

HON'BLE SRI JUSTICE S.V. BHATT

COMPANY PETITION No.250 OF 2015

%01.07.2016

Sri Velamati Chandrasekhara Janardan Rao

....Petitioner

VERSUS

\$ M/s. Sree Raja Rajeswari Paper Mills Limited and another

..Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri S.Ravi

^Counsel for Respondents: Nil

? Cases referred

1. (2000) B.C.C. 172
2. 206 (2014) Delhi Law Times page 17



HON'BLE SRI JUSTICE S.V.BHATT

COMPANY PETITION No.250 OF 2015

ORDER:

One Velamti Chandrasekhara Janardan Rao is the petitioner.

The petition is filed under Section 560 (6) of the Companies Act, 1956 (for short 'the Act') to cancel the striking off name of respondent company/M/s See Raja Rajeswari Paper Mills Limited (for short 'the company') pursuant to application dated 09.03.2011 and to restore the name of company in the register maintained by the Registrar of Companies (ROC).

Heard Mr.S.Ravi for petitioner.

Petitioner alleges that he was a shareholder of the company. The company was set up in Hanuman Junction, Krishna District to manufacture and do business in paper boards. On 17.07.1999, the Managing Director Sri A.S.V.R.G.K. Prasad passed away. Thereafter, the Board comprised of Dr.V.V.Gopala Krishna and Sri V.V.R.B. Prasad. According to petitioner, these two Directors acted to the detriment of the company. Directors did not enjoy the confidence of majority of shareholders of the company. The Company Law Board, with the expiry of the term of these two Directors appointed Chairman to conduct meeting of shareholders of the company. In the meeting convened by the Chairman, new Board of Directors of the company was constituted. The erstwhile Directors after ceasing to be the Directors of the company have continued to hold books and vital documents of the company. The retention of books and documents resulted in filing of a complaint under

Section 630 of the Act by the company in the Court of Special Judge for Economic Offences, City Criminal Court, Nampally, Hyderabad vide STC No.24 of 2000. It is further stated that the STC ended in dismissal, for the company failed to prove that the said Directors continued to hold documents or records of the company. The petitioner having been left with no option, on 25.04.2011, applied under Section 560 of the Act to strike off the name of the company. The ROC struck off the name of company on 30.04.2011. The copies of request and the striking off order of ROC are placed on record as Annexures P1 and P2.

It is further averred that the landed property of the company was not in the knowledge of the petitioner though he was the Chairman. Therefore, even without selling the available assets and distributing the sale proceeds to the shareholders, request for striking off the name of the company from the register was made and was accepted in routine course. The petitioner categorically alleged that the restoration of name of company in the register of the ROC is mandatory to deal with the available, but undisclosed, assets of the company. Therefore, he prays for striking off the cancellation order and restoration of the name of the company in the register of ROC. The restoration does not prejudice the cause of any one, on the other hand, enables the legal entity to protect the property and if necessary realize consideration by sale of these properties.

Mr. Ravi has substantially reiterated the averments referred to above and contends that the request to cancel the name of the company in the register of ROC was made in *bona fide* belief that

the company had no asset and liability, the shareholders have no objection for striking off the name of the company and accordingly the application dated 25.04.2011 was made. Now, from the material available on record, it is contended that there is necessity in law and fact to restore the name of company in the register maintained by the ROC, for according to learned counsel if the company is not restored and the entity is not revived, the properties of the company either will be lost or taken over by persons who cannot and could not claim title from the company. Further, the shareholders of the company did not get money from the assets of the company. Therefore, restoration of name in register is in the interest of one and all. He further contends that even if 3rd parties have any claim enforceable in law against the company, unless and until the entity is restored, they cannot proceed against a non-existing company. He places reliance on *172 Conti v. UeberseeBank AG.¹ and M.A.Panjwani v. Registrar of Companies and Another.²

I have perused the material available on record and noted the submissions of Mr.Ravi and in the considered view of this Court, the following point arises for consideration

Whether the petitioner is entitled for cancellation of striking off company's name from register and consequently entitled for restoration of the name of company in the register maintained by the ROC?

¹ (2000) B.C.C. 172

² 206 (2014) Delhi Law Timespage 17

The instant petition is made under Section 560 sub-section (6) of the Act.

Section 560 of the Act reads as follows:

560. Power of Registrar to strike defunct company off register.

(1) Where the Registrar has reasonable cause to believe that a company is not carrying on- business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiry of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Official Gazette, and send to the company by registered post, a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company have been completely wound up, and any returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Official Gazette and send to the company or the liquidator, if any, a like notice as is provided in subsection (3).

(5) At the expiry of the time mentioned in the notice referred to in sub- section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette; and on the publication in the Official Gazette of this notice, the company shall stand dissolved: Provided that-

(a) the liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this sub- section shall affect the power of the (Tribunal) to wind up a company the name of which has been struck off the register.

(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.

(7) Upon a certified copy of the order under sub- section (6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

(8) A letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or if no office has been registered, to the care of some director, the manager or other officer of the company, or if there is no director, manager or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

(9) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business.

Section 560 confers power on the ROC to strike off defunct company from the register.

