

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY JURISDICTION

COMPANY PETITION NO. 14 OF 2010

Reserved on : 29.04.2010

Date of pronouncement: 04-06-2010

M/s Amarpreet Enterprises Private Limited & Anr.

.....Petitioners

Through Mr. Mukesh Sukhija, Advocate

Versus

Registrar of Companies

.....Respondent

Through Mr. V.K.Gupta, Dy. Registrar of Companies

CORAM :

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed under S.560(6) of the Companies Act, 1956, seeking restoration of the name of the petitioner company to the Register of Companies maintained by the Registrar of Companies. M/s Amarpreet Enterprises Private Limited was incorporated under the Companies Act, 1956 on 6th January, 1979

vide Certificate of Incorporation No. 55-009393 as a private limited company with the Registrar of Companies, NCT of Delhi and Haryana.

2. M/s Amarpeet Enterprises Private Ltd., is petitioner No. 1, and its Director, Bawa Amarjyot Singh, is petitioner No.2.

3. The Registrar of Companies, i.e the respondent herein, struck the company's name off the Register due to defaults in statutory compliances, namely, default in filing annual returns for the period 30.09.1986 to 30.09.2009 and balance sheets for the period 31.03.1986 to 31.03.2009. 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 his office. 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.

4. The petitioner states that the company has not been doing any business for quite some time, but owns substantial properties in different states in India. It is also stated that, however, the company was carrying on operations at the time the notice striking the company's name off the Register was published in the Official Gazette, i.e 23rd June, 2007. In support of this statement, copies of the annual accounts for the financial year ending 31st March, 1990 to the financial year ending 31st March, 2009, have been annexed to this petition.

5. It is also alleged by the counsel for the petitioner that the 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. On examination, it appears that the address of the registered office of the petitioner company in the records of the respondent is different from the address stated to be the current registered office of the petitioner company. With regard to the current address, the petitioner has submitted that it has been the registered office of the company since 1991. A copy of Board Minutes dated 18th August, 1991, wherein the decision to change the registered office of the company was taken has also been filed. However, no proof has been placed on record by the petitioner of due intimation of this change in its registered office to the respondent in the requisite Form 18. Therefore, it is likely that the petitioners did not receive any notice issued by the respondent under S.560, Companies Act, 1956 because of their own default.

6. 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 from the date of publication of the notice in the Official Gazette.

7. According to the petitioner, the day-to-day affairs of the company were handled by Late Lt. Colonel Bawa Gurbachan Singh, one of the Directors of the company and the father of petitioner No.2, who is stated to have expired on 3rd September, 2009. It is further submitted that it was only in October 2009, when petitioner No.2 took over the assets, possessions and other rights and liabilities of his

father, that the fact of non-filing of the returns and other documents with the respondent became known to the petitioner No.2. Thereafter, the petitioners are stated to have engaged the services of M/s PB & Associates, Company Secretaries, to take care of corporate and secretarial matters for the petitioner company, who subsequently informed the petitioners of fact that the company's name had been struck off the Register maintained by the respondent.

8. It is also stated that certain legal proceedings are stated to be pending before the High Court of Punjab and Haryana, in respect of land belonging to the petitioner company.

9. Counsel for the respondent does not have any objection to the revival of the petitioner company, subject to the petitioner company filing all outstanding statutory documents, i.e. annual returns for the period 30.09.1986 to 30.09.2009 and balance sheets for the period 31.03.1986 to 31.03.2009, along with the filing and additional fee, as applicable on the date of actual filing. The affidavits of 'No Objection' of the Directors, to the restoration of the name of the petitioner company to the Register maintained by the respondent, have also been placed on record.

10. In **Purushottamdas & Anr (Bulakidas Mohta Co P. Ltd) v Registrar of Companies**, [1986] 60 Comp Cas 154 (Bom), the Bombay High Court, in paragraph 20 thereof, has 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.”

11. Restoration of a company's name to the Register of Companies under S.560(6), once it has been struck off the Register by the respondent, can be in the following two situations, i.e. when the Court is satisfied that the company was in business or in operation at the time its name was struck off, or it is otherwise just that the company's name be restored. In the present case, the petitioner has submitted that the company has not been doing any business for 'quite some time', but 'owns substantial properties in different states'. The Memorandum of Association of the petitioner company states that one of the objects of the company is 'to acquire, hold or deal in lands, buildings, houses, flats, bungalows and shops', as also 'to sell, improve, manage, develop exchange, or lease, mortgage or dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company'. This leads to the conclusion that owning and managing property was within the objects of the petitioner company, even though this line of business activity may not be the main part of its business.

12. Further, when a litigation is pending by or against a company, it is only proper that its name be restored to the Register to enable the matter to be carried to its conclusion. This principle has been followed in **M/s Indian Explosives Ltd. v Registrar of Companies**, CP. No.185/2008, decided on 21st April, 2010.

13. I might notice that Rule 94 of the Companies (Court) Rules, 1959 states, 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.'

To my mind, the expression 'shall otherwise order' used in Rule 94, as reproduced above, means that although, ordinarily, the costs of the Registrar of Companies must be paid by the petitioner, however, if the Court considers it necessary to do so, it may give other orders in this behalf also. From this it follows that it is open to the Court to issue specific orders departing from the norm by imposing lower or no costs at all, or even levying further additional costs, depending on the circumstances.

14. The facts and circumstances of this case show that it is not merely a case where the interests of justice and requirements of the statute would be met merely by the payment of costs of the Registrar of Companies. It is difficult to believe that although the company was functioning for 23 years, the management was so preoccupied with other matters that they were unable to spare time to ensure that the annual returns and other statutory documents were being filed, regardless of who was in charge of the company's day-to-day affairs. The petitioners also neglected to inform the respondent of the change of address of the company's registered office in the proper manner. The whole matter has obviously been handled in a very casual manner and must be deprecated. To my mind, such conduct does not display sound and responsible business functioning expected of companies.

The non-filing of returns and balance sheets with the respondent had also made it impossible for any interested party to find out about the financial health of the petitioner company over a span of almost 25 years. Earlier decisions on the same lines are **M/s Santaclaus Toys Pvt. Ltd v Registrar of Companies**, CP. No.271/2009, decided on 16th February, 2010; **M/s Medtech Pharma India Pvt Ltd v Registrar of Companies**, CP.No.241/2009, decided on 19th April, 2010; and **Rajinder Bawa, Director, Bayer Suspension (P) Ltd v Registrar of Companies**, CP No. 406 of 2008, decided on 27th April, 2010.

15. For all these reasons, the restoration of the company's name to the Register maintained by the respondent will be subject to the payment of Rs. 1,00,000/- as exemplary costs, payable to the common pool fund of the Official Liquidator. In addition, further costs of Rs. 25,000/- be paid to the Registrar of Companies. Costs be paid within three weeks from today. The restoration of the petitioner company's name to the Register will be subject to the petitioner filing all outstanding documents required by law and completion of all formalities, including payment of any late fee or any other charges which are leviable by the respondent for the late filing of statutory returns. The name of the company, its directors and members shall then, 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.

16. Liberty is granted to the respondent to proceed with penal action against the company, if so advised, on account of the

company's alleged default in compliance with S.162 of the Companies Act, 1956.

17. The petition is disposed of in the above terms.

SUDERSHAN KUMAR MISRA, J.

JUNE 04, 2010.