

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY JURISDICTION

COMPANY PETITION NO. 373 OF 2009

Reserved on : 10-03-2010

Date of pronouncement: 07-04-2010

M/s Himalaya Packaging & Printing Pvt. Ltd. & Anr.

.....Petitioners

Through Mr. Rajender Yadav, 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 petitioner No.1 on the Register of Companies maintained by the Registrar of Companies.

2. M/s Himalaya Packaging & Printing Pvt. Ltd., i.e. petitioner No.1, was incorporated under the Companies Act, 1956 on 6th January, 1995 vide Certificate of Incorporation No. 55-64119 as a private limited company with the Registrar of Companies, NCT of Delhi and

Haryana. Petitioner No.2 is Mr. Harpal Singh Yadav, a Director as well as shareholder of petitioner No.1.

3. The Registrar of Companies, i.e the respondent herein, struck the petitioner No.1's name off the Register for defaults in statutory compliances, namely, failure to file balance-sheets as at 31.03.2003 to 31.03.2005 and 31.03.2007 and failure to file annual returns made up to 30.09.2003 to 30.09.2005 and 30.09.2007. The respondent had 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 respondent. It is submitted 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 petitioner No.1 in this regard was published in the Official Gazette on 26th April, 2008 at S. No. 3801.

4. The petitioners state that the 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, the audited accounts of the company for the year ending 31st March, 2008, a copy of the balance sheet, as at 31st March, 2008, the Profit and Loss Account for the year ending 31st March, 2008, as well as auditors' reports in this regard, have been annexed to this petition. It is alleged that the Annual Report of the petitioner company for the financial year 2004-2005 was prepared, but was not filed with the respondent due to a clerical mistake, and that the petitioners remained under the impression that the same had been

filed. This Annual report for the financial year 2004-2005 has also been annexed to the petition.

5. It is also stated by the counsel for the petitioners 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. The fact of a change of address of the registered office of the petitioner No. 1 to 1626/33, Naiwala, Karol Bagh, New Delhi – 110005, is stated to have been communicated to the respondent on 22nd November, 2002 in the requisite Form 18. Proof of receipt of this intimation by the office of the respondent is also on record.

6. However, the address of the petitioner No. 1 in the challan issued by the respondent in respect of the fee for filing Form 20B for the year ending 30.09.2006, is still shown as 'A-34, Rewari Line Industrial Area, Phase I, New Delhi', which is the old address of the petitioner No. 1. Therefore, there is every possibility that the address of the petitioner No. 1 in the records of the respondent, has remained unchanged, despite due intimation of the same by the petitioner No. 1 to the respondent in 2002. Consequently, any notice issued by the respondent to the petitioners, with regard to any action under Section 560 by the respondent, may not have been received by the petitioners, which may have, in turn, caused further lapses in statutory compliances by the petitioners.

7. The petitioners aver that the accounts of the petitioner company were prepared and audited every year, and that the company had engaged the services of a Chartered Accountant to perform the task of filing the returns with the office of the Registrar of

Companies. It is submitted the returns and other necessary documents were not filed with the Registrar of Companies "due to some mistake of the CA". It is further submitted that it was only sometime in 2007, that the fact of non-filing of the returns and other documents with the respondent, as well as the fact that the petitioner No.1's name had been struck off the Register maintained by the respondent, was known to the petitioners. It is alleged that annual returns for the financial year ending 31st March, 2006 were filed with the respondent, and that the same was ignored by the respondent. It is further alleged that the company could not file its annual returns for the year 2007 as the DIN number of one of the Directors, namely, Mr. Yudhishter was only issued on 15th September, 2008.

8. Counsel for the respondent does not have any objection to the restoration of the company's name to the Register of Registrar of Companies, subject to the petitioners filing all outstanding statutory documents i.e. annual returns made up to 30.09.2003 to 30.09.2005 and 30.09.2007, balance sheets as at 31.03.2003 to 31.03.2005 and 31.03.2007, along with the filing and additional fee, as applicable on the date of actual filing. The certificates of 'No Objection' of the Directors, as well as those of the shareholders, to the restoration of the name of the company to the Register maintained by the respondent, have been placed on record as well.

9. In **Purushottamdas & Anr (Bulakidas Mohta Co P. Ltd) v Registrar of Companies**, [1986] 60 Comp Cas 154 (Bom), it has been held, inter alia, that;

"20. 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."

10. Looking to the facts, it is possible that notice in respect of action under S.560 was not sent to the registered office of the company. Consequently, the condition precedent for the initiation of proceedings to strike off the name of petitioner No.1 from the Register maintained by the respondent, was not satisfied. At the same time, the company is stated to be a functioning one, and looking to the ratio of **Purushottamdas & Anr (Bulakidas Mohta Co P. Ltd) v Registrar of Companies (supra)**; it is only proper that the impugned order of the respondent, which struck off the name of petitioner No.1 from the Register of Companies, be set aside.

11. Accordingly, this petition deserves to be allowed. The restoration of the company's name to the Register maintained by the Registrar of Companies will be subject to 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 respondent, 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 the necessary 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.

13. The petition is disposed of.

SUDERSHAN KUMAR MISRA, J.

April 07, 2010