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

% **Judgment reserved on : 20 August 2024**
Judgment pronounced on: 07 October 2024

\+ C.R.P. 151/2023, CM APPL. 30530/2023 & CM APPL. 30531/2023

M/S A.B. CREATIONS & ANR. .....Petitioners
Through: Mr. Aditya N Prasad & Mr. Pratyush Jain, Advs.

versus

M/S BHAN TEXTILES PVT. LTD. .....Respondent
Through: Mr. Amit Trikha, Adv.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioners, who are defendants in the suit instituted by the respondent/plaintiff have preferred this revision under Section 115 of the Code of Civil Procedure, 1908 **['CPC']** assailing the impugned order dated 14.12.2022 passed by the learned Additional District Judge, 02/South East, Saket Courts, New Delhi[1] in the suit bearing no. CS DJ No.11971/2016, whereby its application under Order VII Rule 11 of CPC has been dismissed.

2. Shorn of unnecessary details, the respondent/plaintiff has instituted a suit against the petitioners/defendants seeking recovery of ₹6,73,740/- under Order XXXVII of the CPC, which has been converted into an ordinary civil suit *vide* order dated 21.12.2016 and it is brought out that when the matter was pending for recording of the

[1] Learned Trial Court

evidence of the petitioners/defendants, an application under Order VII Rule 11 of CPC was moved primarily on the ground that the name of the respondent/plaintiff company had been struck off from the Register of Companies in terms of Section 248(5) of the Companies Act, 2013 (for short '**the Act'**) *vide* notification dated 08.08.2018 by the Registrar of Companies, GNCTD[2].

3. The plea of the petitioners/defendants in moving the application was that since the respondent/plaintiff-company was a juristic person which has ceased to have such legal and distinct status, it could not pursue the pending civil proceedings against the petitioners/defendants. At this stage, it would be relevant to reproduce the short and crisp order which was passed by the learned trial court which reads as under:-

> "CS DJ 11971/16
> M/S BHAN TEXTILES PVT LTD
> Vs.
> M /S AB CREATIONS
>
> **14.12. 2022**
> **Present:** Sh. Amit Trikha Adv., Ld. Counsel for plaintiff.
> Sh. Harsh Vardhan Adv ., Ld . Proxy Counsel for defendant.
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> Arguments heard on the application under Order 7 Rule 11 CPC moved by the defendant for rejection of the plaint on the ground that the name of the plaintiff company was struck off from the register of companies vide Notification dated 08.08.2018 by the Registrar of Companies, NCT of Delhi.
>
> Ld. Counsel for defendant submits that after 08.08.2018, there is no entity in existence by the name of the plaintiff company in the records of the Registrar of Companies and therefore, prays for the dismissal of the suit being not maintainable after 08.08.2018.

[2] Government of National Capital Territory of Delhi

On the other hand, Ld. Counsel for plaintiff admits that the name of the plaintiff company struck off from the register of Companies in terms of Section 248(5) CPC of The Companies Act 2013. However,, he submits that continuance of the present suit is saved by the provisions of Section 250 r /w section 248 (6) & (7) CPC of The Companies Act 2013.
Proviso 2 section 248(6) of The Companies Act categorically states that notwithstanding striking of the name of a company , the assets of the company shall be made available for the payment or discharge of its liabilities even after the date of the order removing the name of the company from the register of companies. Further, Section 250 The Companies Act categorically creates the exception for the purposes of realizing the amount due to the company.

CS Dj 11971/16
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M/S AB CREATIONS

In view of the same, since present suit was filed way back in 2016, the continuance of the suit is not affected by striking of the name of the company from the register of company in view of the provisions of section 250 r/w Proviso to the section 248 (6) of The Companies Act 2013. Therefore, application under Order 7 Rule 11 CPC is accordingly dismissed with cost of Rs.10,000/- to be paid by the defendant to the plaintiff.
Last & final opportunity is given to the defendant to lead D.E.
Put up for D.E. on 20.04.2023.

