2024:DHC:1283

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th FEBRUARY, 2024

IN THE MATTER OF:

\+ **W.P.(C) 1546/2021 & CM APPL. 34108/2023**

REEBOK INDIA COMPANY ..... Petitioner

Through: Mr. Raj Shekhar Rao, Sr. Advocate with Mr. Shantanu Tyagi, Mr. Aayush Kevlani, Ms. Purnima Mathru, Ms. Yamini Mookherjee, Advocates

versus

UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF CORPORATE AFFAIRS & ANR. ..... Respondents

Through: Mr. Ravi Prakash, CGSC with Mr. Varun Aggarwal, Mr. Farman Ali, Ms. Astu Khandelwal, Mr. Aman Rewaria, Mr. Yasharth Shukla, Ms. Usha Jamnal, Mr. Abhishek Khanna, Advocates

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court with the following prayers:

> "*(a) issue an appropriate direction, order or writ in the nature of mandamus quashing / setting aside the Impugned Rule, i.e. Rule 37(8) of the Companies (Incorporation) Third Amendment Rules, 2016, notified by the Respondent No.1 on 27.07.2016 as it is ultra vires the Act and the Constitution;*
>
> *(b) issue an appropriate direction, order or writ in the nature of certiorari quashing / setting aside the Impugned Decision and Order dated 07.08.2020 passed by the Respondent No.2;"*

2. Since Rule 37 of the Companies (Incorporation) Third Amendment Rules, 2016, notified by the Respondent No.1 on 27.07.2016 is under challenge in the present Writ Petition, the matter was placed before the Division Bench of this Court. On 23.01.2023 Learned Counsel appearing for the Petitioner stated before the Division Bench of this Court that he is not pressing for the relief prayed for in the prayer Clause (a) of the Writ Petition. In view of the submission made by the learned Counsel for the Petitioner the matter was listed before a Single Judge.

3. This Court will, therefore, deal only with the Order dated 07.08.2020, which is under challenge in the present Writ Petition, by which the Registrar of Companies rejecting the conversion of the Petitioner's company from an "Unlimited Liability Company" to a "Limited Liability Company".

4. Facts of the case reveal that the Petitioner is a company incorporated under the Companies Act, 1956 and is engaged in the business of wholesale cash and carry trading of footwear, apparels and sports equipment under the "Reebok" brand name through franchise based stores across India. It is stated that the Petitioner was set up as Joint-Venture (JV) company by Reebok International Limited (*hereinafter referred to as 'the RIL'*), a company registered under the laws of the United States of America. It is stated that the investment of RIL in the equity shares of the Petitioner/Company was done through Reebok (Mauritius) Company Limited, a subsidiary of RIL.

5. It is stated that after consideration of the changing conditions in the external environment in which the Petitioner/Company operated and on evaluating its organizational structure and further considering the changes in

its strategy and key management of the Company, the shareholders and the Board of Directors of the Petitioner passed a resolution to convert the Petitioner/Company from an unlimited liability company to a private limited company under Section 18 of the Companies Act, 2013. It is stated that on 21.10.2014, the Petitioner filed an application for conversion of the company into a limited liability company along with all the relevant and necessary e-forms INC-1, GNL-1, and MGT-14. It is stated that on 31.10.2014 the Petitioner was informed by Respondent No.1 that its e-form INC-1 has been marked as "pending user clarification" as the Petitioner had not complied with Section 18 of Companies Act. It is stated that on 12.11.2014, the Petitioner wrote a letter to the Respondent No. 2 clarifying and explaining its compliance with Section 18 of the Companies Act.

