

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY JURISDICTION

**COMPANY PETITION NO. 271 OF 2009**

Reserved On : February 03, 2010  
Date of Judgment : February 16, 2010

M/s Santaclaus Toys Pvt. Ltd. .....Petitioner  
Through Mr. Ravi Gupta, Sr. Advocate with  
Ms. Pushp Gupta, Advocate

Versus

Registrar of Companies .....Respondent  
Through Mr. V.K.Gupta, Dy. RoC for Registrar of  
Companies.

**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 petition has been filed under Section 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.

2. M/s Santaclaus Toys Pvt. Ltd. was incorporated under the Companies Act, 1956, on 26th December, 1996, as a private limited company with the Registrar of Companies, NCT of Delhi and Haryana.

It is stated to have carried on the business of manufacture and distribution of toys.

3. The Registrar of Companies, i.e. the respondent herein, struck the petitioner company's name off the Register due to defaults in statutory compliances which are required under Sections 159 and 220 of the Companies Act, 1956, namely, failure to file balance-sheets for the period 31.03.2001 to 31.03.2009 and failure to file annual returns for the period 30.09.2001 to 30.09.2009.

4. The respondent had initiated proceedings under Section 560 of the Companies Act, 1956, for the purpose of striking the name of the company off the Register maintained by the respondent. It is stated by counsel for the respondent that the procedure prescribed under Section 560 of the Companies Act, 1956 was followed. It is further stated that notices as required under Sections 560(1), 560(2), 560(3) and ultimately, under Section 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. 9890.

5. The petitioner claims to have been active since incorporation, and that it has also been maintaining all the requisite documentation, as per the provisions of the Companies Act, 1956. To demonstrate that the company was never defunct or wound up, copies of the audited balance sheets; trading and profit and loss accounts for the year ending 31.03.2008; copies of the acknowledgement of income tax returns for the assessment year 2008-09, and copies of

the provisional receipt of e-TDS statements in respect of the assessment year 2008-09 have been annexed to this petition.

6. It is the petitioner's case 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.

7. The petitioner avers that the compliance related work of the company was looked after by Shri Neeraj Dhamija, the Director of the petitioner company, and that the company duly complied with the statutory requirement of returns being filed with the office of the Registrar of Companies till the financial year 1999-2000. It is submitted that after that, due to the illness of Shri Dhamija's wife, the secretarial department of the petitioner company was entrusted with the work related to filing forms and returns with the office of the Registrar of Companies, but that the department failed to do so, because of the non-availability of a person having the required skills for the same. It is further submitted that it was only in 2008 that the fact of non-filing of the returns and other documents with the Registrar of Companies, as well as the fact that the petitioner company's name had been struck off the Register maintained by the respondent, was known to the petitioner company.

8. Counsel for the respondent does not have any objection to the revival of the company, subject to the petitioner filing all outstanding statutory documents, i.e. annual returns from 30.09.2001 to 30.09.2009 and balance sheets for the period 31.03.2001 to

31.03.2009, along with the filing and additional fee, as applicable on the date of actual filing through the e-filing system. Although the certificates of 'No Objection' of the Directors, as prayed for by the respondent, are not on record, the petitioner states in its rejoinder that there is no objection from the other Directors to the present petition filed by the Managing Director, Shri Neeraj Dhamija, as the same was filed with their consent.

9. In **Purushottamdas & Anr. (Bulakidas Mohta Co. P. Ltd. vs. Registrar of Companies** (1986) 60 Company Cases 154 (Bom.), the Bombay High Court, has held as follows:-

"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. Vs. Registrar of Companies, NCT of Delhi and Haryana**, CP No. 285/2009; **M/s Kakku E and P Control Pvt. Ltd. & Anr. Vs. The Registrar of Companies, NCT of Delhi and Haryana**, CP No. 409/2008 and **M/s Sohal Agencies Pvt. Ltd. Vs. Registrar of Companies, NCT of Delhi and Haryana**, CP No. 297/2009.

10. 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, this petition

deserves to be allowed. However, a greater degree of care was certainly required from the petitioner company in ensuring statutory compliances. Looking to the fact that the returns have not been filed for a period of almost 8 years, to my mind, this is not merely a case of mistake on the part of the secretarial department of the petitioner company, who are its employees. The primary responsibility for ensuring that proper returns and other statutory documents are filed, in terms of the statute and the rules, remains that of the management. 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."

11. The facts and circumstances of this case show that this is not merely a case where the interests of justice and requirements of the Statute would be met merely by payment of the costs of the Registrar of Companies. It is difficult to believe that although the company kept functioning for 8 long years along with a properly staffed secretarial department but the Director was so pre-occupied with his wife's illness for 8 years continuously that he was unable to spare even a minute or two to inquire from his staff as to whether the annual statutory returns were being filed. It is also equally improbable that the continuing illness, described as "kidney problems", of the Director's wife, precluded the staff of the company from informing Mr. Neeraj Dhamija or even any of the other Directors of the fact that statutory returns mandated under the Companies Act

are not being filed. The whole thing 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 with the Registrar of Companies had also made it impossible for interested parties to find out the current financial health of the company over a span of 8 years.

12. 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. 50,000/- as exemplary costs, payable to the common pool fund of the Official Liquidator. In addition, further costs of Rs. 11,000/- be paid to the Registrar of companies. Costs be paid within three 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 Section 560(6) of the Companies Act, 1956.

13. The petition is disposed of.

**SUDERSHAN KUMAR MISRA, J.**

New Delhi  
February 16, 2010