

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY JURISDICTION

COMPANY PETITION NO. 217 of 2009

Reserved on : 19-04-2010

Date of pronouncement: 27-04-2010

M/s Badar Industries Private Limited

.....Petitioner

Through Mr. Anand K. Ganesan, 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 Badar Industries Pvt. Ltd was incorporated under the Companies Act, 1956 on 16th April, 1984 vide Certificate of Incorporation No. 55-17934 as a private limited company with the Registrar of Companies, NCT of Delhi and Haryana.

2. The Registrar of Companies, i.e the respondent herein, struck the company's name off the Register due to defaults in statutory compliances, namely, failure to file annual returns for the period 30.09.2001 to 30.09.2008 and failure to file balance sheets for the period 31.03.2001 to 31.03.2008. 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 April 26 – May 2, 2008 at S.No. 896.

3. The petitioner states that the 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 audited accounts for the financial years 2000-2001 to 2007-2008; copies of income tax returns for the financial years 2000-2001 to 2007-2008; and copies of Form 32 filed in respect of appointment/resignation of directors along with proof of payment of fee for the same; have been annexed to this petition.

4. It is further stated 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.

5. It appears that the address of the registered office of the petitioner company in the records of the respondent, stated to be '1/1881, Ballimaran, Delhi-110006' is incorrect. The correct address of the registered office of the petitioner company is '1/881, Ballimaran, Delhi-110006', as is stated in the petition and its annexures. There is every possibility that any notice issued by the respondent to the petitioners, with regard to any action taken under S.560 by the respondent, may not have been received by the petitioner, which may have, in turn, caused further lapses in statutory compliances by the petitioners.

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 avers that the accounts of the company were prepared and audited every year, and that the petitioner company's secretarial staff was to perform the task of filing the returns with the office of the Registrar of Companies. It is submitted that the company's secretarial staff did not file the returns and other necessary documents with the Registrar of Companies and did not reveal this fact to the Directors of the company. It is further submitted that it was only in September 2008 that the fact of non-filing of the returns and other documents with the respondent, as well as the fact that the petitioner's name had been struck off the Register maintained by the respondent, was known to the petitioner.

7. Counsel for the respondent does not have any objection to the revival of the petitioner company, subject to the petitioner filing all

outstanding statutory documents, i.e. failure to file annual returns for the period 30.09.2001 to 30.09.2008 and failure to file balance sheets for the period 31.03.2001 to 31.03.2008, along with the filing and additional fee, as applicable on the date of actual filing. The certificates of 'No Objection' of the Directors, to the restoration of the name of the company to the Register maintained by the respondent, have also been placed on record.

8. 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.”

This decision has been followed by this Court in M/s Deepsons Non-Ferrous Rolling Mills Pvt Ltd v Registrar of Companies, NCT of Delhi and Haryana, CP No. 285/2009; M/s Kakku E and P Control Pvt Ltd & Anr v The Registrar of Companies, NCT of Delhi and Haryana, CP No. 409/2008 and M/s Sohal Agencies Pvt Ltd v Registrar of Companies, NCT of Delhi and Haryana, CP No. 297/2009.

9. Looking to the facts, it is possible that notice in respect of action under S.560, Companies Act, 1956, was not sent to the registered office of the petitioner company. Consequently, the condition precedent for the initiation of proceedings to strike the

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petitioner's name off the Register of Companies, was not satisfied. At the same time, the petitioner company is stated to be a functioning one, its Director has filed this petition within the stipulated limitation period, and looking to the decision of the Bombay High Court, it is only proper that the impugned order of the respondent, which struck the petitioner's name off the Register of Companies, be set aside.

10. Accordingly, the petition is allowed. 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 petitioner 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.

11. Liberty is granted to the respondent to proceed with penal action against the petitioner company, if so advised, on account of the company's alleged default in compliance with S.162 of the Companies Act, 1956.

12. The petition is disposed of.

SUDERSHAN KUMAR MISRA, J.

APRIL 27, 2010