

(2007) 03 CAL CK 0073

In the Calcutta High Court

Case No : A.C.O. No. 38 of 2007, A.P.O.T. No. 117 of 2007, C.P. No. 14 of 2007,
C.A. No. 60 of 2006 and T. No. 152 of 2006

Tata Steel Limited and Another

APPELLANT

Vs

Indra Singh and Sons Private Ltd.

RESPONDENT

Date of Decision : 26-03-2007

Acts Referred:

Companies Act, 1956 — Section 10(3), 17, 17(1), 17(5), 18
Limitation Act, 1963 — Section 5

Citation : (2007) 4 CHN 71 : (2008) 141 CompCas 263 : (2008) 1 CompLJ 479

Hon'ble Judges : Kishore Kumar Prasad, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : S.N. Mukherjee and Debasish Kundu, for the Appellant; Rabi Kapoor, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya , J.—This Letters Patent appeal is at the instance of on applicant for winding up of a company and is directed against two orders, one dated 29th March, 2006 and the other, dated 12th May, 2006 both passed by a learned Single Judge of this Court in Company Petition No. 14 of 2006, company Application No. 60 of 2006 and T. No. 152 of 2006. By the first order dated 29th March, 2006, the learned Single Judge dismissed an application for winding up of a company on the ground that the registered office of the company having been transferred to Chandigarh from Kolkata, the winding up application was not maintainable in this Court.

2. The appellant having filed an application for review of the said order dated 29th March., 2006, the learned Single Judge by the latter order dated May 12, 2006 dismissed such application by affirming the earlier order dated 29th March, 2006, with specific assigned reasons.

3. Being dissatisfied, the present appeal has been preferred challenging both the orders along with an application u/s 5 of the Limitation Act for condonation of

delay. However, at the time of hearing of the appeal, it was pointed out that there was no delay in filing the appeal, inasmuch as, the certified copy of the orders impugned were not supplied to the appellant in spite of making specific application within the period of limitation. Such fact was not disputed by the learned Counsel for the respondent and as such, the appeal should be deemed to have been preferred within the period of limitation.

4. We, therefore, propose to dispose of the appeal on merit.

5. To appreciate the question involved in this appeal the following dates are relevant for our purpose:

25.1.2005 Special Resolution was taken by the Board of the company with regard to the shifting of the registered office of the company from Kolkata to Chandigarh. (Annexure-"B", Page- 36 of the petition) 5.10.2005 Order of the Company Law Board confirming the alteration of the Memorandum of the company relating to the change of place of its registered office to Chandigarh. (Para- 7, Page- 10, Annexure- "H" at Page-169) 3.11.2005 The order allowing transfer of registered office appears to have been registered with Registrar of Companies, Punjab, Himachal Pradesh and Chandigarh. 26.11.2005 The Registrar of Companies, West Bengal issued a certificate u/s 18(3) certifying the registration of the order of alteration of the Memorandum of the company insofar as the same involved the transfer of the registered office of the company from the State of West Bengal to the Union Territory of Chandigarh. (Annexure "B" at Page- 33). 7.1.2006 The petitioners instituted the winding up petition against the respondent company. [Para- 2(k), Page- 8 of petition]

6. The only question that arises for determination in this appeal is whether the learned Single Judge was justified in holding that the application for winding up filed on 7th January, 2006 was not maintainable before this Court and that the appellant ought to have presented such application before the Court at Chandigarh.

7. At this juncture, it will be profitable to refer to the provision contained in Section 10(3) of the Companies Act, 1956 provides as follows:

For the purpose of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

8. In addition to the Section 10(3) , the provisions contained in Sections 17, 18 and 19 of the Companies Act are also relevant and those are quoted below:

17. Special resolution and confirmation by Company Law Board required for alteration of memorandum.-(1)

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(2) The alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the Company Law Board on petition.

(3) Before confirming the alteration, the Company Law Board must be satisfied-

(a) that sufficient notice has been given to every holder of the debentures of the company, and to every other class of persons whose interest will, in the opinion of the Company Law Board, be affected by the alteration; and

(b) That, with respect to every creditor who, in the opinion of the is entitled to object to the alteration, and who signifies his objection in the manner directed by the Company Law Board either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Company Law Board:

Provided that the Company Law Board may, in the case of any person or class of persons, for special reasons, dispense with the notice required by Clause (a).

(4) The Company Law Board shall cause notice of the petition for confirmation of the alteration to be served on the Registrar who shall also be given a reasonable opportunity to appear before the Company Law Board and state his objections and suggestions, if any, with respect to the confirmation of the alteration.

(5) The Company Law Board may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper.

18. Alteration to be registered within three months.--(1) A company shall file with the Registrar-

(a) a special resolution passed by a company in relation to clauses (a) to (g) of Sub-section (1) of Section 17, within one month from the date of such resolution; or

(b) a certified copy of the order of the Company Law Board made under subsection (5) of that section confirming the alteration, within three months from the date of order,

as the case may be, together with a printed copy of the memorandum as altered and the Registrar shall register the same the certify the registration under his hand within one months from the date of filing of such documents.

