

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

COMP No. 19 of 2015

- Veear Mercantile Private Ltd., A Company Incorporated under the Companies Act, 1956, Having Its Registered Office At 21/519 Ram Kutir Civil Lines, Raipur (Chhattisgarh) and Having Its Current Address at 4-5 Golcha Plaza, OCM Square, Raj Bhawan Road, Civil Lines, Raipur (Chhattisgarh) Through Its Managing Director, Shri Vasudev Narang, S/o Late Shri Ramchand Narang

---- Petitioner

Versus

1. Union Of India, Through Secretary Ministry Of Corporate Affairs, 5th Floor, 'A' Wing, Shastri Bhawan, New Delhi
2. Registrar Of Companies, Bilaspur, First Floor, Ashok Pingley Bhavan, Municipal Corporation, Nehru Chowk, Bilaspur (Chhattisgarh)

---- Respondent

For Petitioner

Shri Harsh Wardhan, Advocate

For Respondent No.1

Shri N. K. Vyas, ASG with Shri R. K. Gupta,
Standing counsel

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

26/02/2016

1. This company petition under Section 560 (6) of the Companies Act, 1956 (for short 'the Act, 1956') has been preferred seeking restoration of the certificate of incorporation of the company, whose name was struck off from the register of the companies sometimes in the year 2007. The applicant company was established to carry on business of whole sale and retail sale of all types of cloths, fabrics, garments, sarees and to act as a commission agent for the above items and to establish branches, depots and also to undertake the business of

purchase and sale of plots, lands, buildings, bridges, hotels, clubs, restaurants, baths, places of worships, places of amusements, swimming pools, play grounds, community halls, parks, gardens, reading rooms, schools and for other incidental or ancillary objects. The company was incorporated on 18.02.1992 and thereafter it continued the business, filed annual returns from the year 1992 to 1998. It is averred in the application that from the year 1998 to 2006, the company was doing business, but returns could not be filed and thereafter on account of severe accident of one of the family members, who was also the Managing Director of the company, it stopped doing business, because it being a closely held company, there was no outsider to carry on the operations.

2. Shri Harsh Wardhan, learned counsel appearing for the applicant, would submit that the company is not in debt nor there is any winding up petition pending before any Court of law against the company. He would refer to para 6 of the application to state that the authorized capital of the company is Rs.16,00,000.00 and the paid up capital is Rs.10,08,900.00 and has no liability outstanding as on date. He would further submit that conditions having improved, the company again desires to enter into the business for which the company was established, therefore, a bona fide prayer for restoration of the company's registration is made in this application.
3. In the reply filed by the Registrar of companies-cum-Official Liquidator, Chhattisgarh, it is stated that it has no objection, if the name of the company is restored in the record of the Registrar of companies, however, it has defended its action of striking off the name of the company on submission that there being failure on the part of the

company to file statutory documents as required under Section 159 (1) and 220 (1) of the Act, 1956 with the office of the respondents after closing of every financial year, the name has rightly been struck off.

4. The provisions contained in Section 560 of the Act, 1956 provides that if the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send the company a letter by post enquiring whether the company is carrying on business or in operation. If no answer is received within one month, the Registrar shall, within 14 days, after the expiry of the month, send a registered letter, referring to the first letter, asking the company as to why its name be not struck off from the register. If no reply is received or a reply is received that it is not carrying on the business or in operation, the Registrar shall either send second notice or shall proceed to pass an order to struck off the company from the register and thereafter the company will be dissolved.
5. Sub-Section (6) of Section 560 is relevant for the present purpose, which reads thus:-

(6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the Tribunal, on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register; and the Tribunal may, by the order, 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."

6. Thus, the law enables a company, whose name has been struck off, to move an application, within 20 years from the date of striking off, for restoration and thereafter on being satisfied that either the company was in operation or otherwise it is just that the company be restored to the register, an order may be passed for restoring the company to the register.
7. In the case at hand, there is no material on the record to suggest that the company has any existing liability or that the application is otherwise mala fide so that it can be said that the application for restoration has been moved to defeat any provisions of law. On the contrary, the Registrar-cum-Official Liquidator, Chhattisgarh has supported the petitioner company's plea of restoration with a rejoinder that the petitioner company be directed to file its overdue annual returns under Section 159 (1) of the Act, 1956 for the financial years ending 31.03.1999, 31.03.2000, 31.03.2001, 31.03.2002, 31.03.2003, 31.03.2004, 31.03.2005, 31.03.2006, 31.03.2007, 31.03.2008, 31.03.2009, 31.03.2010, 31.03.2011, 31.03.2012, 31.03.2013, 31.03.2014, 31.03.2015 and 31.03.2016 and balance sheet under Section 220 (1) of the Act, 1956 for the above stated financial years in accordance with the provisions of the Act, 1956. The application for restoration of the name of the petitioner company, thus, appears to be bona fide and deserves to be allowed.
8. By virtue of the order of restoration of the name of the petitioner company, the earlier order of striking off would get extinguished or in other words, the company would be deemed to be in existence from the date of incorporation. Hence, the balance sheet, profit and loss

account including its annual returns of the petitioner company are required to be filed under Section 159 and 220 of the Act, so as to comply with the mandatory provisions of the Act, 1956, failing which it would be contrary to the very statutory provisions itself. It is also to be seen that the Act prescribes time limit for filing of the balance sheet, profit and loss account and annual returns and in the event of default, the ROC would be empowered to levy and collect 10 times the fee prescribed as provided under sub-section (2) of Section 611 of the Act, 1956.

9. In view of the above and considering the statutory provisions, the prayer for restoration of the name of the petitioner company is allowed subject to the following conditions:-

- I. The petitioner company shall submit balance sheet, profit and loss account and annual returns for the financial years
31.03.1999, 31.03.2000, 31.03.2001, 31.03.2002,
31.03.2003, 31.03.2004, 31.03.2005, 31.03.2006,
31.03.2007, 31.03.2008, 31.03.2009, 31.03.2010,
31.03.2011, 31.03.2012, 31.03.2013, 31.03.2014,
31.03.2015 and 31.03.2016 within a period of 6 months before the ROC, in accordance with the provisions of the Act, 1956.
- II. The ROC would be empowered to levy and collect 10 times the fee prescribed as provided under sub-section (2) of Section 611 of the Act, 1956.
- III. In addition, the petitioner company shall pay cost of Rs.50,000/- to the ROC, apart from the fee that would be

determined by the ROC while accepting the accounts/returns that would be filed by the petitioner company for the financial years ending 31.03.1999, 31.03.2000, 31.03.2001, 31.03.2002, 31.03.2003, 31.03.2004, 31.03.2005, 31.03.2006, 31.03.2007, 31.03.2008, 31.03.2009, 31.03.2010, 31.03.2011, 31.03.2012, 31.03.2013, 31.03.2014, 31.03.2015 and 31.03.2016.

- IV. The restoration of the name of the petitioner company shall be done by the ROC only after payment of the entire fee, as indicated above and the cost of Rs.50,000/- is deposited by the petitioner company with the ROC.

Sd/-

Company Judge

PRASHANT KUMAR MISHRA

Nirala