

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

+ **COMPANY PETITION NO. 409 OF 2008**

Reserved on : November 19, 2009
Date of Decision : December 02, 2009

M/S KAKKU E AND P CONTROL PRIVATE LIMITED & ANR.
.....Petitioners
Through Mr. Amit Goel, Advocate

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 Kakku E and P Control Pvt. Ltd was incorporated under the Companies Act, 1956 on 22nd February, 1982 vide Certificate of Incorporation No.13188 as a private limited company with Registrar of Companies, NCT of Delhi and Haryana. The petitioner company is stated to be engaged in the business of manufacture, sale and trading of all kinds of industrial

control components, parts and accessories, including magnetic separators, electric magnetic gaps and industrial bells and sirens.

2. According to the Registrar of Companies, i.e. the respondent herein, the company's name was struck off the Register due to defaults in statutory compliances, namely, failure to file the necessary annual accounts, returns and other documents from 31.03.2005 onwards. 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 notice striking off the name of the petitioner company from the Register was published in the Official Gazette on.

3. Counsel for the petitioner submits that, along with the petition, copies of the audited annual accounts, up to 31.03.2008, have been filed. He submits that a perusal of the same shows that the petitioner company is a running company, that is presently carrying on business and has never been defunct, inoperative or non-functional. Copies of the Sales Tax Registration Certificates, copies of Central Excise Returns, and acknowledgments of income tax returns have been annexed to the petition, in support of this claim. The petitioners have also given details of their sales figures for the last 6 financial years.

4. Counsel for the petitioner company submits that, sometime October 2008, when an attempt was made to file the annual returns and the annual accounts with the respondent, the petitioner came to know that its name had been struck off the Register of the Registrar of Companies. 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.

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. He submits that the accounts of the petitioner company were prepared and audited every year, and that the company had engaged the services of a firm of Chartered Accountants to perform the task of filing the returns with the office of the Registrar of Companies. It is stated that this firm failed to file the annual returns and other documents with the respondent from the financial year 31.03.2005 onwards.

7. The respondent does not to have any serious objection to the revival of the company, subject to the petitioner filing all outstanding statutory documents 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 also been placed on record.

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. 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.22,000/- 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. Petition stands disposed of.

SUDERSHAN KUMAR MISRA, J.

December 02, 2009