

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY JURISDICTION

COMPANY PETITION NO. 501 OF 2009

Reserved on: 27-09-2010

Date of pronouncement :08-10-2010

M/s Rajasthan Foils Pvt. Ltd.

.....Petitioner

Through : Mr. Ashish Aggarwal, Advocate

Versus

The Registrar of Companies,
NCT of Delhi & Haryana.

.....Respondent

Through : Mr. K.S.Pradhan, Dy. Registrar for
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 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, i.e the respondent herein. M/s Rajasthan Foils Pvt. Ltd. was incorporated under the Companies Act, 1956 on 6th June, 1996 vide Certificate of Incorporation No. 55-79443 as a private limited company with the Registrar of Companies, NCT of Delhi and Haryana.

2. In view of its failure to file 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 with the respondent, the petitioner company defaulted in complying with statutory requirements. 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. According to the respondent, 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 the name of the petitioner company was published in the Official Gazette on 23rd June, 2007 at S.No. 9444.

3. The petitioner alleges that it did not receive any 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 correct. It is therefore presumed that the petitioner was duly served with the notices issued under S.560 by the respondent.

4. It is stated by petitioner that it has been active since incorporation, and has never been defunct or non-operational, with a turnover of approximately 24 crores in the year 2008-2009. In support of this statement, copies of registration certificates issued by the District Industries Centre (Bhiwadi), Rajasthan from 1999 onwards that show the status of the petitioner as a Small Scale Industry; copies of registration certificates issued by the Department of Central Excise, showing that the petitioner is a Dealer under S.7(1) and (2) of the

Central Sales Tax Act, 1956; a copy of the petitioner's PAN card; and copies of income tax return acknowledgements and the audited balance sheets for the assessment years 2007-2008, 2008-2009 and 2009-2010 have been annexed to this petition.

5. It is alleged that all statutory documents, including accounts that were audited every year, were prepared every year by SMR & Associates, Chartered Accountants, who had been engaged by the petitioner to do the same. However, the task of filing the statutory documents with the office of the respondent was entrusted to one Shri Ramesh Kumar Sharma, one of the Directors of the petitioner company, who was also looking after the day-to-day affairs of the company. Shri Ramesh Kumar Sharma admittedly resigned in 2002 due to ill health, and his responsibilities were given to Shri Siddharth Sharma, who was allegedly inexperienced with regard to the statutory compliances that were to be made by the company. It is further submitted that it was only in October 2009, during a routine diligence that was conducted as the petitioner was seeking a fresh credit facility from a bank, that the fact that its name had been struck off the Register was known to the petitioner.

6. 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. 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 to the Register, have also been placed on record.

7. 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.”

8. Looking to 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. However, a greater degree of care was certainly required from the company in ensuring statutory compliances. A change in the management of a company and inexperience in the new management is no excuse for not complying with the requirements of the statute. Yet, at the same time, since there is the possibility of the company to continue functioning, it is only proper that the impugned order of the respondent, which struck the petitioner's name off the Register, be set aside.

9. 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.

10. The facts and circumstances of this case show that this is not 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. 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 nine 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; **Rajinder Bawa, Director, Baver Suspension (P) Ltd v Registrar of Companies**, CP. No. 406/2008, decided on 27th April, 2010 and **M/s Model Machinery Co. (P.) Ltd. v Registrar of Companies**, CP. No. 170/2009, decided on 4th June, 2010.

11. 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 ₹ 1,00,000 as exemplary costs, payable to the common pool fund of the Official Liquidator. In addition, further costs of ₹ 25,000 be paid to the respondent. 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 petitioner company, its directors and members shall then, as a consequence, stand restored to the Register maintained by 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 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.

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

SUDERSHAN KUMAR MISRA, J.

October 08, 2010.