

(2024) 02 NCLAT CK 0022**National Company Law Appellate Tribunal New Delhi****Case No:** Company Appeal (AT) No. 228 of 2023

M/s AKL Enterprise Private Limited

APPELLANT

Vs

Registrar Of Companies Odisha

RESPONDENT

Date of Decision: Feb. 8, 2024**Acts Referred:**

- Companies Act, 2013 - Section 248(1), 248(1)(c), 248(5), 248(6), 252, 252(3), 420(1), 420(2), 421(3), 455
- Limitation Act, 1963 - Section 14
- National Company Law Tribunal Rules, 2016 - Rule 11, 20, 44, 45, 154, 155

Hon'ble Judges: M. Venugopal, Member (J); Dr. Alok Srivastava, Member (T)**Bench:** Division Bench**Advocate:** Sashwat K Achary, Dhanananjay Bhaskar Ray**Final Decision:** Dismissed

Judgement

M. Venugopal, Member (Judicial)

1. The Appellant / Petitioner has preferred the instant Company Appeal (AT) No. 228 of 2023 as an 'Aggrieved' person in respect of the impugned order dated 08.08.2023 IA No. 19/CB/2023 in CP No. 70/CB/2020 passed by the National Company Law Tribunal, Cuttack Bench.

2. Earlier, the National Company Law Tribunal while passing the impugned order at paragraph No. 4 had observed the following:-

"Now this application has been filed. The High Court granted liberty to the applicant to file amendment application. The scope of amendment is to rectify the mistake if it is apparent on record. The applicant has not point out any apparent

mistake appeared in the dismissal order of this Tribunal dated 21.08.2020 instead he prayed to receive additional documents on record and grant the relief prayed in dismissal C.P. No. 70/CTB/2020. The prayer of the applicant is beyond the scope of amendment. The order passed on merit dated 21.08.2020 not set aside by Higher forum, the order is still in force. The C.P. No. 70 of 2022 is not pending hence the question of receiving additional documents in disposed petition/proceeding does not arise. On the applicant side not brought to notice of this Tribunal any apparent mistake appeared in the dismissal order dated 21.08.2020. The High Court granted permission to the applicant to file amendment petition. The applicant not filed an application for an amendment instead he filed the application to receive the additional documents, this prayer is beyond the scope of the permission granted by High Court. The applicant cannot on its own expand the permission granted by High Court and labelled that this application is filed in pursuance of High Court order dated 23.12.2021. In the High Court order there is no whisper about production of additional documents and the revival of the company. In strict sense this application is not in consonance with the order of High Court. The citations submitted by the applicant counsel regarding revival of company are not relevant to decide the amendment application. In the circumstances, the application is devoid of merits both on law and facts and liable to be dismissed."

and resultantly dismissed the Application.

Appellant's Contentions

3. The Learned Counsel for the Appellant submits that the impugned order dated 08.08.2023 in IA No. 19/CB/2023 in CP No. 70/CB/2020 passed by the National Company Law Tribunal, Cuttack Bench is an erroneous one and that the Tribunal had misinterpreted the meaning and 'purport of Liberty' granted to the Appellant, by the Hon'ble High Court of Orissa.

4. According to the Learned Counsel for the Appellant the Appellant / Company was an active Company ever since its incorporation and was maintaining all the requisite Books of Accounts, in terms of the provisions of the Companies Act, 2013. Moreover, 'Notice' of 'Striking off and Dissolution' in Form No. STK-7 was issued dated 23.10.2019 as per Section 248(5) of the Companies Act, 2013 by the 'Registrar of Companies', pertaining to various Companies, among which the Appellant's name was also found.

5. On behalf of the Appellant, it is represented that before 'any notice' issued, as per Section 248(5) of the Companies Act, 2013 was served on the Appellant/Company, a 'notification' was published in the 'Gazette of India' as per Section 248(1) of the Companies Act, 2013, for 'Removal' of the Appellant/Company from the 'Registrar of Companies' for non-filing of Annual Returns for the Financial Years 2016-2017 and

2017-2018.

