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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CO.PET. 278/2015

GAURAN PROPERTIED PVT. LTD.

..... Petitioner

Through: Mr. Manish Sharma & Ms. Chandni
Mehra, Advocates

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 Gauran Properties Private Limited (hereinafter known as the Petitioner) under Section 560(6) of the Companies Act, 1956 read with Rules 9 and 92 of the Company (Court) Rules, 1959 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 25.07.1991 vide Certificate of Incorporation No. 55-45100 with the object of carrying on the business of, *inter alia*, acquiring and developing lands.
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 2000 to 2014, and Balance Sheets from 2000 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 address available with the registrar as 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.

4. The petitioner has, on the other hand, submitted that it had not engaged in any business since its incorporation. However, the company had acquired property bearing No. C-577, Defence Colony, New Delhi vide a registered sale deed dated 06.04.1993. Further, the petitioner submits that it had filed its returns till the year 2000 through its directors. The petitioner also averred that the petitioner company was a closely held family concern and affairs of the company were being handled solely by one Mr. DharamDutt, who passed away on 23.11.2008. It is also stated that due to ill health and old age, he was unable to attend to the affairs of the company from the year 2000 till his demise in the year 2008. In support of this statement, the petitioner has relied on its annual returns dated 24.09.1999, copy of which is 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. It is also averred that the petitioner came to know that its name had been struck off from the register of companies in April, 2015. In this

context, it is also averred that the registered office address of the company available with the respondent was 1748/55 – Naiwala, Karol Bagh, New Delhi.

6. It has been averred on behalf of the respondent that though the notices/letters under S.560(1) and (3) were sent at the office address of the petitioner as available in the records of the respondent, however their copies and dispatch proof are not traceable.
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. 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, as applicable on the date of actual filing. The certificates of 'No Objection' of the directors and 80.02% of the shareholders, to the restoration of the name of the company to the Register maintained by the respondent, have also been placed on record.
9. 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 MedtechPharma (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.

10. Under the facts and circumstances, it is possible that notice in respect of action proposed 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 **Purushottamdas 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 fourteen 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.

11. 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.

12. Liberty is also 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.

13. The petition is disposed off.

SUDERSHAN KUMAR MISRA, J.

December 01, 2015