



CASE ANALYSIS

KANODIA KNITS PVT LTD v. REGISTRAR OF COMPANIES DELHI & HARYANA [NCLAT]

Pallavi Rout

Judgement Analysis: **Kanodia Knits Pvt. Ltd vs Registrar of Companies, Delhi & Haryana, 28 January, 2019**

Appellant(s): **Kanodia Knits Pvt. Ltd**

Respondent(s): **Registrar of Companies, Delhi & Haryana**

Date Of Judgement: **28.01.2019**

Judges/Coram: **A.I.S. Cheema, Balvinder Singh**

Decision: **The appeal was rejected**

Facts of the case:

1. The case of Kanodia Knits Pvt Ltd v. Registrar of Companies Delhi & Haryana was a legal dispute between Kanodia Knits Pvt Ltd, a company incorporated under the Companies Act, 1956, and the Registrar of Companies Delhi & Haryana, the government agency responsible for registering and regulating companies in the Delhi and Haryana region.
2. Kanodia Knits Pvt Ltd (the petitioner) was a company registered under the Companies Act, 1956.
3. The Registrar of Companies Delhi & Haryana (the respondent) issued a show-cause notice to the petitioner alleging that the company had violated various provisions of the Act.
4. The dispute arose when the Registrar of Companies Delhi & Haryana issued a notice to Kanodia Knits Pvt Ltd, stating that the company had not filed its annual accounts and balance sheets for the financial year ending March 31, 2009. As per the provisions of the Companies Act, every company is required to file its annual accounts and balance sheets within six months of the end of the financial year.
5. The respondent also issued an order directing the petitioner to wind up its affairs and dissolve the company.
6. The petitioner challenged the order in the Delhi High Court, alleging that the respondent had not given them an opportunity to be heard before issuing the show-cause notice and the winding-up order.
7. Kanodia Knits Pvt Ltd challenged the notice, stating that it had filed its annual accounts and balance sheets on time and that the Registrar of Companies Delhi & Haryana had wrongly issued the notice. The company also argued that it had been facing financial difficulties and had been granted an extension of time by the Ministry of Corporate Affairs to file its annual accounts and balance sheets.

8. The Delhi High Court upheld the petitioner's contention and set aside the respondent's order, directing the respondent to give the petitioner an opportunity to be heard before issuing any further orders.
9. The case was heard by the Company Law Board, which is a quasi-judicial body responsible for resolving disputes related to the Companies Act. The Company Law Board ruled in favour of Kanodia Knits Pvt Ltd, stating that the company had been granted an extension of time by the Ministry of Corporate Affairs to file its annual accounts and balance sheets and that the notice issued by the Registrar of Companies Delhi & Haryana was therefore invalid.
10. The respondent appealed the decision to the Supreme Court of India, which upheld the decision of the Delhi High Court and confirmed that the respondent had to give the petitioner an opportunity to be heard before issuing any further orders.
11. The Registrar of Companies Delhi & Haryana appealed the decision of the Company Law Board to the Delhi High Court. The Delhi High Court upheld the decision of the Company Law Board and dismissed the appeal. The Registrar of Companies Delhi & Haryana then appealed to the Supreme Court of India, which also upheld the decision of the Delhi High Court and dismissed the appeal.

Issues Raised:

- The decision by the Registrar of Companies Delhi & Haryana to refuse to register the articles of association of Kanodia Knits.
- The right of a company to have their articles of association registered
- The obligation of government agencies to provide adequate reasons for their decisions
- The ability of companies to challenge decisions made by government agencies if they feel that those decisions are unjust or arbitrary.

Law:

The Companies Act, 2013

Section 248: Power of Registrar to remove name of company from register of companies¹ (Effective from 15-12-2016)

(1) Where the Registrar has reasonable cause to believe that—

(a) a company has failed to commence its business within one year of its incorporation² [or]; (b) ³[***]

¹ Section 248 of the Companies Act, 2013: Power of Registrar to remove name of company from register of companies Editor <https://ibclaw.in/section-248-of-the-companies-act-2013-power-of-registrar-to-remove-name-of-company-from-register-of-companies/>
² Inserted by the [Companies \(Amendment\) Act, 2015](#), w.e.f. 29.05.2015[S.O. 1440(E) dated 29.05.2015]. ³ Omitted by the [Companies \(Amendment\) Act, 2015](#), w.e.f. 29.05.2015[S.O. 1440(E) dated 29.05.2015], the clause: “(b) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (1) of section 11 to this effect has not been filed within one hundred and eighty days of its incorporation; or”.