6. It is projected on the side of the Appellant, that the 'Tribunal' had disregarded the clear liberty granted to the Appellant by the Hon'ble High Court, by holding that since the Company petition was not pending, there was no question of receiving 'Additional Documents' in a disposed of petition/proceeding.

7. The Learned Counsel for the Appellant adverts to the fact that the Tribunal had failed to appreciate that the 'details of Bank Transactions' between 09.01.2013 and 12.03.2018, in the Bank Account of the Appellant allegedly indicated that there were no 'Business Transactions', in the Account and that the Company was neither 'Going Concern' nor was having any 'Business Operations' and was not doing Banking/Business Transactions when its name was struck off from the 'Registrar of Companies'.

8. According to the Appellant, the copies of Company Petition, Bank Statements, Audited Balance Sheets and Annual Returns for the Financial Years 2016-2017 and 2017-18, 2018-19 were annexed to the 'Company Petition' to exhibit that it was in operation all along and undertook to file the outstanding statutory Annual Returns and Financial Statements for the period 2016-2017 and 2017-18, 2018-19 along with the fees and additional fees as applicable in the event of the Company was revived.

9. The Learned Counsel for the Appellant points out that there was blatant negation of the principles of natural justice, in as much as the 'Objections' filed by the Registrar of Companies (Respondent) were not given to the Appellant and 'No Opportunity' was given to the Company to explain and furnish proof in regard to its being in operation at the relevant time.

10. It is the version of the Appellant that the Leka Consulting Services Private Limited (Appellant in Comp. App. (AT) No. 228/2023) had preferred W.P. (C) No. 35437 of 2020 assailing the order dated 21.08.2020 passed by the NCLT, Cuttack in CP No. 69 of 2020.

11. The Learned Counsel for the Appellant refers to the order dated 23.12.2021 in W.P. (C) No. 35437 of 2020 passed by the Hon'ble High Court of Orissa wherein a direction was issued that the 'Appellant' might approach the Ld. NCLT, Cuttack to contend that the impugned order be amended on the 'Tribunal' not having allowed the Appellant to adduce evidence of the company being in operation, in context of the report having said that the 'Tribunal', is satisfied, it may amend the impugned order. It was observed in conclusion that the Appellant herein has not preferred an Appeal and, therefore, is still entitled to approach the Tribunal.

12. According to the Appellant, it filed a CP 47/CB/2022 on 24.06.2022 before the NCLT Cuttack, which was later withdrawn on 20.09.2022, with liberty to prefer necessary petition as per Hon'ble High Court's order of Orissa dated 23.12.2021. Likewise, petition

in CP 48/CB/2022 was filed on 24.06.2022 before the NCLT Cuttack, in the matter of 'Leka Consulting Services Pvt. Ltd'. (Appellant in Comp. App. (AT) No. 227/2023), wherein a similar withdrawal order, with liberty was passed by the 'Tribunal' on 20.09.2022.

13. According to the Appellant, it filed a W.P. (C) No. 26971 of 2022 dated 12.10.2022 before the Hon'ble High Court of Orissa, Cuttack questioning the order dated 21.08.2020 passed by the NCLT Cuttack in CP No. 70/2020. In fact, the W.P. (C) No. 26971 of 2022 was disposed of, as per order dated 23.12.2021 in W.P. (C) No. 35437 of 2020 passed by the Hon'ble High Court.

14. The Learned Counsel for the Appellant brings to the notice of this 'Tribunal' that the Appellant had preferred IA No. 19/CB/2023 dated 25.11.2022 before the NCLT Cuttack, as per Section 252(3) r/w Section 420 of the Companies Act praying for 'Reconsideration' of the Revival / Company resting upon the order dated 14.10.2022 passed by the Hon'ble High Court in W.P. (C) No. 35437 of 2020, while taking into consideration, the 'Additional Documents' furnished along with the said Interlocutory Application being four 'Sale Deeds' from the year 2008 to 2011 along with encumbrance certificates (to exhibit) that the Appellant / Company was in operation at the relevant point of time.

15. The Learned Counsel for the Appellant points out that just because Appellant / Company was making losses, it could not have been concluded that the Appellant / Company was not a 'Going Concern' and was not doing any 'Business Operations'.