(**Munish Markan)**
ADJ-02/(SE), District Courts,
Saket,New Delhi/14.12.2022"

4. Assailing the aforesaid order, it is urged by the learned counsel for the petitioners/defendants that consequent to the name of the respondent/plaintiff having been struck off from the Register of Companies, the civil proceedings cannot be saved under Section 248 read with Section 250 of the Act. It is urged by the learned counsel for the petitioners/defendants that the word 'due', as reflected in Section 250 of the Act, is distinct from the word 'claimed' and the word 'due'

means that the amount should be such which is crystallized or has become legally recoverable, for which reference is made to **Tower Vision India Pvt. Ltd. v. Procall Private Limited**[3] wherein this Court, while deciphering the meaning of the expression 'admitted debt' in the context of Section 433(e) of the erstwhile Companies Act, 1956, held as under:-

> "1. All these three company petitions are referred by the learned Company Judge to the Division Bench for decision. Initially Company Petition No.458/2010 had come up before the Company Judge and was heard on 31.10.2011 when following order was passed:
> "After hearing the parties at length, this Court is of the view that following question need to be answered by a Division Bench of this Court as the said issue arises in a number of matters and an authoritative pronouncement of the same is required:-
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> i) Whether in a contract for rendering of service/use of site, a stipulation to pay an amount for the "lock-in" period, is an admitted debt within the meaning of Section 433(e) of the Companies Act, 1956 or whether the same is in the nature of damages?
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> **What is 'debt' : The legal position**
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> 30. At this juncture, we would like to refer to the judgment of Bombay High Court in the case of E-City Media Private Limited a Private Limited Company v. Sadhrta Retail Limited a Public Limited Company, [2010] 153 Comp.Cas 326 (Bom.) (rendered by Single Judge). In this case also, winding up petition was filed on account of alleged dues stipulated in the contract in case of breach. Facts of the case disclose that the petitioner had appointed the respondent as an exclusive agent for designated branding sites situated within the premises of a shopping mall. The petitioner had permitted the respondent to display advertisements at the Mall, in a theatre and upon ticket jackets. The contract was to commence on 22.5.2008 and was to conclude on 31.7.2009. This term was extended by a formal amendment till September, 2009. The agreement also provided that in the event respondent fail to make payment for a period of one month, during the term of the agreement, the petitioner would be at liberty to terminate the agreement with notice of seven days. In that event, respondent was obliged to make good losses and damages

[3] 2012 SCC OnLine Del 4396

which may be suffered by the petitioner. The respondent was liable to pay entire royalty/minimum guaranteed amount mentioned in the agreement with interest @ 18% per annum on alleged breach committed by the respondent. The petitioner terminated the contract and demanded the entire amount of royalty/minimum guaranteed amount**. On the respondents failure to pay, winding up petition was filed. The Court dismissed the said petition holding that it was not maintainable upon a claim for damages which could not be treated as debt. It was held that damages become payable only when they are crystallized upon adjudication. Until and unless an adjudication takes place with a resultant decree for damages, there is no debt due and payable. Damages require adjudication. Until then, the liability of a party in alleged breach of a contract does not become crystallized.** In support of this view, the Court referred to a Division Bench judgment of Karnataka High Court in Greenhills Exports (P) Ltd. v. Coffee Board, Bangalore, [2001] 106 Comp.Cas 391 (Kar) in the following words:

" ...Mr. Justice R.V. Raveendran (as the Learned Judge then was) speaking for the Division Bench formulated the propositions of law which emerge from judgments of the Supreme Court and the High Court. The Court held as follows:

(i) A "Debt" is a sum of money which is now payable or will become payable in future by reason of a present obligation. The existing obligation to pay a sum of money is the *sine qua non* of a debt.
"Damages" is money claimed by, or ordered to be paid to; a person as compensation for loss or injury. It merely remains a claim till adjudication by a court and becomes a "debt" when a court awards it.