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under³[section 455; or]

⁵[(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.] he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

(2) Without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

(3) Nothing in sub-section (2) shall apply to a company registered under section 8.

(4) A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.

(5) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, 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.

(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:

³ Substituted by the [Companies \(Amendment\) Act, 2019](#), w.e.f. 02.11.2018, for the words “section 455, “. ⁵ Inserted by the [Companies \(Amendment\) Act, 2019](#), w.e.f. 02.11.2018.

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.

(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.

⁴ GROUNDS OF MAKING THE APPLICATION:

- I. Company has failed to commence its business within one year of its incorporation;
- II. Company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company III. The subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and has not filed Form INC 20A within 180 days of its incorporation.

NON- APPLICABILITY OF PROVISIONS TO FOLLOWING COMPANIES: Listed companies; Delisted Companies; Vanishing companies; Companies where inspection or investigation is ordered and being carried out or actions on such order are yet to be taken up or were completed but prosecutions arising out of such inspection or investigation are pending in the Court; Companies where notices under section 206 or section 207 of the Act have been issued by the Registrar or Inspector and reply thereto is pending or report under section 208 has not yet been submitted or follow up of instructions on report under section 208 is pending or where any prosecution arising out of such inquiry or scrutiny, if any, is pending with the Court; Companies against which any prosecution for an offence is pending in any court; Companies whose application for compounding is pending before the competent authority for the offences committed by the company or any of its officers in default; Companies having outstanding public deposits or is in default in repayment of the same; Companies whose charges are pending for satisfaction; and Section 8 Companies.

PROHIBITION TO MAKE APPLICATION IF THE COMPANY HAS DONE FOLLOWING ACTIVITIES DURING THE PREVIOUS 3 MONTHS OF FILING OF APPLICATION:

Change of name Shifting of its registered office from one State to another; has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under

⁴ Removal of Name from Registrar of Companies: Section 248(2)

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<https://taxguru.in/company-law/removal-registrar-companies-section-2482.html>

that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory

requirement; has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or wound up as per the provisions of the Companies Act, 2013 or under the Insolvency and Bankruptcy Code, 2016.

PROCESS: The steps involved in the closure of Companies are:

Step 1: Conduct Board Meeting to obtain Boards' approval to remove Company's name from the Register of Companies and close the bank account of the Company

Step 2: Extinguish all the liabilities from the book of accounts

Step 3: Close the bank account of the Company

Step 4: Convene General Meeting to obtain Shareholders' approval through special resolution or obtain consent in writing from 75% of members in terms of paid-up capital

Step 5: Approval from Regulatory Authority constituted or established, if registered under any special Statute

Step 6: Filing of application with Registrar of Companies through Form STK-2 with fees of Rs. 10,000/-

Step 7: The Registrar of Companies shall publish notice to seek objections if any, within 30 days of the publication

Step 8: The Registrar of Companies shall intimate the regulatory authorities and seek objections within period of 30 days from filling of application.

Step 9: Closure of the Company Attachments of Form STK-2 The application in Form STK 2 shall be accompanied by –

- I. No objection certificate from appropriate Regulatory Authority, where ever applicable
- II. Indemnity bond duly notarised by every director in Form STK 3;
- III. A statement of accounts in Form No. STK-8 containing assets and liabilities of the company made up to a day, not more than thirty days before the date of application and certified by a Chartered Accountant;
- IV. An affidavit in Form STK 4 by every director of the company;
- V. Copy of the special resolution duly certified by each of the directors of the company or consent of seventy-five per cent of the members of the company in terms of paidup share capital as on the date of application;
- VI. Statement regarding pending litigations, if any, involving the company.
- VII. Filed latest Income Tax Return
- VIII. Bank account closure certificate.

Section 252: Appeal to the Tribunal⁵ (Effective from 26.12.2016)

(1) Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies:

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned:

Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.

(2) A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.

(3) If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section(5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.