16. The Learned Counsel for the 'Appellant' takes a fervent plea that the Appellant had purchased 'Lands' by investing substantial money which was to be utilised for further 'Business Activities' and the 'Loans' taken for purchasing these Lands was required to be 'Paid off' for which 'Revival' of the Appellant / Company is necessary. Also, that the Appellant / Company had given 'Loans' to another corporate entity, which becomes impossible to recover unless and until the Appellant / Company is revived.

17. It is the stand of the Appellant/Company that the Respondent /ROC and the 'Tribunal', had failed to appreciate that the ingredients of Section 248(6) of the Companies Act, 2013 mentions that the Respondent/ROC shall satisfy itself that sufficient provision was made for realization of all the amounts, due to the Company and for payment and discharge of its liabilities and obligations, within a reasonable time and if necessary, undertakings are required to be obtained from the 'Managing Director', Director or other persons incharge of the Management of the Company.

18. The Learned Counsel for the Appellant points out that the Appellant had filed Returns for the earlier years and it could be seen that the Appellant has Assets and Liabilities and as such the Respondent had failed to satisfy the requirement of Section 248(6) of the Companies Act, 2013. As such, the action taken by the Respondent / ROC

is untenable in Law.

19. The Appellant comes out with a stand that the object of Section 252(3) of the Companies Act is to provide a chance to the Company, its 'Members and the Creditors' to revive the Company which was 'struck off' by the 'Registrar of Companies' within a period of 20 years and to provide them an opportunity to carry on the Business.

The Appellant's Citations

20. The Learned Counsel for the Appellant refers to the decision in M.A. Panjwani v. Registrar of Companies, 2013 SCC online Del 4863 wherein at paragraph 12 it was held that the Company Court has the power to order restoration of the Company's name to the Register of Companies on the application made by the Company itself or its Member or Creditor. It has also be observed therein that such an application can be made at any time before the expiry of 20 years from the publication of the notice for striking off the name published in the official gazette. Also it was observed that there are only two circumstances in which the Company Court can exercise the power; the first is when it is satisfied that the Company was, at the time of the striking off of its name from the Register, carrying on business or was in operation; the second circumstance is when it appears to the Company Court that it is "otherwise just" that the name of the company be restored to the Register.

21. The Learned Counsel for the Appellant relies on the decision in M.A. Panjwani's case, wherein at paragraph 15 it was held that the presence of the words "or otherwise" denotes that even if the Company was not carrying on any business or was not in operation at the time of striking off, it is still open to the Company Court to order restoration if it appears to be Court to be "otherwise just".

22. The Learned Counsel for the Appellant adverts to the decision of Hon'ble Supreme Court in the matter of Posh Exports Pvt. Ltd. v. Registrar of Companies 2014 SCC Online Del 7439 wherein the Company was directed to be restored (subject to the filing of all statutory documents and also the other documents with the requisite fee as well as additional fee as applicable on the date of actual filing of the documents) on the basis of an affidavit filed by the said Company that the non-filing of the Annual Return and the Balance Sheets was because the part time Accountant of the said Company, who was dealing with the aforesaid work, left the employment of the Petitioner Company.

23. The Learned Counsel for the Appellant seeks in aid of the decision in Suneil Bhende V. Registrar of Companies in 2018 SCC OnLine NCLT 22132 wherein it was observed that the relevant documents, which are to be filed, are ready with the Company and the Company is willing to file the same if so permitted. That the Petitioner had enclosed the Audited Report and Financial Statement for the relevant years with the petition to show that the Company was in continuous operation. It was held that it would be just and

proper to order restoration of the name of the Company, in the register of Companies maintained by the Registrar of Companies.

24. The Learned Counsel for the Appellant points out that the CP 70/CB/2020 was filed by one of the Directors of the Company, for revival of the Company on 26.02.2020 and the COVID pandemic intervened on and that the Hon'ble Supreme Court's suo moto order excludes all Limitation for all purposes from 15.03.2020 to 28.02.2022.

