**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 6109 OF 2024**

**M/S. AKL ENTERPRISE PVT. LTD. ..... APPELLANT(S)**

**VERSUS**

**REGISTRAR OF COMPANIES, ODISHA ..... RESPONDENT(S)**

**WITH**

**CIVIL APPEAL NO. 6575 OF 2024**

# O R D E R

**SANJAY KUMAR, J.**

**1) CIVIL APPEAL NO. 6109 OF 2024**

**The appellant, M/s. AKL Enterprise Pvt. Ltd., was incorporated on 11.09.2006 under the provisions of the Companies Act, 1956, with an authorized share capital of ₹10,00,000/- (Rupees Ten Lakh only), divided into one lakh equity shares of ₹10/- (Rupees Ten) each. The issued, subscribed and paid-up Share Capital of the company was ₹9,30,000/- (Rupees Nine Lakh Thirty Thousand only), divided into ninety-three thousand equity shares of ₹10/- (Rupees Ten) each. While so, the name of the appellant-company was removed from the Register of Companies by the Registrar of Companies, Odisha, on 02.11.2019 on the ground that it had failed to file annual returns for the Financial Years 2016-2017 and 2017-2018.**

Signature Not Verified
Digitally signed by Deepak Gugnani
Date: 2024.09.12 18:18:30 IST
Reason:

**The appellant-company filed Company Petition No. 70/2020**

**before the National Company Law Tribunal[1], Cuttack, Odisha, seeking restoration of its name on the rolls of the Registrar of Companies, Odisha. By order dated 21.08.2020, the NCLT dismissed the said company petition holding that the appellant-company was not in operation and was not carrying on business.**

**Aggrieved thereby, the appellant-company filed Writ Petition (Civil) No. 26971/2022 before the High Court of Orissa at Cuttack. However, by order dated 14.10.2022, the High Court disposed of the writ petition as being covered by the order dated 23.12.2021[2], thereby granting liberty to the appellant-company to approach the NCLT seeking 'amendment' of the order passed by it and adduce evidence of the company being in operation.**

**Thereupon, the appellant-company filed I.A.(Companies Act) No. 19/CB/2023 before the NCLT praying for its revival on the rolls of the Registrar of Companies, Odisha. The NCLT, however, dismissed the application on 08.08.2023, holding that the prayer of the appellant-company was beyond the scope of 'amendment', as permitted by the High Court. This order was subjected to challenge by the appellant-company before the National Company Law Appellate Tribunal[3], Principal Bench, New Delhi, in Company Appeal (AT) No. 228/2023. This appeal also met with the same fate, when the NCLAT dismissed it by judgment dated 08.02.2024. Hence, this appeal under Section 423 of the Companies Act, 2013.**

[1] "NCLT", for short.

[2] The High Court *vide* order dated 23.12.2021 in Writ Petition (Civil) No. 35437/2020 filed by Leka Consulting Services Private Limited, the appellant-company in connected Civil Appeal No. 6575/2024, had granted liberty approach the NCLT seeking 'amendment' of the order passed by it and adduce evidence of the company being in operation.

[3] "NCLAT", for short.

**Notice having been issued, the Registrar of Companies, Odisha, filed a counter affidavit setting out the facts leading to the striking off of the appellant-company's name from the Register of Companies. However, no real opposition was offered to the prayer of the appellant-company for restoration of its name in the Register of Companies.**

**The aforesaid facts demonstrate that there were lapses on the part of the appellant-company in filing annual returns as per due procedure. However, there is no evidence available to support the conclusion drawn by the NCLT that the appellant-company is not in operation and is not doing business. No such averment has been made by the Registrar of Companies in the counter affidavit. There is also no allegation to the effect that the appellant-company is a shell company or is engaging in illegal or wrongful activities.**

**In the above circumstances, we direct that the name of the appellant-company, *viz*., M/s. AKL Enterprise Pvt. Ltd., shall be restored by the Registrar of Companies, Odisha, in the Register of Companies. This shall be subject to the appellant-company and its Directors complying with all the formalities required under law for this purpose, including payment of compounding fees in relation to the admitted violations committed by it. In addition thereto, the appellant-company shall also pay costs of ₹2,50,000/- (Rupees Two Lakh Fifty Thousand only) to the Registrar of Companies, Odisha, within a period of six weeks from today.**

**The appeal is allowed and disposed of in the above terms.**

**Pending application(s), if any, shall also stand disposed of.**

**2) CIVIL APPEAL NO. 6575 OF 2024**

**The appellant, Leka Consulting Services Private Limited, was incorporated on 12.09.2006 under the provisions of the Companies Act, 1956, with an authorized share capital of ₹15,00,000/- (Rupees Fifteen Lakh only), divided into one lakh fifty thousand equity shares of ₹10/- (Rupees Ten) each. The issued, subscribed and paid-up share capital of the company was ₹12,00,000/- (Rupees Twelve Lakh only), divided into one lakh twenty thousand equity shares of ₹10/- (Rupees Ten) each. While so, the name of the appellant-company was removed from the Register of Companies by the Registrar of Companies, Odisha, on 02.11.2019 on the ground that it had failed to file annual returns for the Financial Years 2016-2017 and 2017-2018.**