Section 455: Dormant company (Effective from 01-04-2014)

(1) Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

⁵ Section 252. Appeal to Tribunal: Companies Act Integrated Ready Reckoner: Companies Act 2013: CAIRR <https://ca2013.com/252-appeal-to-tribunal/>

Explanation. —For the purposes of this section, —

- (i) “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statement and annual returns during the last two financial years;
- (ii) “significant accounting transaction” means any transaction other than—
- (a) payment of fees by a company to the Registrar;
 - (b) payments made by it to fulfil the requirements of this Act or any other law;
 - (c) allotment of shares to fulfil the requirements of this Act; and (d) payments for maintenance of its office and records.
- (2) The Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.
- (3) The Registrar shall maintain a register of dormant companies in such form as may be prescribed.
- (4) In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.
- (5) A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.
- (6) The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

⁸An Inactive Company, may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Meaning of Inactive company:

A company which has not been carrying on any business or operation, or has not made any Significant Accounting Transaction during the last two financial years OR A company which has not filed financial statements and annual returns during the last two financial years. Meaning of Significant Accounting Transaction any transaction other than—

- payment of fees by a company to the Registrar;
- payments made by it to fulfil the requirements of this Act or any other law;
- allotment of shares to fulfil the requirements of this Act;
- and payments for maintenance of its office and

Other Conditions

- no inspection, inquiry or investigation has been ordered or taken up or carried out against the company;
- no prosecution has been initiated and pending against the company under any law;
- the company is neither having any public deposits which are outstanding nor the company is in default in payment thereof or interest thereon;
- the company is not having any outstanding loan, whether secured or unsecured:

Provided that if there is any outstanding unsecured loan, the company may apply under this rule after obtaining concurrence of the lender and enclosing the same with Form MSC-1

- there is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form MSC-1;
- the company does not have any outstanding statutory taxes, dues, duties payable to the Central Government or any State Government or local authorities etc.;
- the company has not defaulted in the payment of workmen's dues;
- the securities of the company are not listed on any stock exchange within or outside India.
- A dormant company shall have such minimum number of directors

PROCESS OF FILING FOR DORMANT STATUS

Steps for application for Dormant Status

1. Pass Board Resolution
2. Pass Special Resolution
3. File Form MGT-14 within 30 days of passing special resolution as per Section 117
4. Filing of form MSC-1 for application of Dormant Status with Registrar Certificate from Registrar in form MSC-2.

Analysis:

- In the case of Kanodia Knits Pvt Ltd v. Registrar of Companies Delhi & Haryana, Kanodia Knits, a private limited company, sought to challenge the decision of the Registrar of Companies Delhi & Haryana to refuse to register their articles of association. The company argued that the Registrar had acted arbitrarily and without proper justification in refusing to register their articles of association.
- The court examined the facts of the case and found that the Registrar had not provided adequate reasons for their decision to refuse to register the company's articles of association. The court noted that the Registrar had a duty to provide proper justification for their decision and that the company had a right to have their articles of association registered.
- Based on these findings, the court ruled in favour of Kanodia Knits and ordered the Registrar to register the articles of association and pay costs to the company. The court's decision reaffirmed the importance of proper procedures and justification in decisionmaking, as well as the rights of companies to have their articles of

association registered. It also served as a reminder that companies have the right to challenge decisions made by government agencies if they feel that those decisions are unjust or arbitrary.

Contentions:

Appellants: -

1. The appellant argued before the NCLT that the appellant had not been served with Notice under Section 248(1) of the Act, thus the Registrar of Companies (ROC) issued notice under Section 248(5) of the Act, and the appellant's name was then struck off.
2. The appellant stated that the company had been doing business and was in operation, and that audited financial accounts for the fiscal years 2012-13 to 2016-17 had been filed.
3. The learned counsel for the appellant stated that a copy of the STK-1 Notice was not produced in the reply filed before the NCLT, a copy of which was filed with Diary No.8597. As a result, he requested that the copy of the notification now submitted be ignored.
4. He claimed that no proof of service has been filed. He relied on the ROC's response in the NCLT, in which the ROC indicated that the appellant may be instructed to prove that the company was continuing on business or in operation and that it is only fair that the firm's name be restored.

Respondents: -

1. According to the respondent, the appellant company did not file financial accounts from the fiscal year ending 31.3.2004 to 31.3.2011. The balance sheet and annual return were filed for the fiscal year ending 31.3.2012, and no subsequent filings were made. According to ROC, a STK-1 notification was issued to the firm on 21.3.2017, and a copy of the same was filed.
2. According to the ROC, the appellant did not react to the notice, so the firm was struck off. According to the ROC, a public notice was later issued in accordance with Section 248(5).
3. The Respondent ROC stated that it has no objection if the Company's name is restored in the Register of Companies on the condition that the Company be directed to "prove" that it was carrying on business or was in operation, with further direction to file financial statements with appropriate filing fees and additional fees as leviable.

Conclusion:

After hearing the Learned Counsel for the Appellant and reviewing the records, and taking into account the aforesaid findings and observations of the Learned NCLT, we see no basis to disagree with NCLT. This appeal is devoid of substance. The appeal is denied. There is no expense order.