(ii) In regard to a claim for damages (whether liquidated or unliquidated), there is no "existing obligation" to pay any amount. No pecuniary liability in regard to a claim for damages, arises till a court adjudicates upon the claim for damages and holds that the defendant has committed breach and has incurred a liability to compensate the plaintiff for the loss and then assesses the quantum of such liability. An alleged default or breach gives rise only to a right to sue for damages and not to claim any "debt". **A claim for damages becomes a "debt due", not when the loss is quantified by the party complaining of breach, but when a competent court holds on enquiry, that the person against whom the claim for damages is made, has committed breach and incurred a pecuniary liability towards the party complaining of breach and**

assesses the quantum of loss and awards damages. Damages are payable on account of a fiat of the court and not on account of quantification by the person alleging breach.
……"

5. The learned counsel for the petitioners/defendants has also invited reference to the decision in the case of **Indian Explosives Ltd. v. Registrar of Companies**[4]**,** wherein it was held that even a creditor, who has an arbitral award in its favour, must move the appropriate forum to restore the name of the company in the Register of Companies to enable him to execute the award and it was observed as under:-

> "4. H.N. Explosives Pvt. Ltd. was incorporated under the Companies Act, 1956 on 17th April, 1989 as a private limited company with the Registrar of Companies, NCT of Delhi and Haryana.
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> 5. The petitioner herein is Indian Explosives Ltd, and is stated to be a creditor of the erstwhile company H.N. Explosives Pvt. Ltd.
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> 6. The Registrar of Companies, i.e the respondent herein, struck the name of H.N. Explosives Pvt. Ltd. off the Register on the ground of non-filing of returns. The requisite notification was duly published in the Official Gazette on 23rd June, 2007 at S. No. 6403.
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> 7. It is the petitioner's case that it had acquired the business in explosives of ICI India Ltd. in 1999. Earlier, on 29 May, 1991, ICI India Ltd. had entered into an agreement with H.N. Explosives Pvt. Ltd., whereby the erstwhile company was appointed the distribution/consignment agent of ICI India Ltd. By this agreement, H.N. Explosives Pvt. Ltd was given charge of keeping the goods of ICI India Ltd. in its godown and, for that, it was entitled to a certain commission. On 17th May, 1999, the petitioner company, i.e. Indian Explosives Ltd., was incorporated and, on 29th May, 1999, became a joint venture with ICI India Ltd. and Orica Investment Pvt. Ltd. Since the business in explosives of ICI India Ltd. was acquired by the petitioner company under the aforesaid joint venture, it became entitled to claim and receive all sums due and payable by H.N. Explosives Pvt. Ltd. to ICI India Ltd. Consequently, disputes between the petitioner and H.N. Explosives Pvt. Ltd. were referred

[4] 2010 SCC OnLine Del 1613

to arbitration sometime in 2002, and ultimately, a sum of Rs. 81,76,360/- was awarded on 14th March, 2007 against the erstwhile H.N. Explosives Pvt Ltd. and in favour of the petitioner.

8. It is the petitioner's case that since H.N. Explosives Pvt. Ltd. was struck off from the Register of Companies by the respondent on 23.06.2007, therefore, it has become impossible for the petitioner to execute the said award against that company. This stand is also affirmed by the respondent in reply.

9. A petition for restoration of the name of a company to the Register of Companies under Section 560(6) of the Companies Act,1956 can only be made by the company, a member or a creditor. Acreditor is entitled to maintain a petition for restoration only if he was a creditor at the time the name of the company was struck off from the Register of Companies. Here, the arbitration award in favour of the petitioner was rendered on 14 March, 2007, i.e. before the date of the Gazette Notification notifying that the name of H.N. Explosives Pvt. Ltd. has been struck off the Register of Companies. It is clear that the amount claimed by the petitioner was against an incorporated company, which was a legal entity recognized under the Companies Act, 1956, and the arbitration award in question was also rendered against such a company. When H.N. Explosives Pvt. Ltd. was struck off from the Register of Companies by the respondent, it ceased to exist. Although, the liability of persons falling within the ambit of the first proviso to Section 560(5), who were directors, managers, officers exercising any power of management and members of the erstwhile company can nevertheless be enforced; however, in this case, the liability in terms of the award is that of the company itself and not of any individual mentioned in Section 560(5). Consequently, under the circumstances, the petitioner, in whose favour the award has been rendered, is left without a remedy to effect recovery against the erstwhile company H.N. Explosives Pvt. Ltd.