6. Union of India brought out the Companies (Incorporation) Third Amendment Rules, 2016 (*hereinafter referred to as 'the 2016 Rules'*). The said Rules came into force on 27.07.2016 and on that date the application of the Petitioner/Company was pending. Rule 37 of the said Rules deals with Conversion of unlimited liability company into a limited liability company by shares or guarantee. Rule 37(8) of the said Rules specifies as to when An Unlimited Liability Company shall not be eligible for conversion into a company limited by shares or guarantee and the same reads as under:

> " *(8) An Unlimited Liability Company shall not be eligible for conversion into a company limited by shares or*
> *guarantee in case-*
>
> *(a) its networth is negative, or*
> *(b) an application is pending under the provisions of the Companies Act1956 or the Companies Act, 2013 for striking off its name, or*

> *(c) the company is in default of any of its Annual Returns of financial statements under the provisions of the Companies Act, 1956 or the Companies Act, 2013, or*
>
> *(d) a petition for winding up is pending against the company, or*
>
> *(e) the company has not received amount due on calls in arrears, from its directors, for a period of not less than six months from the due date; or*
>
> *(f) an inquiry, inspection or investigation is pending against the company."*

7. It is stated that the application of the Petitioner was rejected vide communication dated 05.10.2016 without any reasons and justification. It is stated that the Petitioner wrote letters seeking reasons for the rejection and since no reason was forthcoming, the Petitioner approached this Court by filing W.P.(C) 952/2017 challenging the communication dated 05.10.2016. It is stated that this Court *vide* Order dated 03.03.2020 directed the Respondent No.2 to decide the application of the Petitioner afresh, in accordance with law, after giving adequate opportunity of being heard to the Petitioner. It is stated that pursuant to the Order passed by this Court, the Petitioner was invited by Respondent No.2 for in-person hearing on 30.06.2020. Material on record discloses that after hearing the Petitioner, the application of the Petitioner was rejected *vide* Order dated 07.08.2020.

8. It is this Order which is under challenge in the present Writ Petition.

9. The reasons given by the Respondents for rejecting the application of the Petitioner are as under:

a. that various prosecutions have been filed by the Serious Fraud Investigation Organization against the Petitioner for offences under the Companies Act and the IPC.

b. that the e-Form 27 which was to be filed with the Registrar of Companies was not in compliance with Rule 37 of the 2016 Rules.

c. to protect the interest of creditors, stakeholder and public interest and also keeping in view the factual position and the position of law on protection of interest of creditors on conversion of status from one class of company to another class as company as the Petitioner Company was involved in falsification of Books of Accounts & financial statements during the period of 2008 to 2011 by raising fictitious.

d. The Petitioner/Company has not enclosed the list of Creditors, suppliers & Stakeholders to whom amount was payable as on date of conversion nor it has attached any NOC from them on account of conversion of status of company with its conversion application. The Petitioner had also not filed any public advertisement in the newspaper inviting objections of creditors/stakeholders nor had it filed any undertakings/ declaration of the 3 shareholders of the company giving their guarantee to bring assets to the company if company fails to repay its creditors.

e. That the Auditors of the Company have given serious adverse remarks/qualifications in the financial statements as on 31.03.2014, i.e. preceding to the date of Company's application

dated 21.10.2014. The Auditor has also stated that accumulated loss at the end of financial year is more than 50% of net worth and company has cash losses in current year & preceding financial year. Further the company has used funds amounting to Rs. 3,50,87,54,000/- raised on a short term basis primarily to finance operating losses.

f. It was also held that on an analysis of financial statements of the company, it was found that the company has a net deficit in current liabilities over the assets amounting to Rs. 2117.52 Crores, Rs. 2175.32 Crores & Rs. 2122.14 Crores as on 31.03.2014, 31.03.2015 & 31.03.2019 respectively due to cash losses incurred by the company during the past financial years and the net worth of the company is negative and if company goes into winding up or is unable to pay its debts/liabilities then only the 3 shareholders of company have to bring money to pay the debts of the company and the company will not be able to pay its creditors in full.

10. Since the validity of Rule 37 of the 2016 Rules is not under challenge anymore, the only question which remains for consideration is as to whether the Order rejecting the application of the Petitioner can be sustained or not.

11. It is contended by the learned Senior Counsel appearing for the Petitioner that Section 18(3) of the Companies Act provides for conversion of companies which are already registered and it provides that the registration of a company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf

of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done. He, therefore, states that any debts, liabilities, obligations or contracts incurred or entered by or on behalf of the company with unlimited liability will continue to be enforceable against the company with limited liability as if the liability of the company and its members was unlimited. He, therefore, states that there cannot be any concerns regarding the liability of the members of the company on the date of conversion. He states that the laws in Singapore and UK have the same effect that the liability of the members gets limited only from the date the application for conversion gets approved. He, therefore, states that in view of the above, the major concerns raised by the RoC cannot survive.

