 252(3) of Companies Act, 2013.....*” The name of the Company (para no. 9(a) and CIN Number of the Company (page no. 29) is also not as per the Master Data. It is also submitted that debt is time barred and they cannot be considered as creditor. It is also submitted that on the basis of MoU dated 27.11.2017, appellant do not become creditors of the Company. The Appellant fails to justify proper grounds for restoration. The Company is not carrying or any business since striking off and has no employees or any loans for banks or financial institution and restoration will not be in larger interest of stakeholder, hence this appeal deserves to be dismissed.

10. The Appellants have filed their affidavit-in-rejoinder to reply of Respondents.
11. Respondent No. 2 Nayana Suthar is not a party to the MoU, hence application is not maintainable as per law.
12. The Applicants have complied order dated 19.03.2024 filed clarification affidavit along with Financial Statements of 2016-17 and MoA. The applicants have enclosed various undated and unnamed (payee's name not mentioned)

stated to have been issued in terms of MOU. However, this Tribunal feels from the submissions that the MOU does not make the applicants as creditors based on such legally not tenable cheques to have been issued even if from the corporate debtor's Account. The respondent No.2 has stated that the MoU even if it exists is barred by limitation and the Director is stated to have taken the car and not returned back. Whatever be the merits of the case, from the financial statements submitted of 31.03.2016 and 31.03.2017, the applicants are mentioned both as loans and advances taken from related parties which does not mention that there was a loan for car and the MOU states that the said loan was taken in name of Jitendra Mehta and car was used in company's name.

13. We have considered the submissions made by the Learned Counsel for the Appellants and also material produced before us including ROC Report. It is observed that an agreement which is relied upon is undated. The name of Nayana Suthar as Respondent No. 2 is not mentioned in MoU. It is also observed that the names of witnesses and signatures are not reflected on MoU. Thus, considering the facts, as stated hereinbefore, we are of the view that this

application is not maintainable. It is a personal loan between related parties and raised in an inappropriate manner of justifying the transaction, if , any under section of Companies Act. Amount of so called EMI for use of Car cannot be termed as debt. In view of Section 252 of the Companies Act, Tribunal can direct revival of name of Company only if the name of Company struck down by the ROC for the grounds mentioned therein. We are not satisfied with the reasons given by the Appellants. There is no error in the order of ROC, it cannot be revived for the grounds mentioned and hence, we pass following order:

ORDER

Co. Appeal 02 of 2022 stands dismissed and disposed of.

SD/-

SD/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

CHITRA HANKARE
MEMBER (JUDICIAL)

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