
(2022) 09 SC CK 0123

In the Supreme Court Of India

Case No : Civil Appeal No(S). 4448 Of 2015

Nirendra Nath Kar

APPELLANT

Vs

Gopal Navin Bhai Dave & Ors.

RESPONDENT

Date of Decision : 29-09-2022

Acts Referred:

Companies Act, 1956 — Section 3, 303, 560, 560(5)

Citation : (2022) 9 JT 466 : (2022) 14 Scale 361

Hon'ble Judges : Ajay Rastogi, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Kailash Pandey, Ranjeet Singh, Krishna Yadav, Gaichangpou Gangmei, Pankaj Jain, Bijoy Kumar Jain, Ashok Kumar Jain, Sanjay Jain, Padmesh Mishra, Anukalp Jain, Arvind Kumar Sharma

Final Decision : Dismissed

Judgement

Ajay Rastogi, J

1. The instant appeal is directed against the judgment and order passed by the Division Bench of the High Court of Calcutta dated 17th October, 2012 while setting aside the finding returned by the learned Single Judge dated 8th August, 2012 in sequel affirmed order of the Registrar of Companies (RoC) striking off the name of the Company from the register of RoC by an Order dated 27th January, 2006 in exercise of power under Section 560(5) of the Companies Act, 1956(hereinafter being referred to as the "Act 1956").

2. The brief facts of the case are as under:-

The initial incorporation of the Company was in the name of Basanti Cotton Mills Private Limited with three Directors, namely, (i)Gopal N. Dave, (ii) Nikhil Basant Lal Merchant, (iii) Paresh Basant Lal Merchant and the authorized share capital of the Company was Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10 each. The name of the Basanti Cotton Mills Private Limited was changed to Basanti Cotton Mills(1998) Private Limited on 3rd March, 2000. The last annual

return and audited accounts were filed with the Registrar of Companies for the financial year 2002-2003. The name of the Company in terms of Section 560(5) of the Act, 1956 was struck off by the Registrar of Companies, West Bengal on 27th January, 2006 at the instance of the respondents(Directors of the Company).

3. It may be relevant to note that the Registrar of Companies in its affidavit in opposition before the High Court asserted that the company was not functioning and not carrying out any business and the last annual return was filed of the year 2002-2003. The relevant extract is quoted hereunder:-

"Basanti Cotton Mills(1998) Pvt. Ltd.

12.08.1998 The company was formed and registered under the Companies Act 1956 as Basanti Cotton Mills Pvt. Ltd. bearing Registration no.87716.

First Directors of the Company were –

a) GOPAL N DAVE

b) NIKHIL M. MERCHANT

c) PARESH V. MERCHANT

10.03.2003 Last Annual Return filed by the company made upto 04.02.2003 wherein the following were shown as its directors.

a) GOPAL N DAVE

b) NIKHIL M MERCHANT

c) PARESH V MERCHANT

As per Annexure-A

23.12.2003 Last Balance Sheet of the Company as at 30.09.2003 filed by the company.

As per Annexure-B

03.03.2009 Name of the Company changed from Basanti Cotton Mills Pvt. Ltd. to Basanti Cotton Mills (1998) Pvt. Ltd. under Section 21 of the Companies Act 1956.

As per Annexure-C

10.10.2008 DIN No.3 in respect of Narendranath Kar filed under MCA online filing system

As per Annexure-D

17.11.2008 One Form NO. 18 filed under the signature of Narendranath Kar showing the change of Registered Office of the company from B.T. Road Panihati to 109, F, 139F and 137 F.B.T. Road, Panihati w.e.f. 10.10.2008.

As per Annexure-E

10.10.2009 05.11.2009-DIN No. 3 in respect of Dipali Chowdhury and Babulal Banerjee filed under MCA online filing system under the signature of Nirendranath Kar.

As per Annexure-F

N.B. 1) In this regard it may kindly be pointed out that though DIN NO. 3 in respect of Nirendranath Kar, Dipali Chowdhury and Babulal Banerjee has been filed online under the Digital signature of Nirendranath Kar, however no Form 32 has been filed showing the appointment of the said three persons as directors of the company with Registrar of Companies West Bengal (ROC, WB). In terms of the provisions of Section 303 of the Companies Act, 1956.

2) DIN 3 form could be filed by a person for himself and thereby his name used to become recorded as Director of the Company. But corresponding filing of Form 32 is necessary to corroborate the DIN 3 filed.