12. The Ld. Senior counsel also states that any pending prosecutions initiated by the SFIO cannot be an impediment for converting the company from an unlimited liability company to a limited liability company inasmuch as the continuation of such prosecutions which have been initiated prior to the conversion of the company will have no effect on the liability of the company.

13. It is pertinent to mention herein at this juncture that this Court on 23.03.2023 had directed the Petitioner/Company to file an undertaking in terms of Section 18(3) of the Companies Act disclosing the management and shareholding pattern as on the date of the application and post conversion being granted. The Petitioner/Company was also directed to file the details of any changes in the management since 2014.

14. As directed by this Court, an affidavit had been filed by the Petitioner/Company on 06.04.2023. A perusal of the said affidavit discloses

that the shareholding pattern of the company has changed more than once since the date of the application. Paragraph No.2 & 3 of the said affidavit lists out the changes in the shareholding pattern from the date of application and the same reads as under:

Shareholder name	No. of shares held	% of shareholding
Reebok (Mauritius) Company Limited	2130377	93.15
adidas Technical Services Private Limited	2	0.00
Focus Energy Limited	156750	6.85

Since then, the shareholding structure has changed 3 times, in January 24, 2022, February 21, 2022 and February 24, 2022, details of which are below:

January 24, 2022

Shareholder name	No. of shares held	% of shareholding
Reebok International Ltd. LLC.	233008420	99.03
Reebok (Mauritius) Company Limited	2130377	0.91

adidas Technical Services Private Ltd.	2	0.00
Focus Energy Ltd.	156750	0.07

February 21, 2022

Shareholder name	No. of shares held	% of shareholding
Reebok International Ltd. LLC.	233008420	99.03
Reebok (Mauritius) Company Limited	2130377	0.91
adidas Technical Services Private Ltd.	2	0.00
adidas America, Inc.	156750	0.07

February 24, 2022

Shareholder name	No. of shares held	% of shareholding
adidas Holdings LLC	233008420	99.03

adidas (Mauritius) Limited (*formerly known as Reebok (Mauritius) Company Limited*)	2130377	0.91
adidas Technical Services Private Ltd.	2	0.00
adidas America, Inc.	156750	0.07

As of the date of this affidavit, the Petitioner Company's shareholding structure is as below:

Shareholder name	No. of shares held	% of shareholding
adidas Holdings LLC.	233008420	99.03
adidas (Mauritius) Limited (*formerly known as Reebok (Mauritius) Company Limited*)	2130377	0.91

adidas Technical Services Private Ltd.	2	0.00
adidas America, Inc.	156750	0.07

3. The present members of the Board of Directors, and Key Managerial Personnel of the Petitioner Company are:

Name of Director	DIN	Designation
Neelendra Singh	08491872	Managing Director
Sunali Ahluwalia	09287188	Director

15. Arguments in the matter were heard and judgment was reserved on 12.09.2023. While dictating the Judgment this Court felt that the issue as to whether the Companies (Incorporation) Third Amendment Rules, 2016, would be applicable to the pending applications should also be dealt with and the case was posted for hearing once again on 09.11.2023 and the matter was again reserved on 08.12.2023.

16. Learned Counsel for the Petitioner has placed reliance on the following judgments:

a) Kunj Behari Lal Butail and Ors. v. State of H.P. and Ors., **(2021) 10 SCC 210**;

b) Panchi Devi v. State of Rajasthan and Ors., **(2009) 2 SCC 589**;

c) M. Surender Reddy v. State of Andhra Pradesh and Ors., **(2015) 8 SCC 410**;

d) L.R. Brothers Indo Flora Ltd. v. Commissioner of Central Excise, **2020 SCC OnLine SC 705.**

17. In Sree Sankaracharya University of Sanskrit and Others v. Dr. Manu and Another, **2023 SCC OnLine SC 640**, the Apex Court has culled out the following principles:

i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.

ii) In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.

iii) An explanation/clarification may not expand or alter the scope of the original provision.

iv) Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.

