

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY JURISDICTION

**COMPANY PETITION NO. 307 OF 2009**

Reserved on: 22-09-2010

Date of pronouncement : 28-09-2010

ASHOK KAMAL CAPITAL BUILDERS PVT. LTD.

.....Petitioner

Through : Mr. A.K.Srivastava, Advocate

Versus

REGISTRAR OF COMPANIES

.....Respondent

Through : Mr. Darpan Wadhwa, Advocate  
with Ms. Divya Jha, Advocate

**CORAM :**

**HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA**

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

**SUDERSHAN KUMAR MISRA, J.**

1. This petition under S.560(6) of the Companies Act, 1956, seeks restoration of the name of the petitioner company to the Register of Companies maintained by the Registrar of Companies. M/s Ashok Kamal Builders Pvt. Ltd. was incorporated under the Companies Act, 1956 on 15<sup>th</sup> July, 1987 vide Certificate of Incorporation No. 28624 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 petitioner's name off the Register due to defaults in statutory compliances, namely, failure to file balance sheets for the period 31.03.2002 to 31.03.2008 and annual returns for the period 30.09.2002 to 30.09.2008. Consequently, the respondent initiated proceedings under S.560 of the Companies Act, 1956, for the purpose of striking the petitioner's name off the Register maintained by the respondent. It is stated by 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 26<sup>th</sup> April, 2008 at S.No. 1594.

3. The petitioner alleged that it 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 petitioner's registered office in the records of the respondent is incorrect. Counsel for the petitioner submitted that, in fact, the registered office of the petitioner had first shifted from '6, SFS, Greater Kailash – I, New Delhi' to '4, Community Centre II, Ashok Vihar II, New Delhi', with effect from 1<sup>st</sup> December, 1987. Copies of the requisite Form 18 dated 1<sup>st</sup> December, 1987 that had been submitted to the respondent, and of the receipt No.3670 issued by the respondent in respect thereof, have been placed on record by the petitioner. It was further submitted that the petitioner company again shifted its registered office to '110, Zamrudpur Auto

Complex, Greater Kailash –I, New Delhi’, with effect from 30<sup>th</sup> April, 1990. Copies of the Form 18 dated 3<sup>rd</sup> May, 1990 and of the receipt No. 7340 issued by the respondent in respect thereof have also been placed on record. However, the address being shown as the registered office of the petitioner company in the website of the respondent remains the petitioner’s original address, i.e. ‘6, SFS, Greater Kailash – I, New Delhi’. The respondent has not refuted these facts by placing on record any proof of dispatch of the notices issued under S.560 to the petitioner to the correct registered office. It is, therefore, apparent that none of the notices issued by the respondent under S.560, which form the condition precedent for the initiation of any proceedings under S.560, would have been received by the petitioner.

4. It is averred that the petitioner has been active since incorporation, and has never been defunct or non-operational. In support of this statement, a copy of the income tax return verification form for the assessment year 2008 – 2009, has been annexed to this petition. It is also submitted that the petitioner is in the process of recovering certain outstanding amounts due from debtors and is also engaged in some litigations against the DDA and some other parties.

5. 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. balance sheets for the period 31.03.2002 to 31.03.2008 and annual returns for the period 30.09.2002 to 30.09.2008, 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 to the Register of Companies, have also been placed on record.

6. 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.”

7. Keeping in mind the fact that the petitioner never received any notices issued by the respondent before its name was struck off the Register; the fact that the company is functional; that this petition has been filed within the prescribed 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. Further, since the petitioner is also involved in recovery proceedings and some litigations, as aforesaid, which cannot be concluded if the company no longer exists, it is only proper that its name is restored to the Register.

8. For all these reasons, 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 maintained by the respondent, as if its name had not been struck off, in accordance with S.560(6) of the Companies Act, 1956.

9. 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.

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

**SUDERSHAN KUMAR MISRA, J.**

**SEPTEMBER 28, 2010**