

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**CP(Appeal) NO. 917/KB/2018**

In the matter of:

Section 252 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013;

And

In the matter of:

ISHIKA FILMS PRIVATE LIMITED(Company name struck off by Registrar of Companies, West Bengal)

And

ANJANI KUMAR DHANUKA, residing at Club Town Estate, BL-5, 5<sup>th</sup> Floor, Fkat - 5A, 87, DumDum Road, North 24 Parganas, Kolkata-700 074, West Bengal within the jurisdiction of this Tribunal

.. Petitioner

- Versus -

The Registrar of Companies, West Bengal, having its office at Nizam Palace, IInd MSO Building, 2<sup>nd</sup> Floor, 234/4, AJC Bose Road, Kolkata - 700 020, within the jurisdiction of this Tribunal

.... Opposite Party

Coram: Mr. Jinan K.R., Member(Judicial)

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For the Appellant:

1. Mr. Arjun Pitti, FCA

Ms. Ishani Pandya, Assistant Registrar of Companies, West Bengal, Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs

Date of Pronouncement of Order:

12.09.2018

#### ORDER

Per Shri Jinan K.R., Member (Judicial)

1. This is an Appeal filed by one of the Directors of the Appellant Company, namely, Ishika Films Pvt. Ltd. for restoration of the name of the Appellant Company in the Register of Companies, West Bengal under section 252(3) of the Companies Act, 2013.

2. The brief facts for the consideration of the Appeal are the following:

The Appellant Company was incorporated on 17-11-2008 as a Private Limited Company having authorised capital of Rs. 10,00,000/- divided into 1,00,000 equity shares of Rs.10/- and issued, subscribed, paid up capital of the Company is s. 1,00,000 divided into 10,000 equity shares of Rs.10/- each.

3. The Appellant Company is a going concern. There is no failure in compliance of the formalities by the Appellant Company and there has been no fault and/or violation of the provisions of the Companies Act, except non-filing of the Annual Return and Balance sheet for the year ended 31-03-2014 onwards. The Appellant Company was doing business and regularly carrying business activities since incorporation but inadvertently the Annual Return and the

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Balance sheets could not be filed for the Financial year ending 31-03-2014. However, when the Directors of the Company came to know that the Annual return of the Company was not up to date and attempted to file the same in the Office of the Registrar of Companies, West Bengal, it is seen that the Company's name has been struck off from the Register of Companies, West Bengal and thereby filed this Appeal for restoration of the name of the Company in the Register of Companies, West Bengal. The Appellant showed its readiness to file all the Annual Returns and the financial statements provided the name of the Company is restored. If it is not restored, it would cause hardship for the Appellant Company. Upon said contentions, the Appellant prays for restoration of the name of the Company in the Register of Companies, West Bengal.

4. The Registrar of Companies, West Bengal filed report contending in brief the following:

M/s. Ishika Films Pvt. Ltd. was incorporated on 17-11-2008 and the aforesaid company was struck off on 09-06-2017 after complying with the provision of Section 248 of the Companies Act, 2013. The Registrar of Companies has issued notices to the Companies as well as the Directors under Section 248(1)(in e-form STK-5) of the Companies Act, 2013 read with Rule 7 of the Companies(Removal of names of Companies from the Registrar of Companies) Rules, 2016 for removal of name of the Company from the Register of the Companies as there was reasonable cause to believe that the Company was not functioning or in operation for the period of last two(2) immediate preceding financial years and has not made any application within such period for obtaining the status of dormant Company under Section 455 of the Companies Act, 2013.

