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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 9th July, 2013

+ CO.PET. 460/2012

SHITIZ METALS LIMITED Petitioner
Through: Mr Aashish Middha and Mr Nilesh
Kumar, Advs.

versus

REGISTRAR OF COMPANIES & ORS Respondents
Through: Mr K S Pradhan, Dy.ROC for RD

**CORAM:
HON'BLE MR. JUSTICE R.V.EASWAR**

R. V. EASWAR, J.: (ORAL)

The prayer in this company petition is that the order and the notification striking off the name of respondent No.2-company declaring it as defunct company be set aside and the name of the company be restored and also that investigation be ordered into the affairs of the said company.

2. The petition has been filed under the following circumstances. The respondent No.2 i.e. M/s Nicholson Export and Import Pvt. Ltd. was incorporated on 7.3.1997. The registered office of the company was in Delhi. The directors of the company made an application under Section

560(1) of the Companies Act, 1956 ('Act') to the Registrar of Companies under the Easy Exit Scheme, 2011 for striking off the name of the company from the register of companies. The prescribed forms were also filed. The Registrar of Companies by gazette notification dated 6.8.2011 struck off the name of the company under the provisions of section 560(1) of the Act.

3. The petitioner company had lent a sum of ₹14.80 lakhs in two installments of ₹5 lakhs and 9 lakhs to the respondent-company in the years 2003 and 2004. These amounts were given by cheques drawn on the Punjab National Bank. It is not in dispute that the cheques were deposited with the bank and were encashed. According to the learned counsel for the petitioner, the Registrar of Companies appears to have issued the gazette notification striking off the name of the respondent company without examining whether the request of the company to strike off its name from the register was made bona fide and after repaying all the debts due to the creditors. He contends that in the balance sheet filed by the respondent company with the ROC as on 21.4.2011, only the authorised capital of ₹1 lakh is shown on the liabilities side and an identical amount is shown as debit balance in the profit and loss account in the asset side, and that the amount advanced by the petitioner company

is not reflected. It is alleged that the directors of the respondent-company have played a fraud on the petitioner-company by frittering away the funds belonging to the petitioner-company and got its name struck off from the register of companies so as to prevent the petitioner-company from taking any action against it. It is on the basis of these contentions that the prayer referred to earlier has been made in the application.

4. Mr K S Pradhan, Deputy Registrar of Companies submits that the action of the ROC is well within the provisions of the Easy Exit Scheme, 2011 under which the ROC is not obliged to go beyond the documents such as the application, statement of accounts, affidavit and indemnity bond submitted by the company which desires its names to be struck off and there is no scope at that stage for a deeper examination into the same. He however, does not dispute that if any fraud or malpractice has been adopted in resorting to the provisions relating to the striking off of the companies' name as if the provision of Section 560 have been resorted to for thwarting the claims of any creditor, has the power to give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off, by virtue of the provisions of section 560(6) of the Companies Act.

5. On a careful consideration of the matter I am of the view that the petitioner-company has made out a case for the invocation of the powers of this Court under sub-section (6) of section 560 of the Companies Act. The amount of ₹14.80 lakhs was undisputedly advanced by the petitioner-company as loan to the respondent-company. The loan has not been repaid. It was not also disclosed in the balance sheet filed with the ROC. At the stage of examining the application for striking off the name, the ROC adopts a summary procedure and if the necessary documents furnished, he may strike off the name of the company from the register. But that does not mean that he condones any fraud or malpractice. Mr K S Pradhan has drawn my attention to the provisions of section 628 of the Companies Act, which provides for penalty for false statements made in any return, report, certificate, balance sheet, statement or other document filed by the company for the purposes of any of the provisions of the Act if it is false in any material particular or omits any material fact deliberately and with the knowledge that it is false or material. Imprisonment for a term which may extend to two years is provided. The provisions of sub-section (6) of section 560 are overriding in nature and the action of striking off name of the company from the register is not conclusive. Any creditor can make an appropriate application to the

company court before the expiry of 20 years from the publication in the official gazette seeking restoration of the name of the company in the register so that it can pursue its remedies which are available to it under the law for recovery of the amount from the company whose name was struck off.

6. In the present case, I am satisfied that the name of the company should be restored to the register. I direct accordingly. It would be open to the petitioner-company to take any action, if it is so advised against Nicholson Export and Import Pvt. Ltd. for recovery of the amount due. The aforesaid company as well as all other persons are restored to the same position, as if the name of the said company has not been struck off.

7. I further direct the company to file all the statutory documents with the Registrar of Companies within a period of two months from the date on which its name is restored in the register of members. The directors of the company are directed to personally ensure this.

8. If any other statutory formalities are to be complied with by the petitioner-company consequent to the restoration of the name of the respondent-company in the register of members, the same shall be done within a period of one month from the date on which the name is

restored. This includes formalities under the Companies Act, 1956 and the applicable rules.

The petition is disposed of in the aforesaid terms.

R.V. EASWAR, J.

JULY 9, 2013

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