25. It is represented on behalf of the Appellant that CP 70/CB/2020 on the file of the Tribunal was heard through only virtual mode because of COVID 19, which was just newly started and further the ROC's report was neither provided to the Appellant.

26. Moreover, according to the Appellant, it mistakenly filed another CP/47/CB/252/2023 under the Companies Act, 2013, before the Tribunal instead of preferring an application in the previous CP 70/CB/2020. In any event, the CP/47/CB/252/2023 was filed, within two years from 21.08.2020, when the first CP 70/CB/2020 was dismissed.

27. The Learned Counsel for the Appellant points out that the Tribunal had not non-suited the Appellant on the ground of limitation and in fact, the Hon'ble Supreme Court had already provided for in the suo moto order the exclusion period and in terms of Section 14 of the Limitation Act, 1963, the period of pendency before the Hon'ble High Court from 12.10.2022 to 14.10.2022 = 3 days and the pendency before the Tribunal in CP/47/CB/252/2023 was for 88 days from, 24.06.2022 to 29.02.2022 aggregating in all 91 days.

28. The Learned Counsel for the Appellant points out that till date the Registrar of Companies' Report was not given to the Appellant. Moreover, the prayer made before the Tribunal in the application No. IA 19/CB/2023 in CP 70/CB/2020 was to reconsider the revival of the Appellant/Company, based on the order dated 14.10.2022 passed by the Hon'ble High Court

29. Furthermore, the Appellant came to know about the non-filing of Annual Returns and Balance Sheets for the years 2016-17 and 2017-2018 (for the financial years ending) and further that the Appellant/Company had engaged a Company Secretary to file the Annual Returns before the Respondent / ROC. In fact, the said employee had not filed the Annual Returns on time for the years 2016-17 and 2017-18 and it was only in October, 2019 the

Balance Sheet and Auditor's Report for the financial year 2018-19 were ready to be filed with the Respondent.

30. The Learned Counsel for the Appellant submits that the Tribunal took a hyper technical approach dealing with the IA 19/CB/2023 in main CP 70/CB/2020 and ignored

all meritorious grounds under which the Company can be restored.

31. The other plea of the Appellant is that the substantial justice when it is pitted against technicalities, the former will prevail and in the instant case, the Appellant / Petitioner is able to prove a strong case for restoration of the Company.

Appraisal

32. Before the National Company Law Tribunal, Cuttack Bench, the Petitioner/Appellant had filed IA No. 19/CB/2023 in CP/70/2020 (u/s 252(3) & (420) of the Companies Act read with Rule 11 of NCLT Rules, 2016) wherein he had prayed for reception of additional documents and to consider the revival of the Company.

33. According to the Petitioner/Appellant, the Respondent / ROC had initiated proceedings u/s 248 of the Companies Act, 2013, for the purpose of striking off the name of the Company from the Register maintained by the Respondent.

34. It is the stand of the Appellant that the Respondent / ROC had not followed the procedure u/s 248(1) of the Companies Act, 2013, 'Notices' u/s 248(1) were not sent and now had proceeded to issue notice u/s 248(5) of the Act, publishing the name of the Appellant/Petitioner Company in the official gazette on 2-8 November, 2019.

35. It is projected on behalf of the Appellant that the accounts of the Appellant/Petitioner Company were prepared and audited and that the Company had engaged services of a Company Secretary to perform the task of filing the Returns with the office of the Registrar of Companies and had not revealed this fact to the Directors of the Petitioner/Company. Also, that it was only in October, 2019 when the Balance Sheet and the Auditor's Report in respect of the years 2018-19 were ready to be filed with the Respondent and the fact of non-filing of Annual Return and Balance Sheet for the financial year 2016-2017 and 2017-18 and other documents with the Respondent came to the knowledge of the Petitioner / Company as well as the fact that the Petitioner /Appellant's Company's name was struck off from the Register maintained by the Respondent / ROC.

36. The clear cut stand of the Appellant is that the object of Section 252(3) of the Companies Act, 2013 is to provide a chance to the Appellant / Company his members and Creditors to revive the Company which was 'struck off' by the Registrar of Companies within a period of 20 years and to give them an opportunity of carrying on the Business only after the 'Tribunal' was satisfied that such restoration was necessary in the interest of justice.

