

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY JURISDICTION

COMPANY PETITION NO. 88 OF 2009

Reserved on: 04-08-2010

Date of pronouncement :16-08-2010

Highseas Mastics (India) Private Limited & Anr.

.....Petitioner

Through : Mr. V.K.Malik, Advocate

Versus

The 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 Highseas Mastics (India) Pvt. Ltd. was incorporated under the Companies Act, 1956 on 18th February, 1983

vide Certificate of Incorporation No. 15222 as a private limited company with the Registrar of Companies, NCT of Delhi and Haryana.

2. Petitioner No. 1 is the erstwhile company, i.e. Highseas Mastics (India) Pvt. Ltd., and petitioner No.2 is Mr. Surinder Dhami, a Director in petitioner No.1.

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, failure to file balance sheets and annual returns in respect of the years 1995 – 2008, i.e. almost fourteen years. Consequently, the respondent initiated proceedings under S.560 of the Companies Act, 1956, for striking the name of petitioner No.1 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 26th April, 2008 at S. No.734.

4. The petitioners allege that they did not receive any show cause notice, nor were they afforded any opportunity of being heard before the aforesaid action was taken by the respondent. On examination, it appears that the address of petitioner No.1's registered office in the records of the respondent is correct, and corresponds to the address stated by the petitioners themselves in the pleadings. In the circumstances, I do not find force in the contention of the petitioners.

5. The petitioners state that petitioner No.1 has never been a defunct company, and was carrying on business at the time its name was struck off the Register by the respondent. The reason for the non-filing of statutory documents given by the petitioners is that they were 'victims of circumstance'. These circumstances include, inter alia, the death of the Managing Director of petitioner No.1 in 1992, who was stated to be the father of petitioner No.2 herein, the death of petitioner No.2's brother in the same year, as well as the death of petitioner No.2's mother in 1996, who was stated to be the main shareholder in petitioner No.1 and was responsible for managing the affairs of the company. It is also submitted that petitioner No.2 himself underwent a protracted bout of illness and health problems, and was in and out of hospital on various occasions. Not only that, it is further submitted that petitioner No.2's wife and son were also diagnosed with health complications, for which extensive treatment was required. Copies of various medical prescriptions in respect of petitioner No.2 and his wife have been placed on record in support of these statements. It is also stated that it was only in 2008 that the fact of non-filing of the returns and other documents with the respondent, as well as the fact that the company's name had been struck off the Register maintained by the respondent, was known to the petitioners. However, copies of the income tax return verification forms for the assessment years 2006-2007, 2007-2008 and 2008-2009, as well as copies of the balance sheets of the petitioner company for the years 2005-2006, 2006-2007 and 2007-2008, have been placed on record, to demonstrate that petitioner No.1 is a functioning company.

6. 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. balance sheets and annual returns for the period 1995 - 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 petitioner company to the Register maintained by the respondent, have been placed on record.

7. 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."

8. During the course of these proceedings, the petitioners also sought to rely on 'The Company Law Settlement Scheme, 2010', which has been introduced by the Ministry of Corporate Affairs, Government of India for the period 30th May, 2010 to 31st August, 2010, in order to enable companies who have not complied with statutory provisions regarding filing of certain documents with the respondent, or those companies that have not raised their share capital to the required threshold limits, to do so without apprehension of action being taken against them by the Registrar of Companies.

9. The aforesaid Scheme clearly states, in Clause 3 sub-clause (viii) thereof that the Scheme is not to apply in certain situations. Clause 3(viii)(b) further clarifies, as follows:

“This Scheme shall not apply to companies against which action under sub-section (5) of section 560 of the Act has been initiated by the Registrar of Companies;”

10. In the present case, the respondent initiated action against the petitioner company some time in 2008, and finally published the name of the petitioner company in the Official Gazette on 26th April, 2008. Consequently, it is clear that the respondent initiated action against the petitioner company for lack of statutory compliances long before the Company Law Settlement Scheme, 2010 was introduced by the Government of India. In any case, the Scheme itself clearly bars the petitioner from taking advantage of its terms.

11. In that view of the matter, to my mind, the petitioners are not entitled to the immunity envisaged by that Scheme. An additional affidavit invoking the scheme was also disallowed as no permission from this Court to file the same was sought. The present proceedings are the only manner in which the petitioners can seek revival of the company, which may or may not be granted after due exercise of this Court's discretionary jurisdiction in the matter.

12. However, since the petitioners have filed this petition within the limitation period stipulated by the statute, i.e. within 20 years from the date of publication of the notice in the Official Gazette,

and in view of the decision of the Bombay High Court in **Purushottamdas & Anr (Bulakidas Mohta Co P. Ltd) v Registrar of Companies** (*supra*), to my mind, the petition deserves to be allowed, subject to the imposition of costs.

13. 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 this is not 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. Notwithstanding the personal troubles and health problems of petitioner No.2 and his family, the fact remains that sound business functioning is expected of companies. Filing of certain documents with the respondent is an obligation imposed by statute and every company is expected to comply. The non-filing of statutory

documents with the respondent had also made it impossible for any interested party to find out about the financial health of petitioner No.1 over a span of fourteen 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; **Rajinder Bawa, Director, Baver Suspension (P) Ltd v Registrar of Companies**, CP No. 406 of 2008, decided on 27th April, 2010; and **M/s Model Machinery Co. (P.) Ltd. v Registrar of Companies**, CP. No. 170/2009, decided on 4th June, 2010.

15. For all these reasons, the restoration of petitioner No.1'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 petitioner No.1's name to the Register will be subject to the petitioners 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 respondent, 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.

AUGUST 16, 2010