(2) The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum as so altered shall be the memorandum of the company.

(3) Where the alteration involves a transfer of the registered office from one State to another, a certified copy of the order confirming the alteration shall be filed by the company with the Registrar of each of the States, and the Registrar of each such State shall register the same, and shall certify under his hand the registration thereof, and the Registrar of the State from which such office is transferred shall send to the Registrar of the other State all documents relating to the company registered, recorded or filled in his office.

(4) The Company Law Board may, at any time, by order, extend the time for the filing of documents or for the registration of the alteration under this section by such period as it thinks proper.

19. Effect of failure to register.-(1) No such alteration as is referred to in Section 17 shall have any effect until it has been duly registered in accordance with the provisions of Section 18.

(2) If the documents required to be filed with the Registrar u/s 18 are not filed within the time allowed under that section, such alteration and the order of the Company Law Board made under Sub-section (5) of Section 17 and all proceedings connected therewith, shall, at the expiry of such period, become void and inoperative:

Provided that the Company Law Board may, on sufficient cause shown, revive the order on application made within a further period of one month.

9. In the case before us, the application for winding up of the respondent having been filed on 7th January, 2006, this Court can entertain such application provided it is found that the registered office of the company remained within the jurisdiction of this Court for the longest period in course of last six months, i.e. from July 8, 2005 till January 7, 2006.

10. According to the appellants, the registered office of the company has really changed according to law with effect from 3rd November, 2005 and therefore, from 8th July till 3rd November, 2005, i.e. for more than three months within the period of the last six months, the registered office was situated within the State of West Bengal and thereafter, for a period of slight more than two months within the said period of six months, the registered office was stationed at the shifted place in Chandigarh and thus, the application is maintainable in this State having been filed on 7th January, 2006.

11. The learned Advocate for the respondent, on the other hand, supported the reasons assigned by the learned Single Judge in this case, that for all practical purpose, it should be presumed that the registered office of the company was within the State of West Bengal only up to 5th October, 2005, the date of the

order of the Company Law Board confirming the alteration of the memorandum of articles of the company relating to the change of its place of the registered office to Chandigarh.

12. After hearing the learned Counsel for the parties and after going through the aforesaid provisions contained in the Companies Act, we find that according to Section 19(1) of the Act, no alteration referred to in Section 17 shall have any effect until it has been duly registered in accordance with the provision of Section 18. Section 18(1) of the Act, on the other hand, casts a duty upon the company to file with the Registrar, the special resolution passed by the company in relation to cases of sub-section within one month from the date of such resolution or a certified copy of the order of the Company Law Board made under subsection (5) of that section confirming alteration within three months from the date of the order together with a printed copy of memorandum as altered and the Registrar is directed to register the same and certificate of registration under his hand within one month from the date of filing of such document. Therefore, so long the Registrar of the company of the place where the registered office of the company is transferred had not registered the same and certified the registration under his hand within one month from the date of filing of such document, the alteration of the registered office is not complete. The mere passing of an order of confirmation by the Company Law Board is not enough for giving effect to the order unless all the provisions contained in Section 18 are complied with. Even if, after the passing of an order of confirmation by the Company Law Board, the company does not take steps in terms of Section 18, it cannot be contended that the order of confirmation has been given effect to.

13. We, therefore, find that in this case before us, the 3rd November, 2005, the date on which the order confirming the transfer of registered office has been registered with the Assistant Registrar of Companies, Punjab, Himachal Pradesh and Chandigarh, is the effective date which should be taken to be the date of actual transfer of the registered office of the respondent within the meaning of the Companies Act.

14. We have already pointed out that from July 8 till 3rd November, 2005, more than three months time within six months preceding the filing of the application, the registered office of the company was within the jurisdiction of this State and therefore, in terms of Section 10(c) of the Companies Act, the application for winding up was validly presented before this Court.

15. We, thus, find that the learned Single Judge by the first order dated 29th March, 2006 could not dismiss the application by merely looking at the certificate of the registration of the order of Company Law Board, Calcutta Bench confirming the order of transfer and such error apparent on the face of the record having been brought to the notice of the learned Single Judge by filing application for review, it was the duty of the learned Single Judge to rectify the errors earlier committed.

16. We, therefore, set aside the orders impugned in this appeal and hold that the application presented before the learned Single Judge on 7th January, 2006 for winding up of the company was quite maintainable in accordance with law.

17. We, therefore, direct the learned Single Judge to proceed with the application for winding up in accordance with law. We make it clear that we have otherwise not gone into the question whether it was a fit case for winding up of the company.

18. The appeal is, thus, allowed. In the facts and circumstances, there will be, however, no order as to costs.

Kishore Kumar Prasad, J.

19. I agree.