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

+ **CO.PET. 315/2014**

BABA GARMENTS PVT.LTD. & ANR.

..... Petitioner

Through: Mr. A. K. Jain and Mr. Pankaj Jain,
Advocates.

Versus

THE REGISTRAR OF COMPANIES

..... Respondent

Through: Mr. Sanjay Bose, Deputy RoC

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed by Baba Garments Private Limited (hereinafter known as the “petitioner”) under Section 560(6) of the Companies Act, 1956 praying for restoration of its name in the register of companies maintained by the Registrar of Companies.
2. The petitioner was incorporated with the Registrar of Companies, NCT of Delhi & Haryana (hereinafter called the “respondent”) as a company limited by shares on 05.02.1992 vide Certificate of Incorporation No. 55-47475 with the object of carrying on the business, *inter alia*, of manufacturing, wholesale and retail of textiles, handlooms, furnishing fabrics and apparel wear of men, women and children. Presently, the registered office of the petitioner is stated to be situated at WZ-11B, Krishna Park (Extn), Tilak Nagar, New Delhi- 110018.

3. The respondent initiated the proceedings under S.560 of the Companies Act, 1956 to strike the name of the petitioner off the register due to defaults in statutory compliances, namely, non-filing of Annual Returns from 1993 to 2014, and Balance Sheets from 1993 to 2014. It has been submitted on behalf of the respondent that procedure under S.560 was duly followed, with notices/letter as required under S.560(1) and S.560(3) sent at the registered office address of the petitioner. It is further submitted that notice dated 31.05.2007 under Section 560(5) for striking off the name of the petitioner from the register maintained by the respondent was given and the same was published in the Official Gazette on 23.06.2007 mentioning the petitioner-company's name at Serial no.7284.
4. The petitioner has, on the other hand, submitted that it has been carrying on and is also presently carrying on the business and is in full, complete operation and has never been defunct, inoperative and non - functional. In support of this statement, the petitioner has relied on certified copy of its annual accounts for the period 2012 to 2013, copies of all of which are annexed with the petition. It is further submitted that the company has been in operation and has been running and is gainfully engaged in the business earning rental income and therefore by no stretch of imagination it could be said that the company is a defunct or non - operational or dormant company.
5. It is further stated by the petitioner that it did not receive any notices/letters/show-cause notices as required under Section 560(1) and (2) of the Companies Act, 1956, nor was it afforded any opportunity of being heard before action under S.560(5) was taken by the respondent.

The petitioner also averred that upon inspection of official records of the petitioner-company carried out by its authorised representative, no documents pertaining to S.560 were found. It is further averred that no documents evidencing the basis on which the respondent came to the conclusion that the petitioner-company was not carrying on its business was either provided to the petitioner or was available on the records maintained with the respondent.

6. It has been averred on behalf of the respondent that though the notices/letters under S.560(1) and (3) were sent, their copies and dispatch proof are not traceable. On examination of annexures, it appears that the address of the registered office of the petitioner in the records of the respondent is incorrect. However, the petitioner has not placed on record any proof of intimation of the change of the address of its registered office, to the respondent. Therefore, it is entirely possible that the respondent had sent notices under S.560 to the petitioner on the old address of its registered office and the same may not have been received by the petitioner.
7. It is stated by counsel for the petitioner that the present petition is within the period of limitation stipulated by S. 560(6) of Companies Act, 1956.
8. The petitioner avers that the accounts of the company were prepared and audited every year, and the same is reflected by the annexures attached to the petition. The petitioner-company had engaged the services of a Chartered Accountant to perform the task of filing the statutory documents with the office of the respondent, due to some family set back and followed by financial difficulties and due to

frequent change in part time clerical staff and not availability of clerical staff with the petitioner No 1 company, accounts records, record of statutory forms and other statutory records of the company were misplaced. By reconstructing the prior figures, Petitioner Company has been preparing the Annual Accounts for the past few years and getting the same audited by the statutory auditor. Further the petitioner company has during past three years also held and convened, from time to time the Annual General Meeting of the shareholders of the petitioner company.

9. The counsel for the petitioner argued that from the perusal of the Annual Accounts for the last three years, it is manifestly established that the petitioner company has been in operation and has been running and is gainfully engaged in the Business.

10. It is submitted that the chartered accountant failed to file the requisite documents. It is further averred that the petitioner came to know that its name had been struck off from the register when the petitioner company was unable to upload certain statutory documents with the respondent, as per the information available on the web portal of the Ministry of Corporate Affairs.

11. Counsel for the respondent has submitted that the respondent has no objection to the restoration of the petitioner company's name under Section 560(6) of the Companies Act, 1956, subject to the petitioner filing all statutory documents, i.e. annual returns from 1993 to 2014 and balance sheets as at 1993 to 2014, and other requisite documents along with filing fee 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.

12. In **Purushottamdass and Anr. (Bulakidas Mohta Co. P. Ltd.) v. Registrar of Companies, Maharashtra, & Ors.**, (1986) 60 Comp Cas 154 (Bom), the Bombay High Court has held, *inter alia*, that;

“18. 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.”

This decision has been followed by this Court in **Pancham Hotels Pvt. Ltd. v. Registrar of Companies**, CP No. 554/2014; **M/s Medtech Pharma (India) Pvt. Ltd. v. Registrar of Companies**, CP No. 241/ 2009; **M/s Santaclaus Toys Pvt. Ltd. v. Registrar Of Companies**, CP 271/2009; **M/s Deepsons Non-Ferrous Rolling Mills Pvt. Ltd. v. Registrar of Companies, NCT of Delhi and Haryana**, CP No. 285/2009; **M/s Kakku E and P Control Pvt. Ltd. & Anr. v. The Registrar of Companies, NCT of Delhi and Haryana**, CP No. 409/2008 and **M/s Sohal Agencies Pvt. Ltd. v. Registrar of Companies, NCT of Delhi and Haryana**, CP No. 297/2009.

13. Under the facts and circumstances, 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 from the Register maintained by the respondent was not satisfied. Looking to the fact that the petitioner is stated to be a running company; and that it has filed this petition within the stipulated limitation period, and to the decision of the Bombay High Court in **Purushottamdass and Anr. (Bulakidas Mohta Co. P. Ltd.) v. Registrar of Companies, Maharashtra, & Ors.** (supra); it is only proper that the impugned order of the respondent dated 23.06.2007, which struck off the name of the petitioner from the Register of Companies, be set aside. At the same time, however, there is no gainsaying the fact that a greater degree of care was certainly required from the petitioner company in ensuring statutory compliances. Looking to the fact that annual returns and balance sheets were not filed for almost twenty one years, the primary responsibility for ensuring that proper returns and other statutory documents are filed, in terms of the statute and the rules, remains that of the management.

14. Accordingly, the petition is allowed. The restoration of the company's name to the Register maintained by the Registrar of Companies will be subject to payment of costs of Rs. 50,000/- to be paid to the common pool fund of the Official Liquidator, and 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 within 8 weeks; the name of the petitioner company, its directors and members shall, 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.

15.Liberty is granted to the respondent to proceed with penal 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.

16. The petition is disposed off.

SUDERSHAN KUMAR MISRA, J.

December 18, 2015