37. The Appellant/Petitioner in CA 19/CB/2023 in CP/70/CB/2020 had averred that in the event of the revival of the Appellant/Company and restoration of the name of the Appellant/Company in the 'Register' maintained by the Respondent, the

Appellant/Company shall file all outstanding statutory documents viz. the Financial Statement and Annual Returns for the year 2016-17, 2017-18 and 2018-19 together with the filing fees and the additional fee has applicable on the date of actual filing and the certified copy of the Tribunal for the restoration of the name of the Company to the Register maintained by the Respondent.

38. The Appellant/Petitioner takes a stand that the Tribunal had wrongly dismissed the IA 19/CB/2023 in main Company Petition. Also, that the Appellant/ Company holds immovable properties which were purchased from the money raised through Loans from the Promoters and the Company was at the stage of planning and executing future Business activities, to be carried out by the Appellant/Company when its name was 'struck off'. Apart from that, the Appellant / Company, had also given Loans to another corporate entity which becomes impossible to recover unless and until the Appellant / Company/Petitioner, is revived.

39. The submission of the Appellant is that the Tribunal had failed to take note of the ingredients of Section 248(6) of the Companies Act, 2013 which mentions that the Respondent shall satisfy itself that sufficient provisions was made for realisation of all the amounts due to the Company.

40. The Learned Counsel for the Appellant cites the decision in Jagjit Singh Suri v. Registrar of Companies and Anr. Reported in 2023 SCC OnLine NCLAT 118 wherein at paragraph 11 it is observed as under:-

"In view of the fact that the Company is having a large plot of land approximate area of 27,822 square yards, from the U.P.S.I.D.C., being Plot No. 2/1, in Sahibabad Industrial Area, Sahibabad, Ghaziabad, U.P. vide lease deed dated 15th July, 1972 shows that the Company is having substantial movable as well as immovable assets. Therefore, it cannot be said that the Company is not carrying on any business or operations."

41. The Learned Counsel for the Appellant adverts to the decision in Neotech Engineers Private Limited v. Registrar of Companies, Uttar Pradesh reported in 2021 SCC OnLine NCLT 399 wherein it is observed as under:-

"The Appellant has been able to satisfy this bench that it has certain assets which necessitate and justify the restoration of its name in the Register of Companies. A step as stringent as what has been taken at least required an opportunity to the appellant to take remedial measures. Merely to disallow restoration on grounds of its failure to file annual returns would neither be just nor equitable. As per several decisions of various courts it should only be an exceptional circumstance that court should reuse restoration where the company has been struck off for its failure to file annual return as that would be excessive or inappropriate penalty

for that oversight.”

42. The Learned Counsel for the Appellant seeks in aid of the decision in Manmohan Singh Anand v. Registrar of Companies NCT of Delhi and Haryana & Anr. Reported in 2023 SCC OnLine NCLAT 86 wherein at paragraph 11 it is observed as under:-

“After hearing the parties, going through the pleadings made on behalf of the parties and in view of the fact that the Appellant Company was in some disputes and death of the Managing Director, the company could not file its Annual Returns. Further, the Appellant Company has regularly paid payment of Taxes and having valid Sale Deeds dated 20.09.1972, 20.12.1972 & 21.03.1975 and the Municipal Corporation of Faridabad has issued an Encumbrance Certificate dated 04.09.2019, it shows that the land in which the factory of the Company is located, is currently the name of the Company and also having huge assets of the Company. Hence, we are of the view that the order passed by the National Company Law Tribunal (New Delhi Bench, Court-II) as well as Registrar of Companies, NCT of Delhi & Haryana is not sustainable in law.”

43. Section 420(1&2) of the Companies Act, 2013 reads as under:-

“(1) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.

(2) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.”

44. It is aptly pointed out by the Tribunal that for the purpose of ‘rectification’ of ‘any order’ under Rule 154 of the NCLT Rules, 2016, it should relate to the case. In reality, the ‘Rectification order’ can be passed in regard to the mistakes which are patent on record and not mistakes which may be discovered by process of elucidation or any debate, as opined by this Tribunal.

