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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CO.PET. 336/2014

PPI ENTERPRISES PRIVATE LIMITED & ORS. Petitioners

Through: Mr. Mukesh Sukhija, Advocate.

versus

REGISTRAR OF COMPANIES

..... Respondent

Through: Ms. Aparna Mudiam, AROC for RD.

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed by PPI Enterprises 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 12.03.1982 vide Certificate of Incorporation No. 55-013281 with the object of carrying on the business, *inter alia*, of electrical appliances and equipments. Presently, the registered office of the petitioner is stated to be situated at C-39, Flatted Complex, Jhandewalan, New Delhi- 110055.
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 30.09.2001 to 30.09.2014, and Balance Sheets from 31.03.2001 to 30.03.2014. It has been submitted on behalf of the

respondent that procedure under S.560 was duly followed, with notices/letteras 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 Gazetteon 23.06.2007 mentioning the petitioner-company's nameat Serial no.1729.

4. The petitioner has, on the other hand, submitted that it has been functioning and carrying on business since its incorporation, and prepared annual accounts and audited the same every year. In support of this statement, the petitioner has relied on its annual accounts for the period 30.03.2002 to 31.03.2013, Balance Sheets with Schedule of fixed assets of the company and profit and loss account for the financial years ending 31.03.2002 to 31.03.2013, copies of all ofwhich are annexed with the petition.
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 respondentcame to the conclusion that the petitioner-companywas not carrying on its business was either provided to the petitioneror 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. This fact is not denied by the respondent.
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. 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, per the information available on the web portal of the Ministry of Corporate Affairs.
9. 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. 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 2002 to 2014 and balance sheets as at 2002 to 2014, and other requisite documents along with filing fee and additional fee etc., as applicable on the date of actual filing.

10. 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 Santa Claus 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.

11. 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 twelve 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.

12. 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. 22,000/- 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.

13.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.

14.The petition is disposed off.

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SUDERSHAN KUMAR MISRA, J.

December 01, 2015