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Mr Pankaj Kumar Mishra Vs Registrar Of Mumbai And Ors (NACLAT)

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INTRODUCTION.

National Company Law Appellate Tribunal (NCLAT), New Delhi.

The case of MR. PANKAJ KUMAR MISHRA V.S

REGISTRAR OF COMPANIES, MUMBAI & ORS. (NCLAT).

Appellant - Mr. Pankaj Kumar Mishra, He was the power attorney holder of Mr. Utkarsh Mishra.

Versus

Respondent - Registrar of Companies of Mumbai,

- The principal Commissioner of the income tax.

The Advocates of the appellant were Mr. Saurabh Agarwal, Mr. Komal Mundhra, and Mr. Shantanu Singh

The Advocates of the respondent were None.

This is the provision that was included in Section 252(1) of the companies act, 2013.

In this section, it is stated that before passing a judgment or order, The tribunal shall give equal opportunities and make sure that both parties get heard.

In this case, the Company (The viking Pvt. ltd) never got a chance to be heard by the court and make representation according to their capabilities.

Hence, Pankaj Kumar Mishra filed the case against The ROC and The Principal Commissioner of Income tax in the National Company Law Appellate Tribunal (NCLAT).

Through this, we got to learn that representation is important in the case and Section 252 of the companies act, 2013.

FACTS OF THE CASE

The company is named Vikking Ship Managers PVT. LTD. was struck off by the Registrar of Mumbai (ROC of Mumbai).

Then the Principal Commissioner of Income Tax, Mumbai challenged the ROC order before NCLT (National Company Law Tribunal) under section 252 (1) of the Companies Act,2013.

The Principal Commissioner of Income Tax stated that the Company has certain financial transactions in AY 2011-12 against which the IT return was not filed by the Company. This information was found out from ITO Mumbai. Against this notice section 148 of the IT Act, 1961 was issued to the company for the reassessment of Income.

As the name of the Company has been struck down by the ROC of Mumbai and it is difficult to access a defunct Company. This turned into a huge revenue loss for the Government of India (GOI).

The Principal Commissioner Income Tax appealed to NCLT Mumbai Bench to restore the company name, NCLT passed impugned order by allowing the appeal and directing ROC for restoration of the name but no notice was served to the company in question, which was clothed by Respondent.

The Appellant Mr. Pankaj Mishra – Who was the Power Attorney holder of the Company stated that under Section 252 (1) of the Company Act, 2013, Tribunal must give a reasonable opportunity of making representations and be heard to the ROC. He appealed to the National Company Appellant Tribunal (NCLAT).

ISSUE OF THE CASE

Whether the order given by the Tribunal for restoring the name of the company in the register of the company is sustainable in the Law.

The reason is that this order was passed without giving the time to the Company to make any representation or being hereby the Appropriate Authority.

WHAT IS SECTION 252 OF THE COMPANIES ACT, 2013?

Section 252 of the Companies Act, 2013 states an individual aggrieved by an order given by the Registrar, stating a company as dissolved under Section 248, can file an appeal to the NCLT in less than 3 years from the date of the Registrar order.

WHAT ARE NCLAT AND NCLT?

National Company Law Appellate Tribunal (NCLAT) was constituted under section 410 of the Companies act, 2013 for hearing appeals against the orders of the National Company Law Tribunal (NCLT), with effect from 1st June 2016. This tribunal can hear the case appeals of the Insolvency and Bankruptcy Board of India under section 202 and Section 211 of IBC. The tribunal hears an appeal against the order of CCI as per the amendment.

National Company Law Tribunal (NCLT) is a quasi-judicial body that regulates and resolve case of Corporate related issue. It is also the Adjudicating Authority for Insolvency resolution process related to companies and limited liability partnerships, which is given under The Insolvency and Bankruptcy Code, 2016. Both tribunals follow the Civil Procedure Code.

JUDGEMENT.

Justice Jarat Kumar Jain. J the appeal was made under section 421 of the companies act, 2013 against the order dated 11.11.2019 passed by NCLT, whereby allowed the Appeal filed by the company Appeal No. 121 of 2020 Commissioner of Income Tax 15 Mumbai and thereby restored the name of Viking Ship Managers PVT. LTD in the register of the company. The assistance, in this case, was provided by Balvinder Singh (He assisted in technology).

National Company Law Appellant Tribunal (NCLAT) held that the order given by National Company Law Tribunal is not sustainable in Law. This decision was issued without giving any opportunity to the respondent to make any representation and be heard by the tribunal. Hence, the case was remitted back to the tribunal by saying that the order should give according to section 252 of the company act, 2013, and not get influenced by his earlier order.

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