10. In Umedbhai Jhaverbhai v. Moreshwar Keshav, AIR 1954 MB 146, the Madhya Pradesh High Court, construing the corresponding provision S. 247(6) the Companies Act, 1913, restored the name of a company that had been struck off from the Register, as a suit for recovery which had been instituted before the company's name had been struck off, was still pending. It held, inter alia, in paragraph 8 thereof that;

> "…when a suit is actually pending against a company and is being contested by it at the time of the removal of its name from the register, it is proper to direct restoration of the name of the Company particularly when the Directors were aware of the fact of the contested litigation and were actually taking part in it."

> To my mind, the above ratio would be equally applicable to the instant case of a company which was in existence when the arbitral award was rendered.
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> 13. The name of the company H.N. Explosives Pvt. Ltd., its directors and members stands restored to the Register maintained by the Registrar of Companies, as if the name of the said company had not been struck off, in accordance with S. 560(6) of the Companies Act, 1956."

6. *Per contra*, the learned counsel for the respondent/plaintiff has taken a preliminary objection to the maintainability of the instant petition on the ground that the same is hopelessly barred by limitation as it has been filed after a delay of more than 167 days which has not been explained. Alternatively, on merits, it is submitted that the application under Order VII Rule 11 of CPC has been moved purposely and intentionally to derail the trial and frustrate the outcome of the matter. It is pointed out that the civil suit was filed in the year 2016 much prior to the issuance of the notification by the Registrar of Companies striking off the name of the company *vide* order dated 08.08.2018.

7. It is urged that the proviso to Section 248(6) and sub-section (7) to the aforesaid Section besides Section 250 of the Act protect the right of the respondent/plaintiff to continue the civil proceedings despite the name of company having been struck off, which is also a curable defect as the respondent/plaintiff, through its director(s), can apply for restoration within a period of twenty years. Reliance is placed on the decision of the Supreme Court in the cases of **Commissioner of Income Tax, Jaipur v. M/s Gopal Shri Scrips**

Pvt. Ltd.[5] and **Ravinder Kumar Aggarwal v. Income Tax Officer, Ward 20(3) New Delhi**[6]**.**

ANALYSIS & DECISION

8. Having heard the submissions made by the learned counsel for the parties at the bar and on perusal of the record, it is pertinent to mention here that as per Section 248(1) to (5) of the Act, a mechanism has been provided whereby the Registrar of Companies on finding the grounds which are enumerated under Section 248(1), can issue notice to the company and its directors and after adopting the appropriate procedure, it may proceed to strike off the name of the company from the register under sub-section (5) thereof. At this juncture, it would be relevant to re-produce the subsections (6), (7) & (8) of Section 248 of the Act, which read as under:-

> (6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:
> Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.
> (7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.

[5] Civil Appeal No.2922/2019 dated 12.03.2019
[6] W.P.(C) No.7122/2019 dated 17.11.2022

> (8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.

9. Section 250 of the Act further provides as under:-

> 250. Effect of company notified as dissolved.— Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date ***except for the purpose of realising the amount due to the company*** and for the payment or discharge of the liabilities or obligations of the company.

10. A careful perusal of the aforesaid provisions would show although the company shall stand dissolved and the certificate of incorporation shall stand cancelled from the date its name stands struck off, two distinct exceptions have been carved out; *firstly*, that the company shall remain alive for realisation of its due from the debtors and *secondly*, it shall remain alive for payment or discharge of its liabilities. Section 250 of the Act in its plain and simple grammatical manner provides an exception that even after such event happening i.e., the company having dissolved or ceasing to operate, it shall remain alive for ***the purpose for realising the amount due to the company*** and also for the payment or discharge of the liabilities or obligations of the company. The words/expression "the amount due" in Section 250 of the Act would only mean a quantified amount of money which is legally recoverable by the company from its debtors. The plea by the learned counsel for the petitioners/defendants that the 'due' should be restricted to 'admitted debt' or a 'crystalised amount due' cannot be sustained, as the term 'due' is unconditional and lacks

preconditions. This implies that it doesn't solely apply to acknowledged, settled, or legally established claims.

