

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY JURISDICTION

COMPANY PETITION NO. 406 OF 2009

Reserved on : 11-05-2010

Date of pronouncement: 04-06-2010

M/s Kesinga Paper Mills Private Limited

.....Petitioner

Through Mr. Vishnu Langawat, Advocate

Versus

Ministry of Corporate Affairs through 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? 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.

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 Kesinga Paper Mills Pvt. Ltd. was incorporated under the Companies Act, 1956 on 8th February, 1995 vide Certificate of Incorporation No. 55-65229 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 annual returns and balance sheets since incorporation. 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 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. 8527.

3. The petitioner states that the company has been active since incorporation. In support of this statement, copies of extracts of minutes of various Board meetings held in 1995, 2001 and 2009, and the balance sheet for the financial year 1995-96, have been annexed to this petition.

4. It is further stated by the counsel for the petitioner that the 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, it appears that the address of the registered office of the petitioner company in the records of the respondent is different from the address stated to be the current registered office of the petitioner company. With regard to the current address, the petitioner has submitted that it has been the registered office of the company since 10th November, 2001. A

certified true copy of an extract of Board Minutes dated 10th November, 2001, has been filed, wherein the decision to change the registered office of the company was taken and Late Mr. Dina Nath Verma, the then Whole Time Director, was authorized to file Form 18 with the respondent. However, no proof has been placed on record by the petitioner of due intimation of this change in its registered office to the respondent in the requisite Form 18. Therefore, it is likely that the petitioner did not receive any notice issued by the respondent under S.560, Companies Act, 1956, due to its own default.

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 from the date of publication of the notice in the Official Gazette.

6. The petitioner submits that it was unable to file the required statutory documents due to the illness of its Whole Time Director, namely, Mr. Dina Nath Verma, who is stated to have expired in 2001. It is also submitted that after the expiry of Late Mr. Dina Nath Verma, the affairs of the company were neglected, that it was only on 5th April, 2009 that the petitioner's Board decided to entrust all compliance-related work to Mr. Vinod Chadha, a Director of the company. It is further submitted that it was only when the aforesaid Mr. Vinod Chadha carried out an in-depth review that the fact of non-filing of the returns and other documents with the respondent, as well as the fact that the company's name had been struck off the Register maintained by the respondent, was known to the company.

7. In addition, it is stated that the petitioner has filed a writ petition in the High Court of Orissa, being W.P.(C) No.9098/03, seeking relief against certain parties for trespassing on land originally allotted to the petitioner, wherein a stay order in favour of the petitioner was passed on 22nd September, 2003, and the matter is stated to be pending.

8. Counsel for the respondent does not have any objection to the revival of the company, subject to the company filing all outstanding statutory documents, i.e. annual returns and balance sheets since incorporation, 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.

9. 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."

10. Further, when a litigation is pending by or against a company, it is only proper that its name be restored to the Register to enable the matter to be carried to its conclusion, as has been held by

this Court in **M/s Indian Explosives Ltd. v Registrar of Companies**, CP. No.185/2008, decided on 21st April, 2010.

11. 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.

12. The facts and circumstances of this case show that it is not merely a case where the interests of justice and requirements of the statute would be met merely by the payment of costs of the Registrar of Companies. It is difficult to believe that although the company was functioning for almost fourteen years, the illness of the Whole Time Director precluded the other management of the company from ensuring that the annual returns and other statutory documents were being filed with the respondent. Further, the management did not even bother to inform the respondent of the change of address of its registered office in the required Form 18, which is why the petitioner did not receive any of the notices or letters issued by the respondent

in this regard. The whole matter 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 and balance sheets with the respondent had also made it impossible for any interested party to find out about the financial health of the company over a span of fourteen years. Earlier decisions on the same lines are **M/s Santaclaus Toys Pvt. Ltd v Registrar of Companies**, CP. No.271/2009, decided on 16th February, 2010; **M/s Medtech Pharma India Pvt Ltd v Registrar of Companies**, CP.No.241/2009, decided on 19th April, 2010; and **Rajinder Bawa, Director, Baver Suspension (P) Ltd v Registrar of Companies**, CP No. 406 of 2008, decided on 27th April, 2010.

13. 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. 75,000/- as exemplary costs, payable to the common pool fund of the Official Liquidator. In addition, further costs of Rs. 22,000/- be paid 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.

14. 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.

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

SUDERSHAN KUMAR MISRA, J.

JUNE 04, 2010