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IN THE HIGH COURT OF DELHI AT NEW DELHI

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COMPANY PETITION NO. 297 OF 2009

Reserved on : November 13, 2009
Date of Decision : December 02, 2009

SOHAL AGENCIES PRIVATE LIMITED & ANR. Petitioners
Through Mr. Manoj K. Garg and Mr. Sanotsh
Kumar, Advocates

Versus

REGISTRAR OF COMPANIES, NCT OF DELHI & HARYANA
.....Respondents
Through : Mr. Raisuddin, Dy. RoC for Regional
Director (NR), Ministry of Corporate
Affairs

CORAM :
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SUDERSHAN KUMAR MISRA, J.

1. This is a petition under S.560(6) of the Companies Act, 1956, seeking restoration of the name of the company on the Register of Companies maintained by the Registrar of Companies. M/s Sohal Agencies Private Ltd. was incorporated under the Companies Act, 1956 on 4th March, 1987 vide Certificate of Incorporation No. 27184 of 1986-87 as a private limited company with the Registrar of Companies, NCT of Delhi and Haryana. The petitioner company is stated to have carried on the business of import, export, wholesale retail dealings and manufacturing of ready-made garments, textiles and hosiery goods, for the last 21 years.

2. The Registrar of Companies, i.e the respondent herein, struck the petitioner company's name off the Register vide an order dated 31st May, 2007. According to the respondent, the company's name was struck off the Register due to defaults in statutory compliances, namely, failure to file balance-sheets for the period 31.03.2001 to 31.03.2008 and failure to file annual returns for the period 30.09.2001 to 30.09.2008. Consequently, the Registrar of Companies initiated proceedings under S.560 of the Companies Act, 1956, for the purpose of striking the name of the company off the Register maintained by the Registrar of Companies. It is stated by counsel for the respondent that the procedure prescribed under S.560 of the Companies Act, 1956 was followed, notices as required under S.560(1), S.560(2), S.560(3) and, ultimately, under S.560(5) were issued, and that the name of the petitioner company was published in the Official Gazette on 23rd June, 2007 at S.No. 4048, a copy whereof is placed on record.

3. The petitioners state that the petitioner company has been active since incorporation, and has also been maintaining all the requisite documentation, as per the provisions of the Companies Act, 1956. In support of this statement, copies of the balance sheets for the years 2001-2002 to 2007-2008, have been annexed to this petition.

4. It is further stated by the counsel for the petitioner that the petitioner company did not receive any show cause notice, nor was it afforded any opportunity of being heard before the aforesaid action was taken by the respondent. The counsel for the petitioner suggests that this was probably because the address of the petitioner company on the website of the Registrar of Companies is displayed as "3-285,

G.K. 1, Top Floor, New Delhi”, whereas the correct address is actually “S-285, Greater Kailash (Top Floor), New Delhi”, and that the notice issued to the petitioner was presumably sent to the address displayed on the website of the Registrar of Companies, which is incorrect. It is stated by the petitioner that the requisite Form-18 was filed with the Registrar of Companies on 29th January, 2004, informing the respondent of the change of address of the registered office of the petitioner company, and a copy of the said Form-18 is annexed to the petition. However, with regard to the turnover of the company, counsel for the petitioner admits, on a query, that the company is not doing any business.

5. It is stated by counsel for the petitioner that the present petition is within the limitation period stipulated by S.560(6) of the Companies Act, 1956, i.e. 20 years.

6. The petitioner aver that the accounts of the petitioner company were prepared and audited every year, and that the company had engaged the services of a part-time Chartered Accountant to perform the task of filing the returns with the office of the Registrar of Companies, which was done till the year 2000-2001. It is submitted that from the year 2000-2001, said Chartered Accountant did not file the returns and other necessary documents with the Registrar of Companies and concealed this fact from the management. It is further submitted that it was only in August 2008, when this part-time Chartered Accountant left the employment of the petitioner company, and a new employee attempted to file the returns and balance sheets for 2007-2008, that the fact of non-filing of the returns and other documents with the Registrar of Companies, as well as the

fact that the petitioner company's name had been struck off the Register maintained by the Registrar of Companies, was known to the petitioner company.

7. The respondent does not have any objection to the revival of the company, subject to the petitioner filing all outstanding statutory documents i.e. annual returns from 30.09.2001 to 30.09.2008, balance sheets for 31.3.2001 to 31.3.2008, along with the filing and additional fee, as applicable on the date of actual filing. The certificates of 'No Objection' of the Directors, as well as those of the shareholders, to the restoration of the name of the company to the Register maintained by the Registrar of Companies, have been placed on record as well.

8. Looking to the fact that the petitioner is a running company, that it has filed this petition within the stipulated limitation period, and to the decision of the Bombay High Court in **Purushottamdas & Anr (Bulakidas Mohta Co P. Ltd) v Registrar of Companies**, [1986] 60 Comp Cas 154 (Bom), in paragraph 20 thereof, wherein it has been held, inter alia, that;

“The object of section 560(6) of the Companies Act is to give a chance to the company, its members and creditors to revive the company which has been 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 company judge is satisfied that such restoration is necessary in the interests of justice.”

9. Accordingly, this petition deserves to be allowed. However, a greater degree of care was certainly required from the petitioner company in ensuring statutory compliances. Looking to the fact that

the returns were not filed for a long period of 8 years, to my mind, this is not merely a case of negligence on the part of a part-time employee. If any employee, whether part-time or full-time, defaults in his duties, the primary responsibility for ensuring that proper returns are filed, in terms of the statute and the rules, remain that of the management. I might notice that Rule 94 of the Companies (Court) Rules, 1959 state, inter alia, as follows;

'Unless for any special reasons that the Court shall otherwise order, the order shall direct that the petitioners do pay to the Registrar of Companies his costs of, and occasioned by, the petition.'

Consequently, the restoration of the company's name to the Register maintained by the Registrar of Companies will be subject to the payment of Rs. 35,000/- as costs, payable to the Registrar of Companies within 3 weeks from today, and subject to the completion of all formalities, including payment of any late fee or any other charges which are leviable by the Registrar of Companies for the late deposit of statutory documents. The impugned order for striking off the name of the petitioner company shall then stand set aside. The name of the petitioner company, its directors and members shall, as a consequence, stand restored to the Register of the Registrar of Companies, as if the name of the company had not been struck off, in accordance with S.560(6) of the Companies Act, 1956.

10. The petition is disposed of.

SUDERSHAN KUMAR MISRA, J.

December 02, 2009