18. Per contra, learned Counsel for Respondents relies on the Judgment of the Apex Court in Zile Singh v. State of Haryana, **(2004) 8 SCC 1**, wherein the Apex Court has held as under:

"***14***. *The presumption against retrospective operation is not applicable to declaratory statutes…. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended…. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69).*

15. *Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)*

> ***16***. *Where a statute is passed for the purpose of supplying an obvious omission in a former statute or to "explain" a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. A classic illustration is the case of Attorney General v. Pougett [(1816) 2 Price 381 : 146 ER 130] (Price at p. 392). By a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s 4d, but the Act omitted to state that it was to be 9s 4d per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s 4d per cwt., but Thomson, C.B., in giving judgment for the Attorney General, said: (ER p. 134)*
>
> > *"The duty in this instance was, in fact, imposed by the first Act; but the gross mistake of the omission of the weight, for which the sum expressed was to have been payable, occasioned the amendment made by the subsequent Act: but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act;" (Price at p. 392)"*

19. It is contention of the learned counsel for the Petitioner that the Registrar only had to satisfy himself as to whether the provision of Chapter II which will be applicable to the registration of companies has been complied with or not as they existed on the day when the application was made. He states that if the ingredients had been complied with on the day of the application, the Registrar ought to have issued a certificate of registration

in the same manner as it was under the earlier regime. Under Section 18(2) of the Companies Act, the Registrar of Companies could not have exercised his discretion to not permit the conversion of an unlimited company to a limited company in case the company's net worth was negative or where the company was in default of its annual returns or financial statements under the provisions of the Companies Act or if an inquiry, inspection or investigation was pending against the company.

20. Resultantly, even if the net-worth of the company was negative or even if there was an inquiry, inspection or investigation pending against the company, the Registrar of Companies had no other alternative but to accept the application.

21. This Court is of the opinion that the lacuna in the Companies (Incorporation) Rules, 2014 is being sought to be cured by the 2016 Amendment. Since the purpose of the amendment is to cure the defects which existed in the law by giving discretion to the RoC to satisfy himself that there are sufficient means in the company to answer their debts even after conversion, it cannot be said that it would operate only to applications filed after the 2016 amendment. Merely filing an undertaking as mandated under Section 18(3) would not take care of the interests of the creditors which is now sought to be protected under the 2016 amendment.

22. The Apex Court in State Bank's Staff Union (Madras Circle) v. Union of India, **(2005) 7 SCC 584**, has observed as under:

> "***19***. *Every sovereign legislature possesses the right to make retrospective legislation. The power to make laws includes the power to give it retrospective effect. Craies on Statute Law (7th Edn.) at p. 387 defines retrospective statutes in the following words:*

"A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past."

20.*Judicial Dictionary (13th Edn.) by K.J. Aiyar, Butterworth, p. 857, states that the word "retrospective" when used with reference to an enactment may mean (i) affecting an existing contract; or (ii) reopening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure. Words and Phrases, Permanent Edn., Vol. 37-A, pp. 224-25, defines a "retrospective or retroactive law" as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.*

21. *In Advanced Law Lexicon by P. Ramanath Aiyar (3rd Edn., 2005) the expressions "retroactive" and "retrospective" have been defined as follows at p. 4124, Vol. 4:*

"Retroactive.—Acting backward; affecting what is past.

(Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. — Also termed retrospective. (Black's Law Dictionary, 7th Edn., 1999)

*' "**Retroactivity" is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called "true***

retroactivity", consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as "quasi-retroactivity", occurs when a new rule of law is applied to an act or transaction in the process of completion…. The foundation of these concepts is the distinction between completed and pending transactions*….' T.C. Hartley, Foundations of European Community Law, p. 129 (1981).*

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Retrospective.—Looking back; contemplating what is past.

Having operation from a past time.

'Retrospective' is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one. In general, however, the courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. Thus, a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisite for its action is drawn from a time antecedent to its passing." (Vol. 44, Halsbury's Laws of England, 4th Edn., p. 570, para 921.)