45. Rule 20 of NCLT Rules, 2016 lays down the procedure ‘for institution of proceedings, petition, Appeals’ before the Tribunal. Rule 44 of the NCLT Rules, 2016 pertains to hearing of petition or applications. Rule 45 of the Rules concerns with the ‘Rights of a Party’ to appear before the ‘Tribunal’.

46. It cannot be forgotten that Section 420 of the Companies Act, 2013 is subject to limitation. It is worth to refer to a decision of Hon’ble Supreme Court in Lilly Thomas v.

Union of India reported in AIR 2000 SC 1650, 1668 wherein it is observed that power to rectify or amend the order is exercised to remove the mistake, without disturbing its finality.

47. The Tribunal in the impugned order had observed that IA No. 19/CB/2023 in CP No. 70/CB/2020 was filed on 16.12.2022 after the lapse of two years period, from the date of the order passed by the NCLT, Cuttack Bench on 21.08.2020 in main Company Petition.

48. Be it noted that the Petitioner/Appellant had filed IA No. 19/CB/2023 in CP No. 70/CB/2020 before the Tribunal, praying for the reception of 'Additional Documents' and to consider the revival of Company. As a matter of right, the Appellant cannot claim to produce the document or examine any witness, before the Appellate Authority. No wonder, the discretion to receive any document/evidence rests with the Appellate Authority.

49. Even though in the present case, the Appellant has come out with a reason that the Petitioner/Appellant had engaged a Part Time Employee to file the Annual Return before the 'Registrar of Companies' and that because of the reason unknown to the Appellant, the said employee left and therefore, the Return could not be filed on time for the financial years 2016-2017 and 2017-18 and by the time it came to the knowledge of the Appellant/Petitioner Company, his name was already struck off from the register maintained by the 'Registrar of Companies', the Tribunal, in CP No. 70/CB/2020 on 08.08.2023, at para No.13 had clearly observed that 'before striking off the name of the company from its register, ROC, had issued a show cause notice to the Company enquiring whether the said Company was carrying any business or was in operation'.

50. It is not out of place for this Tribunal to make a pertinent mention that the Respondent/ROC through its letter dated 16.04.2019 had categorically made a mention that the 'Petitioner' may be put to strict proof of the contentions made therein that at the time of its striking off the company was in operation'.

51. Continuing further, the Tribunal in CP No. 70/CB/2020 through its order dated 21.08.2020 had at para 13 proceeded to observe that 'details/documents furnished alongwith the application do not suggest that the company was in operation and doing any business during the relevant time. Also available details do not suggest that the Company has anybody in its employment'.

52. In view of the clear cut and candid observations made by the Tribunal in CP(Appeal)No.70/CTB/2020 dated 21.08.2020 as mentioned SUPRA the contra pleas of the Appellant that it engaged part time employee to file the Annual Return before ROC and the said employee had left the Company because of unknown reason to the

Appellant and as such, the statutory return could not be filed on time for Financial years 2016-17-18 etc. are 'unworthy of acceptance' as held by this Tribunal.

53. The power of a Tribunal, to permit additional evidence to produce/documents are within the jurisdiction of the Appellate Authority. A document not pertinent to decide the dispute/controversy in a given proceeding/suit, is not to be accepted as Additional Evidence. Besides this, if there is any lacuna or gap in evidence to be filled up, the discretionary power conferred upon the 'Appellate Authority' does not authorise the Appellate Authority to fill the gap in question.

54. In the instant Company Appeal (AT) No. 228 of 2023, it is worthwhile for this Tribunal to point out that in CP No. 70/CB/2020 the Registrar of Companies had filed a Report mentioning the following:-

"The Company was not filing its Statutory Returns i.e. Balance Sheets and Annual Returns since the Financial Year ended 31.03.2017, hence, the Registrar having reasonable cause to believe that the above named Company is not carrying on any business or in operation for a period immediately preceding last Financial Years and has not made any application within such period for obtaining the status of a Dormant Company under Section 455 of the Companies Act, 2013 and issued Notice in Form No. STK-1 under Section 248(1)(c) of the Companies Act, 2013 to the Company enquiring whether the said Company was carrying on any business or was in operation, but no reply to the said Show Cause Notice was received by this Office. Subsequently this office published in the Official Gazette and Newspaper for the information of the general public regarding Strike Off the name of the said company in Form No. STK-5/5A. Finally, after the expiry of the time mentioned in the above notice the Registrar Struck Off the name of aforesaid Company from his Register and published the same in Form No. STK-7 in the Official Gazette dated 02.11.2019 and on the publication of such Notice in the Official Gazette, the Company stood dissolved on and from 24.10.2019.

