

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY JURISDICTION

COMPANY PETITION NO. 468 OF 2009

Reserved on: 07-07-2010

Date of pronouncement :28-07-2010

M/s APRA MOTELS PVT. LTD. & ORS.

.....Petitioner

Through : Mr. Vivek Kohli, Advocate

Versus

REGISTRAR OF COMPANIES, NCT OF DELHI AND HARYANA

.....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 Apra Motels Pvt. Ltd. was incorporated under the Companies Act, 1956 on 11th April, 1991 vide Certificate of

Incorporation No. 55-43912 as a private limited company with the Registrar of Companies, NCT of Delhi and Haryana.

2. Petitioner No. 1 is the erstwhile company, i.e. Apra Motels Pvt. Ltd., and petitioner No. 2 is Mr. Anumod Sharma, a Director of petitioner No. 1.

3. The Registrar of Companies, i.e the respondent herein, struck the company's name off the Register due to defaults in statutory compliances, namely, failure to file balance sheets for the period 30.09.2000 to 30.09.2008 and annual returns for the period 31.03.2000 to 31.03.2008. Consequently, the respondent initiated proceedings under S.560 of the Companies Act, 1956, for the purpose of striking the name of the petitioner company off the Register maintained by the respondent. 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. 3020.

4. However, counsel for the petitioner alleges that 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 registered office of the petitioner company has remained unchanged since incorporation, and is located at "5, Bahadur Shah Zafar Marg, Pratap Bhawan, New Delhi – 110002". Counsel for the respondent admits that the notices issued by his office were sent to "5, Bahadur Shah Zafar Marg, New Delhi", and that the name of the building was omitted from

the address. No record has been produced or relied upon by counsel for the respondent to show that the aforesaid notices were, in fact, duly served at the petitioner company's registered office.

5. Counsel for the petitioner relies on the decisions of this Court in M/s Badar Industries Pvt. Ltd v Registrar of Companies, CP. No. 217 of 2009, decided on 27th April, 2010 and M/s True Fab Pvt. Ltd. & Anr v Registrar of Companies, CP. No. 432/2009, decided on 27th April, 2010, in support of the proposition that, if notices are not duly served, the petitioner is entitled to the relief it seeks.

6. The petitioner submits 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, copies of the audited balance sheets and the profit and loss account as at 31st March, 2004, 31st March, 2006, 31st March, 2007, 31st March, 2008 and 31st March, 2009, as well as copies of the income tax returns for the assessment years 2003-2004 and 2005-2006, have been annexed to this petition. It is also submitted that a plot has been allotted in the petitioner company's name by the New Okhla Industrial Development Authority (NOIDA), G.B. Nagar, consequent upon the petitioner's application dated 30th January, 2009 for the same. A copy of the allotment letter has been annexed to the petition, along with a report regarding the future business prospects of the company. In this context, it is the petitioner's case that it was not a defunct company at the time when its name was struck off the Register, which fact is evidenced by the allotment of a plot in its name by NOIDA, as aforesaid.

7. The petitioner alleges that the accounts of the company were prepared and audited every year, and that it had engaged the services of a Chartered Accountant firm, namely, M/s S.P. Arora & Co., to perform the task of filing returns with the office of the Registrar of Companies. It is further alleged that the aforesaid firm of Chartered Accountants did not carry out this task, and that it was only in October 2009 that the fact of non-filing of the returns and other documents with the respondent, as well as the fact that the petitioner's name had been struck off the Register maintained by the respondent, was known to the petitioner.

8. Counsel for the respondent does not have any objection to the revival of the company, subject to the petitioner company filing all outstanding statutory documents, i.e. balance sheets for the period 31.03.2000 to 31.03.2008 and annual returns for the period 30.09.2000 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 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. The petitioner’s management, and in particular, the Managing Director, was bound to ensure statutory compliance, since the responsibility for the same lies with the management. 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 petitioner company over a span of eight years, regardless of whether the petitioner company’s management or the hired Chartered Accountant firm was at fault.

11. However, in view of the fact that the petition has been filed within the period of limitation stipulated by S.560 of the Companies Act, 1956, i.e. within twenty years from the date of publication of the notice in the Official Gazette, as well as the fact that there is every possibility that any notice issued by the respondent with regard to action taken under S.560 may not have been received by the petitioner, which, in turn, may have been the cause for further lapses in statutory compliance by the petitioner, the petition deserves to be allowed. The petitioner company also has a right in property which cannot be properly dealt with if the company no longer exists. Further, the respondent’s admitted stand is that the notices, which are statutorily required to be sent before any action is taken under S.560 of the Act, were sent to the incorrect address, which was due to an error in the address of the petitioner’s registered office in the respondent’s records, for which the petitioner cannot be faulted. Therefore, it is only proper that the impugned order of the respondent

dated 31st May, 2007, which struck off the company's name from the Register of Companies, be set aside.

12. For all these reasons, the petition is allowed. 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.

13. 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.

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

SUDERSHAN KUMAR MISRA, J.

JULY 28, 2010