11. The aforesaid provision came up for interpretation before the cited decision of this Court in the case of ***Ravinder Kumar Aggarwal v. Income Tax Officer, Ward 20(3) New Delhi (supra)*** wherein while interpreting section 250 of the Act, it was held as under:-

> "13. Section 250 of Companies Act of 2013 is a new provision and it declares that even where a Company is dissolved in consequence to it being struck off under Section 248, it shall be deemed to continue to be in existence for the purpose of discharging its liabilities. The said section recognizes the continuing liability of a struck off company, which is in addition to Section 248(7) of the Companies Act, 2013, which reads as under:
>
> > "***248. Power of Registrar to remove name of company from register of companies***. *– (1) XXX XXX XXX*
> > *(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every members of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved."*
>
> 14. With respect to the liability of a struck off company, it would also be instructive to refer to repealed Section 560 of the Companies Act, 1956, which corresponds to Section 248 of the Companies Act, 2013. The Sub-Section (5) of Section 560 reads as under: -
>
> > *"(5) At the expiry of the time mentioned in the notice referred to in sub-section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette; and on the publication in the Official Gazette of this notice, the company shall stand dissolved: Provided that-*
> >
> > *(a) the liability, if any, of every director, 1 [***] manager or other officer who was exercising any power of management, and of every member of the company, shall*

continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this sub-section shall affect the power of the Court to wind up a company the name of which has been struck off the register."

15. Clause (a) of the Proviso to Sub-Section (5) of Section 560 came up for consideration before the Supreme Court in Gopal Shri Scrips (Supra), where in similar circumstances a company had been struck off and, on that basis, the High Court had dismissed the appeal filed by the Income Tax Department on the ground that the appeal is not maintainable since the Company stands dissolved. The Supreme Court reversed the order of the High Court and observed as under: -

" 10. In our view, the High Court was wrong in dismissing the appeal as having rendered infructuous. The High Court failed to notice Section 506(5) proviso (a) of the Companies Act and further failed to notice Chapter XV of the Income Tax Act which deals with "liability in special cases" and its Clause (L) which deals with "discontinuance of business or dissolution". The aforementioned two provisions, namely, one under the Companies Act and the other under the Income Tax Act specifically deal with the cases of the companies, whose name has been struck off under Section 506(5) of the Companies Act. These provisions provide as to how and in what manner the liability against such company arising under the Companies Act and under the Income Tax Act is required to be dealt with. Since the High Court did not decide the appeal keeping in view the aforementioned two relevant provisions, the impugned order is not legally sustainable and has to be set aside."*

16. **It is pertinent to observe that in the judgment of Gopal Shri Scrips (Supra), there was no order restoring the Company and it remained to be non-existent, being struck off. Despite the said fact, the Supreme Court, after referring to proviso (a) to Sub-section (5) of Section 560 of the Companies Act, 1956 and Chapter XV of the Act of 1961, held that the High Court was wrong in dismissing the appeal filed against such a struck off Company and remanded the matter to decide the appeal on merits." {bold portions emphasized}**

12. What, therefore, follows on a careful reading of the words in Section 250 of the Act by invoking the *golden rule of construction*

that the words in the statute should be interpreted in their ordinary, normal and grammatical meaning, is that even if the name of a company is struck off from the register, it remains operational in so far as it can pursue legal remedies for realisation of the 'dues' of the said company against its debtors, which have either crystalised or remain uncrystallised, arising from any liability or obligation of its debtors to the company, but even the creditors can pursue legal remedies against the said company for the payment and discharge of its liabilities or obligations arising from any contract or statutory implications.

13. In view of the foregoing discussion, this Court finds that the mere striking-off of the name of the respondent-company from the register by the Registrar of Companies does not automatically invalidate or renders flawed the civil suit filed by the respondent/plaintiff. In the instant matter, apparently the cause of action existed on the day the suit was instituted. Accordingly, the respondent/plaintiff company can pursue its remedies in law even after its name being struck off from the register by the Registrar of Companies.

14. Consequently, the present civil revision petition is dismissed. All pending applications also stand disposed of accordingly. Nothing contained in this order shall tantamount to an expression of opinion on the merits of the matter pending before the learned Trial Court.

DHARMESH SHARMA, J.

OCTOBER 07, 2024/*Ch*