5. Further, it is submitted that due to non-filing of statutory returns by the Company, the respondent drew an opinion that the Company was not carrying on business or in operation. Further, it is submitted that as per provision of Section 248(5) of the Companies Act, 2013 after the expiry of the prescribed time period and as no response has been received from the Company and the

public, a notice(in STK No.7) dated 30-06-2017 was issued by the Registrar of Companies, West Bengal reflecting the name of the Company as strike off with effect from 09-06-2017. The Petitioner Company's name appears at Sl. No. 3140 of the Registrar of Companies notice (STK-7) dated 30-06-2017 and the same was published in the Official Gazette on 15-07-2017. Upon the said contentions the respondent prays for passing appropriate order deemed fit considering the merit of the case.

6. Heard the Ld. FCA appearing for the Appellant and the Assistant Registrar of Companies, West Bengal.

7. The Appellant Company which has been incorporated in the year 2008 admittedly defaulted in filing the balance sheet and the Annual return from the financial year ending 31-03-2014 onwards. The order of striking off the name of the Company from the register of Registrar of Companies, West Bengal is not under challenge. The Ld. FCA submits that it is because of inadvertent mistake on the side of the Appellant Company, the Company failed in submitting the Annual Return and the Balance sheet in compliance of the statutory requirement. Non-filing of Annual return and the balance sheet being admitted and the order of striking off of the name of the Appellant Company by the ROC, WB being not under challenge, I can come to a conclusion that there is no irregularity or illegality in the order passed by the ROC, WB.

8. This Appeal seen filed by one of the Directors of the Appellant Company. In the affidavit, there is no averment that he is the shareholder so as to qualify to file an appeal of this nature. Truly, on looking into the Articles of Association it is understood that there are three Shareholders and Anjani Kumar Dhanuka, the Director who filed the Appeal, is one among the shareholders. However, being filed the Appeal as a Director, an Appeal of this nature is not maintainable under Section 252(3) of the Companies Act, 2013. That being so, this Appeal is liable to be dismissed as it is not maintainable.

9. On merit also, this Appeal deserves no consideration. No copies of Annual Return or financial statement for the period from 2014 to 2017 produced. There is no proof of convening meeting of the shareholders. No copies of minutes of convening annual general meeting also forthcoming. What is produced is the Directors Report, that too, for the financial year ending 31-03-2013 and no Directors Report, balance sheet, annual return for the financial year ending 31-03-2014 and thereafter is produced. The financial year ending 31-03-2013 does not prove that any revenue has been generated from the alleged business. What is the alleged business carrying on is also not forthcoming from the pleadings. The financial statement for the year 2013 does not enable me to come to a conclusion that the Company was a going concern on the date of filing of the Appeal. No valid explanation is forthcoming for non-production of the balance sheet for the financial year ending 31-03-2014 onwards. So also no valid explanation is forthcoming for non-production of the Annual Returns. The affidavit annexed with the Appeal seems to be unsigned but notarized by the Notary, one Shri Chowdhury. I am afraid, the way in which an affidavit seems to have executed before a Notary. The affidavit annexed to the appeal signed by the Director is also not in proper format. There is no solemn affirmation by the deponent. No copies of the Income Tax return also produced. According to Ld. FCA there is no Bank account in the name of the company and no income tax return has filed.

10. Though a report of the Director produced it also not helpful to the Appellant. It is significant to note from the said report that the director seen acknowledged its customers, Bankers and employees of the Company for their cooperation. There is no Bank account. As per the financial statement for the year ending 31-03-2014 there is no employees. On the other hand the Appellant Company is holding cash in hand to the tune of Rs. 1,52,188.35. Even after demonetization whether the appellant continuing the cash in hand is not certain.

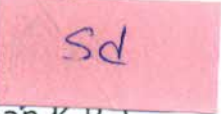
11. The above said factors leads to a conclusion that the Appellant Company miserably failed in proving that the Company is a going concern or that it was

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doing any business as alleged. So also no justifiable reason forthcoming to allow this appeal by restoring the name of the Company of this nature. Therefore, the appeal is liable to be dismissed.

12. In the result, the Appeal is dismissed. However, no order as to costs.

13. Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

  
(Jinan K.R.)  
Member(Judicial)

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