

**IN THE COURT OF APPEAL  
OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an appeal under and in terms of Section 472  
of the Companies Act No.07 of 2007, read with article 138  
of the Constitution.

Jyothi Laboratories Ltd., having its registered office and the  
principal place of business at Ujala House, Ram Krishna  
Mandir Road, Kondivita, Off Andheri Kurla Road, Andheri  
East, Mumbai 400059 India.

**Appellant**

**CA(Appeal) application  
No.CA/MIS/ 01/2016**

**Vs.**

1. The Registrar General of Companies,  
Samagam Madura,  
No.400, D.R. Wijewardena Mawatha, Colombo 10.
2. Jyothi Laboratories Lanka (Private) Limited,  
23, 1/15, Sea Street, Colombo 11.

**Respondents**

Before: **HON. PRASANTHA DE SILVA, J. &  
HON. K.K.A.V. SWARNADHIPATHI, J.**

Counsel: M. Bandara

For the Appellant

Dr. Charuka Ekanayaka, SC

For the 1<sup>st</sup> Respondent

Dr Sunil F.A. Coorey

For the 2<sup>nd</sup> Respondent

Argued on 15.07.2021

Decided on 15.11.2022

**HON. K.K.A.V. SWARNADHIPATHI, J.**

### **JUDGMENT**

The Appellant had filed an application against the Registrar General of Companies under Section 10(1) (c) of the Companies Act No.7 of 2007. The outcome of the inquiry was that the Registrar of Companies rejected the Appellant's application. Aggrieved by that decision, the Appellant had invoked the jurisdiction of this Court.

The parties argued the Appeal and agreed to file fresh written submissions.

The 2<sup>nd</sup> Respondent took up an objection regarding jurisdiction. Accordingly, he argued that any appeal from the Registrar of companies must be referred to the Commercial High Court. However, the second Respondent did not pursue that preliminary objection. Therefore, we will not consider the preliminary objection.

When considering the main Appeal, the Appellant argues that the name of the 2<sup>nd</sup> Respondent is misleading and that it is similar to the name of the Appellant.

The Appellant had used the name "Jyothy Laboratories Ltd. for more than twenty years. They are the owners of "The Ujala brand, a fabric whitener. The said company had done business in Sri Lanka, and the Ujala brand had become a household name.

The Sri Lankan distributor of the Appellant was "Fa Impex (Pvt) Ltd., The Directors and the shareholders of the 2<sup>nd</sup> Respondent company were the same persons as in Fa Impex (Pvt) Ltd. Therefore, they were well aware of the brand Ujala and the Appellants companies. They were also aware that Jyothy was the first name of the daughter of the Managing Director of the Appellant Company. The 2<sup>nd</sup> Respondent had used Jyothy Laboratories Lanka (Pvt) Ltd. as its name. Using this name had given the impression that the Appellants Company has a direct link with the 2<sup>nd</sup> Respondent and is misleading.

As Section 10(1) of the Companies Act provides provision to direct any local company to change its name, the Appellant sought the 1<sup>st</sup> Respondent to exercise its powers which the 1<sup>st</sup> Respondent had failed to fulfil. Therefore, the Appellants plead from Court to direct the Registrar General of Companies to duly hear and determine the application of the Appellant in terms of Section 10(1) of the Companies Act.

When the matter was taken up for argument, the Appellant argued that Section 10(1) (c), which reads as;

"Notwithstanding Section 7, the registrar may direct a company to change its name in the following circumstances". Subsection (c) reads as

(c) a request is made to the Registrar to do so by any person, and the Registrar is satisfied that the name was not applied for in good faith for the purpose of identifying the company.

Even though this provision is specified in the Act, Registrar failed to consider the application of the Appellant and informed that there was no provision under the Companies Act to accede to the request of the Appellant.

Section 472(2) had permitted the Appellant to appeal against the decision of the Registrar. Section 472 reads as

"A person who is aggrieved by an act on the decision of the Registrar may appeal to the Court within fifteen working days after the date of receiving notice of the act or decision, or such further time as the Court may allow".

The Appellant argued that the 1<sup>st</sup> Respondent had failed to understand his powers and duties in exercising Section 10(1) (c). He was duty bound to hold an inquiry, and at the inquiry, the Appellant satisfied the 1<sup>st</sup> Respondent that the name of the 2<sup>nd</sup> Respondent had applied for the name in bad faith; he should direct the 2<sup>nd</sup> Respondent to remove the name.

The argument of the 1<sup>st</sup> Respondent was different. The argument is that the Act's objective is to prevent confusion between an already registered company and a company being registered afresh. According to Section 7(1)(a), the Registrar can consider only where a company is already in existence or a registered overseas company with an identical name.

Section 529 defines a company as a "company incorporated under this act or an existing company. An "existing company" means "a company formed and registered under the joined Stock Companies Ordinance of 1861, or the joint Stock Banking Ordinance of 1897, the Companies Ordinance or the Companies Act No.17 of 1982.

It is the argument of the 1<sup>st</sup> Respondent that the Appellant does not fall into any of the above categories. He neither qualifies to be considered as a registered overseas company. It was the duty of the Appellant to prove that he falls into the categories of a registered overseas company as per Section 488 and Section 489 of the Act. Therefore, being a registered company in India cannot be considered a registration in Sri Lanka. Had the Appellant satisfied that it is a registered overseas company, the Registrar is liable and duty bound to consider, but in this instance, the Appellant had not satisfied same.

On the other hand, the 1<sup>st</sup> Respondent had argued that the application could not be considered as there was no proper application.

Only a natural or juristic person can apply because Sri Lankan law permits and recognizes only those two types as a person since the Appellant is not registered under the Act and, therefore, not

a juristic person. A juristic person can only be formed by incorporation under a statute or Act. The Appellant had not provided material to satisfy the 1<sup>st</sup> Respondent.

The request that the 1<sup>st</sup> Respondent had denied stating that there is no provision, was by a person holding a Power of Attorney of the Appellant. The Power of Attorney holder is also not a Sri Lankan national. The Act has not provided provisions regarding non-Sri Lanka or juristic persons. Section 10(1) (c) does not give any right to a none Sri Lankan to prefer a request. If so, the Act will not expressly state registered overseas companies.

When considering this argument, even a Power of Attorney of a Sri Lankan should be registered with the Registrar General for it to have any effect. Only after the registration, can the attorney operate on behalf of the principal when the principal is not residing in Sri Lanka.

On the other hand, as the argument of the 1<sup>st</sup> Respondent, the Power of Attorney holder can only act in situations where the principal has the power to act. As discussed above, the principal must provide proof to satisfy the Registrar of Companies that he is subject to the law of this country. As a person or as a registered overseas company where the principal cannot be accepted, the Power of Attorney cannot be accepted.

Therefore, the reasoning given by the 1<sup>st</sup> Respondent should be accepted. The Appeal is dismissed subject to taxed costs.

**Judge of the Court of Appeal**

**PRASANTHA DE SILVA, J.**

I agree.

**Judge of the Court of Appeal**