3) In view of the above it can be said that the names of Nirendranath Kar, Dipali Chowdhury and Babulal Banerjee may not be evident as Directors of the company in absence of any such filing of Form No. 32 as required under Section 303 of the Companies Act, 1956."

[emphasis supplied]

4. After the name was struck off, it was published in the Gazette of 27th January, 2006. The bank also issued no dues certificate in favour of Basanti Cotton Mills (1998) Pvt. Ltd. to release charge of the assets of the Company. Complaint was filed by the appellant claiming to be one of the Directors of the Company in the year 2010 before the High Court under Section 560(6) of the Act 1956. Learned Single Judge allowed the application by judgment and order dated 6th October, 2010 after recording a finding that the procedure as prescribed under Section 560 of the Act 1956 was not followed before striking off the name of the Company from the register of the RoC.

5. The order of the learned Single Judge was assailed before the Division Bench of the High Court and that came to be set aside by an order dated 22nd March, 2011 and the matter was remitted back to the learned Single Judge to determine the issue afresh in accordance with law.

6. The Company Judge, by judgment and order dated 8th August, 2012, allowed the application and restored the name of the company and that again became the subject matter of challenge in appeal before the High Court which came to be decided by the judgment impugned dated 17th October, 2012 holding that the appellant has no locus standi as he is neither a Company nor a member nor creditor hence he cannot be said to be a person aggrieved to question the order of the Registrar in striking off the name of the Company from the register of RoC as referred to under Section 560(5) of the Act 1956. The extract of the finding

recorded by the Division Bench of the High Court, after perusal of the admitted facts on records of the Company, maintained by the Registrar is as under:-

"In a case of the like nature when there was dispute with regard to the status of the petitioner it would be safe for the Court to rely upon the admitted records being the records maintained by the Registrar.

From the records produced by ROC appearing at pages 39 to 77 of the paper book (Volume-II), we would find, as on the date of the striking off not a single document would show the nexus of the respondent no. 1 with the company. He came in picture in October 2008 through filing of DIN. Documents filed after 2008 would also show, he was Director since 1998 as claimed by him. Such dispute would have to be resolved in an appropriate forum. Section 560 would not give power to the Court to adjudicate as to such dispute. The court would be relying upon the admitted records that would clearly show, respondent no. 1 did not feature in the records. His belated plea would also keep him at bay. His prayer for restoration would wait for a decision in his favour on his status by a competent civil court or any other appropriate forum. The learned Judge should not have restored the name of the company at the instance of someone whose identity is yet to be established."

7. It is brought to our notice that as per the last balance sheet filed for the year 2002-2003, the paid up share capital of the Company in question was Rs.7,000/- and if that is being taken at the face value which is supported by documentary evidence on record, as per the scheme of Section 3 of the Act 1956, the Company is deemed to be a defunct company.

8. Learned counsel for the appellant has taken us to the additional documents which he has filed in support of his submission, although it is informed that such documents were not available before the High Court when the proceedings were initiated/instituted by the appellant.

That apart, the document produced by the appellant including the DIN forms obtained in September/October 2008, much after name of the Company was struck off in the year 2006 and even Form 32 which has now been placed on record by the appellant has been seriously disputed by the respondents.

9. Learned counsel for the respondents, on the other hand, has brought to our notice the affidavit that was filed before the High Court in the first instance of which a reference has been made by this Court indicating that the present appellant was nowhere recorded as Director of the Company at any given point of time.

10. In addition to it, learned counsel for the respondents further submits that for all practical purposes, the name of the Company was struck off way back on 27th January, 2006 and the paid up share capital as per last balance sheet of 2003 is reduced to Rs.7000/- in terms of Section 3 of the Act 1956, such companies are deemed to be defunct companies and sixteen years have rolled after the date of

striking off the name of the Company in the year 2006, there is hardly any justification to restore the name of the Company at this stage, particularly, when there are no operations of the said Company all throughout.

11. The Division Bench of the High Court under the impugned judgment has proceeded on the basis of the facts referred to in the affidavit in opposition filed by the RoC while recording a finding regarding the locus of the appellant in assailing the order of the Registrar striking of the name of the Company under Section 560(5) of the Act, 2003 and, at this stage, it is difficult to place reliance on the documents placed by the appellant to claim himself to be one of the Directors of the Company.

12. Taking into consideration the material available on record and the finding of fact which has been recorded by the Division Bench of the High Court under the judgment impugned, we find no reason to interfere.

13. Consequently, the appeal fails and accordingly dismissed. No costs.

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