The Hon'ble NCLT, Cuttack Bench may consider the application/petition preferred under Section 252 of the Companies Act, 2013 on its own merits as deemed fit and proper."

55. In so far as the present case is concerned, the Appellant / Petitioner had not filed an Interlocutory Application praying for an 'amendment' but he chose to file IA 19/CB/2023 in CP/69/CTB/2020 seeking to receive additional documents by the Tribunal and to consider the 'Revival of the Company'. In this regard, the IA 19/CB/2023 in CP/69/CTB/2020 filed by the Petitioner/Appellant before the 'Tribunal', indicates that the Hon'ble High Court had granted permission to the Appellant / Petitioner to file an 'Amendment Application'. However, the Petitioner/Appellant had prayed for the reception of 'Additional Documents' to revive the Company which relief is outside the

ambit of the Hon'ble High Court's order.

56. On a careful consideration of the Appellant's contentions, this Tribunal on going through the impugned order dated 08.08.2023 in IA 19/CB/2023 in CP/70/CTB/2020 passed by the Tribunal is of the considered view that additional evidence is not to be accepted by this Tribunal, just because the documents/evidence will tilt the decision in Petitioner/Appellant's favour.

57. In fact, the 'Tribunal/Court of Law' is to see whether the Petitioner/Appellant lacked due diligence to be seen and he cannot be allowed to fill up the 'Lacuna' at the belated stage. As a matter of fact, the production of Additional Evidence, is not to be allowed, when an individual does not satisfy the Court of Law / Tribunal that such evidence was not within the knowledge or could not be produced with 'Due diligence'.

58. As far as the present case is concerned, the Hon'ble High Court of Orissa on 14.10.2022 disposed of W.P. (C) No. 26971 of 2022, in terms of the order dated 23.12.2021 passed by the Hon'ble High Court of Orissa in W.P. (C) No. 35437 of 2020.

59. In fact, the Hon'ble High Court of Orissa had granted liberty to the Appellant in W.P. (C) No. 26971 of 2022 dated 14.10.2022 to prefer an amendment application, obviously as per Section 420 of the Companies Act, 2013 because of the fact that two years period had not expired.

60. In the present case, in CA 19/CB/2023 in CP 70/CB/2020 the IA was filed before the Tribunal on 16.10.2022 after the expiry of two year's period from the date of dismissal order dated 21.08.2020 in CP 70/CB/2020.

61. Be that as it may, on a careful consideration of the Appellant's submissions, this Tribunal on going through the impugned order in IA No. 19/CB/2023 in CP No. 70/CB/2020 dated 08.08.2023 is of the earnest opinion that the Appellant had not preferred IA No. 19/CB/2023 in CP No. 70/CB/2020 within a two years period, as enjoined as per Section 420(2) of the Companies Act, 2013 and indeed, the IA No. 19/CB/2023 in CP No. 70/CB/2020 came to be filed before the Tribunal on 16.12.2022 after a lapse of two years period on 16.12.2022. Therefore, the Tribunal had rightly opined that IA No. 19/CB/2023 in CP No. 70/CB/2020 was not to be considered in regard to the reception of additional documents/additional evidence. Looking at from any angle, the impugned order dated 08.08.2023 in IA No. 19/CB/2023 in CP No. 70/CB/2020 passed by the NCLT, Cuttack Bench is free from any legal flaws. Consequently, the Appeal sans merits.

RESULT

In fine, the 'instant Comp App (AT) 228/2023 is dismissed.

No costs. Connected pending IAs', if any, are closed.