**The appellant-company filed Company Petition No. 69/CTB/2020 before the NCLT, Cuttack, Odisha, seeking restoration of its name on the rolls of the Registrar of Companies, Odisha. By order dated 21.08.2020, the NCLT dismissed the said company petition holding that the appellant-company was not in operation and was not carrying on business.**

**Aggrieved thereby, the appellant-company filed Writ Petition (Civil) No. 35437/2020 before the High Court of Orissa at Cuttack. However, by order dated 23.12.2021, the High Court disposed of the writ petition directing the appellant-company to approach the NCLT seeking 'amendment' of the order passed by it.**

**Thereupon, the appellant-company filed I.A.(Companies Act) No.**

**15/CB/2023 before the NCLT praying for its revival on the rolls of the Registrar of Companies, Odisha. The NCLT, however, dismissed the application on 08.08.2023, holding that the prayer of the appellant-company was beyond the scope of 'amendment', as permitted by the High Court. This order was subjected to challenge by the appellant-company before the NCLAT, Principal Bench, New Delhi, in Company Appeal (AT) No. 227/2023. This appeal also met with the same fate, when the NCLAT dismissed it by judgment dated 08.02.2024. Hence, the present appeal under Section 423 of the Companies Act, 2013.**

**Notice having been issued, the Registrar of Companies, Odisha, filed a counter affidavit setting out the facts leading to the striking off of the appellant-company's name from the Register of Companies. However, no real opposition was offered to the prayer of the appellant-company for restoration of its name in the Register of Companies.**

**The aforesaid facts demonstrate that there were lapses on the part of the appellant-company in filing annual returns as per due procedure. However, there is no evidence to support the conclusion drawn by the NCLT that the appellant-company is not in operation and is not doing business. No such averment has been made by the Registrar of Companies in the counter affidavit. There is also no allegation to the effect that the appellant-company is a shell company or is engaging in illegal or wrongful activities.**

**In the above circumstances, we direct that the name of the appellant company, *viz*., Leka Consulting Services Private Limited, shall be restored by the Registrar of Companies, Odisha, in the**

**Register of Companies. This shall be subject to the appellant-company and its Directors complying with all the formalities required under law for this purpose, including payment of compounding fees in relation to the admitted violations committed by it. In addition thereto, the appellant-company shall also pay costs of ₹2,50,000/- (Rupees Two Lakh Fifty Thousand only) to the Registrar of Companies, Odisha, within a period of six weeks from today.**

**The appeal is allowed and disposed of in the above terms.**

**Pending application(s), if any, shall also stand disposed of.**

**.....J.**
**(SANJIV KHANNA)**

**.....J.**
**(SANJAY KUMAR)**

**NEW DELHI;**
**SEPTEMBER 09, 2024.**

**ITEM NO.49 COURT NO.2 SECTION XVII**

**S U P R E M E C O U R T O F I N D I A**
**RECORD OF PROCEEDINGS**

**CIVIL APPEAL NO. 6109 OF 2024**

**M/S. AKL ENTERPRISE PVT. LTD. ..... APPELLANT(S)**

**VERSUS**

**REGISTRAR OF COMPANIES, ODISHA ..... RESPONDENT(S)**

**(IA No.112611/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.112609/2024-STAY APPLICATION)**

**WITH**

**C.A. No. 6575/2024 (XVII)**
**(IA No.111589/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.111588/2024-STAY APPLICATION and IA No.111591/2024-EXEMPTION FROM FILING O.T.)**

**Date : 09-09-2024 These matters were called on for hearing today.**

**CORAM :**
**HON'BLE MR. JUSTICE SANJIV KHANNA**
**HON'BLE MR. JUSTICE SANJAY KUMAR**

**For Appellant(s)**
**Mr. Ramji Srinivisan, Sr. Adv.**
**Mr. Saswat Kumar Acharya, Adv.**
**Mr. Dhananjay Bhaskar Ray, AOR**
**Mr. Abhijeet Agarwal, Adv.**
**Mr. John James, Adv.**

**For Respondent(s)**
**Mr. Vikramjit Banerjee, A.S.G. (N/P)**
**Mr. Siddhartha Sinha, Adv.**
**Mr. Rajendra Singh Rana, Adv.**
**Ms. Rajeshwari Shankar, Adv.**
**Mr. Shashwat Parihar, Adv.**
**Mr. Shashwat Anand, Adv.**
**Mr. Amrish Kumar, AOR**

**UPON hearing the counsel the Court made the following**
**O R D E R**

**The appeals are allowed and disposed of, in terms of the signed order.**

**Pending application(s), if any, shall stand disposed of.**

**(DEEPAK GUGLANI)**
**AR-cum-PS**

**(R.S. NARAYANAN)**
**ASSISTANT REGISTRAR**

**(signed order is placed on the file)**