22. The question of retrospectively affecting the award is factually of academic interest. It was admitted before the High Court that all amount payable under the award for the prior period has been paid.

23. *In Harvard Law Review, Vol. 73, p. 692 it was observed that:*

*"**It is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called 'small repairs'. Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus the interest in the retroactive curing of such a defect in the administration of the Government outweighs the individual's interest in benefiting from the defect**."*

The above passage was quoted with approval by the Constitution Bench of this Court in the case of Asstt. Commr. of Urban Land Tax v. Buckingham and Carnatic Co. Ltd. [(1969) 2 SCC 55] In considering the question as to whether the legislative power to amend a provision with retrospective operation has been reasonably exercised or not, various factors have to be considered. It was observed in the case of Stott v. Stott Realty Co. [284 NW 635] as noted in Words and Phrases, Permanent Edn., Vol. 37-A, p. 2250 that:

"The constitutional prohibition of the passage of 'retroactive laws' refers only to retroactive laws that injuriously affect some substantial or vested right, and does not refer to those remedies adopted by a legislative body for the purpose of providing a rule to secure for its citizens the enjoyment of some natural right, equitable and just in itself, but which they were not able to enforce on account of defects in the law or its omission to provide the relief necessary to secure such right."

24.*Craies on Statute Law (7th Edn.) at p. 396 observes that:*

> *"**If a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right**."*
>
> ***Thus public interest at large is one of the relevant considerations in determining the constitutional validity of a retrospective legislation.***
>
> ***25. The above position was elaborately noted in Virender Singh Hooda v. State of Haryana [(2004) 12 SCC 588] .***
>
> ***26. Curative statutes are by their very nature intended to operate upon and affect past transactions. Curative and validating statutes operate on conditions already existing and are therefore wholly retrospective and can have no prospective operation**."*
>
> (emphasis supplied)

23. Similarly, the Apex Court in State of Kerala v. B. Six Holiday Resorts (P) Ltd., **(2010) 5 SCC 186**, while adjudicating on the issue of retrospectivity of rules in public interest held as under:

> "***17***. *This question is directly covered by the decision of this Court in Kuldeep Singh v. Govt. of NCT of Delhi [(2006) 5 SCC 702] relating to the grant of licences for sale of Indian-made foreign liquor. This Court held: (SCC pp. 713 & 715, paras 29-31 & 36)*
>
> > *"29. It is not in dispute that the State received a large number of applications. It was required to process all the applications. While processing*

such applications, inspections of the proposed sites were to be carried out and the contents thereof were required to be verified. For the said purpose, the applications were required to be strictly scrutinised.

30. Unless, therefore, an accrued or vested right had been derived by the appellants, the policy decision could have been changed.

31. What would be an acquired or accrued right in the present situation is the question.

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36. In a case of this nature where the State has the exclusive privilege and the citizen has no fundamental right to carry on business in liquor, in our opinion, the policy which would be applicable is the one which is prevalent on the date of grant and not the one, on which the application had been filed. If a policy decision had been taken on 16-9-2005 not to grant L-52 licence, no licence could have been granted after the said date."

***18**. We may in this context refer to some earlier decisions laying down the principle that applications for licences have to be considered with reference to the law prevailing on the date of consideration.*

***19**. In State of T.N. v. Hind Stone [(1981) 2 SCC 205] this Court considered the validity of government action in keeping applications pending for long and then rejecting them by applying a rule subsequently made. This Court while holding that such action is not open to challenge observed: (SCC pp. 219-20, para 13)*

> *"13. ... The submission was that it was not open to the Government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force.* ***While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application.****"*

20*. We may next refer to the decision in Union of India v. Indian Charge Chrome [(1999) 7 SCC 314] wherein this Court held: (SCC p. 327, para 17)*

> ***"17. … Mere making of an application for registration does not confer any vested right on the applicant. The application has to be decided in accordance with the law applicable on the date on which the authority granting the registration is called upon to apply its mind to the prayer for registration."***

