

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY JURISDICTION

COMPANY PETITION NO. 270 OF 2009

Date of pronouncement :08.09.2010

M/s Anuvind Metal Products Pvt. Ltd.

.....Petitioner

Through : Mr. Abhishek Vikas, Advocate

Versus

The Registrar of Companies

.....Respondent

Through : Mr. K.S.Pradhan, Asstt. 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. (ORAL)

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 Anuvind Metal Products Pvt. Ltd. was incorporated under the Companies Act, 1956 on 2nd

November, 1992 vide Certificate of Incorporation No. 55-50826 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 returns and balance sheets for the financial years 2000-01 to 2005-06. Consequently, the respondent initiated proceedings under S.560 of the Companies Act, 1956, for the purpose of striking the name of the petitioner 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 at S.No. 1680.

3. It is the petitioner's case that it received only the notice issued by the respondent under S.560(3), and none of the other notices allegedly sent by the respondent. A copy of this notice dated 26th February, 2007, which was admittedly received by the petitioner has been annexed to the petition. On examination, it appears that the aforesaid notice specifically mentions the previous notices issued by the respondent under S.560(1) and S.560(2). The address of the petitioner's registered

office, as stated in the petition, is identical to its address in the records of the respondent. Therefore, to my mind, there is no reason to believe that all these notices were not duly served. The petitioner is deemed to have been served with all the notices issued by the respondent before the latter struck the petitioner's name off the Register.

4. The petitioner, however, responded only to the respondent's notice dated 26th February, 2007 via its reply dated 15th May, 2007, wherein it stated that it had not received any of the respondent's previous notices under Section 560(1) or Section 560(2), and that it was regularly filing income tax returns even though it had not yet commenced business. It was further stated that the requisite statutory documents had not been filed with the respondent due to an oversight. An undertaking was also given by the petitioner, to the effect that it would file the appropriate documents by the end of May 2007.

5. The returns and the balance sheets for the financial years 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, and 2005-2006 were, in fact, filed by the petitioner on 30th May, 2007. Copies of the challans in G.A.R.7 in this regard, in relation to the respective Form 20B and Form 23AC for the aforesaid financial years, have been annexed to the petition. The respondent's order striking the name of the petitioner off the Register is stated to be of 31st May, 2007, which was thereafter

published on 23rd June, 2007 in the Official Gazette, as stated above.

6. The petitioner admits that the company is 'not carrying on business but is very much in operation', and has been in operation since its incorporation in 1992. The petitioner is also stated to have been regularly filing income tax returns. It is further stated that the petitioner has substantial assets, including the property situated at B-96, Okhla Industrial Estate, new Delhi -110020, and that the petitioner cannot deal with its properties so long as its name is not restored to the Register. The reason given by the petitioner for the delay in filing the statutory documents is the lack of competent personnel in the petitioner's staff to do the needful, and that, it is for this reason as well that the documents pertaining to the year 2007-2008 could not be filed with the respondent on 30th May, 2007.

7. Counsel for the respondent does not have any objection to the revival of the company, subject to the company filing all outstanding statutory documents, along with the filing and additional fee, as applicable on the date of actual filing.

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.”

9. Looking to the fact that the petition has been filed within the stipulated limitation period, i.e. within 20 years from the date of publication of the notice in the Official Gazette, and to the decision of the Bombay High Court in **Purushottamdas & Anr (Bulakidas Mohta Co P. Ltd) v Registrar of Companies (supra)**, this petition deserves to be allowed.

10. 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.

11. For all these reasons, and looking to the circumstances, the restoration of the company's name to the Register maintained by the respondent will be subject to the payment of Rs. 55,000/- as costs, payable 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.

12. 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.

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

SUDERSHAN KUMAR MISRA, J.

SEPTEMBER 08, 2010
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