IN THE SUPREME COURT OF SEYCHELLES

EXPARTE: ORION INTERNATIONAL LTD **APPLICANT**

Civil Side No 133 of 2009

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Mr A. Derjacques for the Applicant

RULING

B. Renaud J

This is an Application entered by the Applicant on 3rd July, 2009, under **Section 97(6) & 98(1**) of the International Business Companies Act Cap 100A and as amended by Act 7 of 2009 – Section 3A(1)(Q).

The Applicant is praying this Court to order:

(1) That the company shall pay its fees and license due and payable to the Registrar, and
(2) That the Registrar shall restore the name of the company, namely, Orion International Ltd, to the register.

The Applicant company was registered with the International Business Authority (hereinafter SIBA), on 19th January, 2004, and registered as Company No.14061. On 1st January, 2006, pursuant to Section 97(6) of the International Business Companies Act, the Applicant's name was struck-off the company registry by the registrar for non-payment of fees due.

The Applicant pleaded that it is willing and able to pay all fees due to the Registrar as per Section 102 of the Act and further the required license fee when so ordered by the Court, prior to being restored to the register.

The Applicant averred that it presently needs to be restored to the Register to continue its functions, meet its bills and fees, discharge its obligations, monitors its accounts and monies, and it is therefore reasonable for the name of the company to be restored to the Register.

Section 97(6) of the International Business Companies Act Cap 100A states that:

> "*If a company fails to pay the increased licence fee stated in the notice referred to in subsection (5) by the 31st December referred to in that subsection, the Registrar shall strike the name of the company off the Register from the 1st January next ensuing".*

Section 98(1) of the International Business Companies Act Cap 100A states that:

> "*If the name of a company has been struck off the Register under 97(4) the company, or a creditor, member or liquidator thereof or any person having an interest in the company may within 3 years immediately following the date of striking off, apply to the court to have the name of the company restored to the Register".*

The Applicant is not disputing the decision of the Registrar for striking out its name on the Register.

In terms of Section 98(1) any person who has an interest in a company whose name has been struck off the Register, to have the name of that company restored on the Register has to apply to the court to have the name of the company restored to the Register **within 3 years** immediately following the date of its being stricken off.

In the instant case, the company having been struck off on 1st January, 2006 the period of 3 years immediately following the date of striking off expires on 1st January, 2009. The Applicant having entered its application for re-instatement on the Register, only on 3rd July, 2009, that application has been made outside of the prescribed time by 6 months.

The issue here is whether this Court has the inherent authority to condone the delay after the expiration of the 3 year limitation period provided for under Section 98(1) of the Act, prior to it being amended.

The Legislature, on 27th May, 2009 enacted an amendment to Section 98(1) of the Act, and extended the 3 year limitation period to 10 years. I note from the Bill that It cited the reason for doing so, as,- "the amendments to the Act will allow Seychelles to enhance its competitive edge and remain at the forefront of current developments in the offshore industry". It thus created the possibility of a company to be restored to the Register within a

period of **10 years** instead of 3 years,following the date of its being struck off. In the case of **Sandhya Rani Satkar v Sudha Rani Debi, (1978) 2 SCC 116,** the Court held that:

> "In dealing with question of condoning the delay the party seeking relief has to satisfy the Court that it had sufficient cause for not preferring the appeal or making the application within the prescribed time and this has always been understood to mean that the explanation has to cover the whole period of delay. It is not possible to lay down precisely as to what facts or matters would constitute 'sufficient cause' but those **should be construed so as to advance substantial justice where no negligence or any inaction or want of bona fides is imputable to the party**; that is, **the delay in filing the appeal or application should not have been for reasons which indicated the party's negligence in not taking necessary steps which he would have or should have taken. Discretion is conferred on the Court** before which an application for condoning the delay is made and **if the Court after keeping in view relevant principles exercises its discretion granting relief**, unless it is shown to **be manifestly unjust or perverse** the Court would be loathe to interfere with it ".

However, delay is not to be needlessly encouraged. The discretion to excuse the delay is a judicial discretion**. Sir Barnes Peacock** lays down the circumstances in which delay will operate as a bar to legal remedy, in **Lindsay Petroleum Co. v Hard (1874) LR PC 221, 239**: -

> "Where it would be **practically unjust to give a remedy**, either because the party has by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, **yet put the other party in a situation i**n which it would be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. **But in every case, ifan argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable.** Two circumstances, always important in such cases, are **the length of the delay** and the **nature of the acts done** during the interval, which might affect

> either party and cause a balance of justice or injustice in taking the one course or the other for as it relates to the remedy."

The words "may admit" clearly connote a discretion vested in the Court to admit or not to admit the application. The discretion of the Court to condone or not condone the delay **is a judicial exercise** of the power and **not an arbitrary one**. In **Sharp v Wakefield (1891) A.C. 173,** Halsbury L.C. adverts to this discretionary power of courts and says:

> "An extensive power is confided to the Justices in their capacity as Justices to be exercised judicially and 'discretion' means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion according to law and not humour. It is not to be arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself. There is no limitation upon the absolute discretion of the Justice, provided that, there is a real judgment exercised in respect of the individual case. But where it cannot be shown that no real discretion has been exercised, the applicant has no other result."

The true guide for the Court in the exercise of its discretion in excusing the delay in presenting an appeal or application is whether the appellant or applicant has acted with reasonable diligence in presenting his appeal or application. (see **The Pal ghat Municial Council v The National Motor Works Ltd. (1965) 2 MLJ 107.**) The yardstick for exercise of judicial discretion has no fetters. No hard and fast rule can be laid down to govern the matter or control the exercise of such discretion. Each case must depend on its own facts." (per P**.N. Mukherjee, J** in **R.S. Chandranull Indra Kumar v J.M. Goenka, 67 Cal W N 482**). The exercise of such discretion by the subordinate court either wrongly or rightly cannot be questioned in appeal or revision, and in the exercise of such discretion is absolutely within the discretion of the subordinate court (see **Manindra Lands & Buildings Corporation v Bhutnath Banerjee, AIR 1964 SC 1336**).

From the pleadings I find that the delay in filing the application are not for reasons which indicated the party's negligence in not taking necessary steps which he would have or should have taken. The delay is not for an inordinately long period and appears to be a genuine omission on the part of the applicant. I also find that it is not manifestly unjust or perverse to condone the delay as the Respondent will not be adversely affected by such

condonation, as the Respondent, by causing the amendment to extend the period to 10 years indicates that the delay is not serious. The discretion of the Court to condone or not condone the delay is a judicial exercise of the power and not an arbitrary one. I am also satisfied that the applicant has acted with reasonable diligence in presenting this application as soon as possible.

For reasons enunciated above, it is my considered judgment that I ought to exercise my discretion in favour of the Applicant and condone the delay and make the following orders:

(1) I hereby order the Registrar to allow the Applicant's Company to pay its fees and license due and payable to the Registrar; and, after the Applicant has complied with this order,
(2) I hereby order the Registrar to restore the name of the Company, namely, Orion International Ltd, to the Register.

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B. RENAUD

JUDGE

Dated this 16th day of July 2010