21. *The applicant contended that it had a vested right because of the several time-bound orders of the High Court and those orders were deliberately flouted by the Excise Authorities. An identical contention was rejected by this Court while considering the issue with reference to sanction of a licence under the Building Rules in Howrah Municipal Corpn. v. Ganges Rope Co. Ltd. [(2004) 1 SCC 663] This Court held: (SCC pp. 679-80, paras 36-37)*

> *"36. ... Neither the provisions of the Act nor general law creates any vested right, as claimed by the applicant Company for grant of sanction or for consideration of its application for grant of sanction on the then existing Building Rules as were applicable on the date of application. Conceding or accepting such a so-called vested right of seeking sanction on the basis of the unamended Building Rules, as in force on the date of application for sanction, would militate against the very scheme of the Act contained in Chapter XII and the Building Rules which intend to regulate the building activities in a local area for general public interest and convenience. It may be that the Corporation did not adhere to the time-limit fixed by the court for deciding the pending applications of the Company but we have no manner of doubt that the Building Rules with prohibition or restrictions on construction activities as applicable on the date of grant or refusal of sanction would govern the subject-matter and not the Building Rules as they existed on the date of application for sanction. No discrimination can be made between a party which had approached the Court for consideration of its application for sanction and obtained orders for decision of its application within a specified time and other applicants*

whose applications are pending without any intervention or order of the Court.

37. ... The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to 'ownership or possession of any property' for which the expression 'vest' is generally used. What we can understand from the claim of a 'vested right' set up by the respondent Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a 'legitimate' or 'settled expectation' to obtain the sanction. In our considered opinion, such 'settled expectation', if any, did not create any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay ***but during pendency of its application for sanction, if the State Government, in exercise of its rule-making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such 'settled expectation' has been rendered impossible of fulfilment due to change in law. The claim based on the alleged 'vested right' or 'settled expectation' cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules…."*** *(emphasis in original)*

22*. Where the rules require grant of a licence subject to the fulfilment of certain eligibility criteria either to safeguard public interest or to maintain efficiency in administration, it follows that the application for*

> *licence would require consideration and examination as to whether the eligibility conditions have been fulfilled or whether grant of further licences is in public interest. Where the applicant for licence does not have a vested interest for grant of licence and where grant of licence depends on various factors or eligibility criteria and public interest, the consideration should be with reference to the law applicable on the date when the authority considers applications for grant of licences and not with reference to the date of application.*"

24. The Division Bench of this Court in its Order dated 03.03.2020 had only directed the RoC to decide the application of the Petitioner afresh in accordance with law. As of today there is no challenge to the 2016 Regulations. This Court is of the opinion that since the 2016 Amendment was only curative in nature and only intended to protect the interests of the creditors, the amended rules, therefore, must apply to applications which are pending with the RoC, and the same must apply to the application of the petitioner/company. The right of the Petitioner for conversion from unlimited company to limited company has not been taken away. In fact, the petitioner/company had no vested right to be granted a certification of conversion to a limited liability company. The rules have only become more stringent inasmuch as the RoC has additional criteria to satisfy himself regarding the networth of the company and as to whether any investigation/inspection is pending against the company or not and only on being satisfied, the permission for conversion can be granted.

25. Viewed in this light, the reasons given by the RoC for rejecting the application of the Petitioner on the ground that various prosecutions have been filed by the Serious Fraud Investigation Organization against the

Petitioner for offences under the Companies Act and the IPC and that the e-Form 27 which was to be filed with the Registrar of Companies was not in compliance with Rule 37 of the 2016 Rules cannot be said to be so perverse especially keeping in mind the interest of the shareholders and the interest of the creditors. The RoC has also observed that the petitioner/company has suffered substantial financial losses and has a net deficit in current liabilities over the assets in excess of Rs. 2100 Crores. The registrar was also not provided with an NOC or undertaking from all the shareholders to support the conversion application and the petitioner did not even issue a public advertisement inviting objections from various creditors/stakeholders on the issue of conversion.

26. The anxiety on the part of the Registrar of Companies that the creditors and stakeholder should not be left high and dry cannot be said to be completely unjustified.

27. Accordingly, the Writ Petition is dismissed. Pending applications, if any, also stands dismissed.

SUBRAMONIUM PRASAD, J

FEBRUARY 16, 2024
Rahul