

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY JURISDICTION

COMPANY PETITION NO. 347 OF 2009

AND

CO. APPLN. NO. _____/2010 (to be numbered)

Reserved on : 19-03-2010

Date of pronouncement: 07-04-2010

M/s Vats Associates Pvt. Ltd. (Defunct Company)

.....Petitioner

Through Mr. Ashish Midha, 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? 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 has been filed under S.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. M/s Vats Associates Pvt. Ltd. was incorporated under the Companies Act, 1956 on 28th May, 1990 vide Certificate of Incorporation No. 55-40286 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 company's name off the Register due to defaults in statutory compliances, namely, failure to file balance-sheets for the period 31.03.2000 to 31.03.2008 and failure to file annual returns for the period 30.09.2000 to 30.09.2008. 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 23rd June, 2007 at S.No.3836.

3. The petitioners state that the petitioner 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, a copy of the balance sheet, as at 31.03.08, the profit and loss account, as at 31.03.08, and the income tax return for the year ending 2008, have been annexed to this petition.

4. It is further stated by the counsel for the petitioner 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. On examination of the annexures, it appears the address of the registered office of the petitioner company

in the records of the respondent is correct. In the circumstances, the petitioners are presumed to have been served the requisite notices under S.560 of the Companies Act, 1956.

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 petitioner company were prepared and audited every year, and that the company had engaged the services of a Company Secretary, namely, Mr. Sunil Bahri, to perform the task of filing the returns with the office of the Registrar of Companies. It is submitted that from the year 2000, the said Company Secretary did not file the returns and other necessary documents with the Registrar of Companies and did not reveal this fact to the management of the petitioner company. It is further submitted that it was only in June 2009, when the balance sheet as at 31.03.08 and the auditors' report in respect thereof was ready to be filed with the respondent that the fact of non-filing of the returns and other documents with the respondent, 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.

7. 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 for the period 30.09.2000 to 30.09.2008, balance sheets for the period 31.03.2000

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. 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 in **Purushottamdas & Anr (Bulakidas Mohta Co P. Ltd) v Registrar of Companies**, [1986] 60 Comp Cas 154 (Bom), in paragraph 20 thereof, wherein it has been 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. 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 annual returns for the period 30.09.2000 to 30.09.2008, as well as balance sheets for the period 31.03.2000 to 31.03.2008, were not filed, to my mind, this is not merely a case of negligence on the part of the Company Secretary. If any employee, whether part-time or full-time, defaults in his duties, the primary responsibility for ensuring statutory

compliances, as per S.159 and 200 of the Companies Act, 1956, remains that of the management. At the same time, the company is stated to be functioning one, having earned a profit of Rs.93,000/- in the year ending 31.03.2008.

10. 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. Looking to all the facts and circumstances, although the company deserves to be restored, to my mind, the restoration of the company’s name to the Register maintained by the Registrar of Companies will be subject to the payment of Rs. 25,000/- as costs, payable to the Registrar of Companies within 3 weeks from today.

12. Consequently, the restoration of the petitioner’s name to the Register maintained by the respondent will be subject to the payment of costs, as aforesaid, and the completion of all formalities, including payment of any late fee or any other charges which are leviable by the respondent for the late deposit of statutory documents. 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 S.560(6) of the Companies Act, 1956.

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

14. The petition and the application praying for interim directions to issue to the respondent, which is not numbered, are both disposed of in the above terms.

SUDERSHAN KUMAR MISRA, J.

April 07, 2010