Sub-section (1) of Section 560 provides that if the Registrar has reason to believe that a company is not carrying business or

operation, a letter is sent to such company enquiring whether the company is carrying on business or not. The steps under sub-section (2) begin when the Registrar does not receive reply within one month of sending the letter under sub-section (1) and within fourteen days from the expiry of one month sends to company by post a registered letter referring to first letter sent under sub-section (1) of Section 560 and states that no reply is received and if reply is not received to the second letter within one month thereof, a notice will be published in the official gazette with a view to striking off the name of the company from the register. Sub-section (3) envisages two situations viz., (1) when reply is received that the company is not carrying on business or in operation or does not receive a reply at all, then the Registrar publishes the name of company in the official gazette and a copy is sent, by RPAD, to company that with the expiry of three months from the date of notice, the name of the company is struck off from the register. Sub-section (4) deals with non-compliance with the filing of returns by the Official Liquidator of a company in liquidation. Sub-section (5) is similar to sub-section (3) referred to above. The instant prayer is made under sub-section (6) of Section 560 of the Act. Under sub-section (6), a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, on an application made by the company, member or creditor before the expiry of 20 years from the publication of official gazette of the notice aforesaid, the Court may, if satisfied that at the time of the striking off the name of company, the company was 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 can issue such further directions in the context of restoration of name by the Registrar. Stated succinctly, sub-section (6) of Section 560 enables three classes of persons namely (1) the company, (2) member or (3) creditor to apply for striking off cancellation within twenty years and seek restoration of the name of company in the register of ROC, subject to the said company, member or creditor satisfying the Court that at the time of striking off the name, the company was carrying on business or in operation or otherwise it is just that the company be restored to the register. The proof of these circumstances enables the Court to consider restoring the name of a company in the register. The words viz., otherwise that it is just that the company be restored to the register confers more discretion on the Court to direct restoration of the name of company in the register. Though sub-section (6) is part of Section 560 of the Act, which deals with striking off name by Registrar, still the absence of the words restricting applicability only to sub-sections 1 to 5 of Section 560, and providing on a company, member, or creditor thereof, it can be construed that sub-section (6) is applicable to voluntary striking off name from register and the words "otherwise that it is just that the company be restored to the register" give sufficient discretion to the Court. In *172 Conti v. Uebersee Bank AG., the Court of Session dealing with Section 653 of Companies Act, 1985, while considering who is an aggrieved person and how the discretion in ordering restoration of name of the company, held as follows:

“1. In measuring whether a person ‘feels aggrieved’ within s.653(1), subjective dissatisfaction was not enough: there had to be something which could fairly be regarded as an objective grievance.

2. In determining whether there was a grievance the court was not necessarily limited to a consideration of the situation as it was at the date of striking off and could make the determination as at the time of the application for restoration. In the intervening period events may have changed and an unexpected benefit discovered which would have accrued to a member or creditor of the company but for the company having been struck off. The tense of the section implied a present sense of the perfect tense, that the member or creditor ‘feels aggrieved by the company having been struck off’.

3. As a matter of ordinary language one could not naturally speak of being aggrieved by one’s own act, so that at the time of striking off the petitioner could not feel aggrieved by what he had brought about. But by the time of the application for restoration it was not contrary to the ordinary use of language to say that at that later date he was aggrieved, not *173 by the original act of striking off the company, but by the company, at the date of the new event, ‘having been struck off’ and no longer being in existence. (Re-New Timbiqui Gold Mines Ltd (1961) 1 Ch 319 and Re AGA Estate Agencies Ltd (1986) [2000] B.C.C. 99,257 distinguished.)

4. The petitioner could thus be a person aggrieved and because of the uncertainties in the facts the case should be sent to proof before answer.”

In M.A.Panjwani v. Registrar of Companies & another, considered the scope of Section 560(6) and the meaning of words “otherwise just” held as follows:

11. Under sub-section (6) of [Section 560](#) of the Companies Act, 1956 the company court has the power to order restoration of the company's name to the register

of companies on the application made by the company itself or its member or creditor. Such an application can be made at any time before the expiry of 20 years from the publication of the notice for striking off the name published in the official gazette. There are only two circumstances in which the company court can exercise the power. The first is when it is satisfied that the company was, at the time of the striking off of its name from the register, carrying on business or was in operation. The second circumstance is when it appears to the company court that it is "otherwise just" that the name of the company be restored to the register. Obviously the petitioner is not the company itself and, therefore, he has to be either a member or creditor. It was submitted on behalf of the ROC that the petitioner is neither a member nor a creditor of the company.

14. Quite apart from the above position, the sub-section recognizes that if the Court is of opinion that it is "otherwise just" that the company be restored to the register, restoration can be ordered. The argument addressed on behalf of the ROC to the effect that the word "just" has to be understood in the background of the specific language of the sub-section on the basis of the principle of ejusdem generis does not appeal to me. As I read the sub-section, there are two situations in which the company court can order restoration. One is when the company was carrying on business or was in operation at the time of striking off its name. The second situation, which is an alternative situation, is one where it appears "just" to the company court that the name of the company be restored to the register. I do not see any scope for the application of the rule of ejusdem generis because of the presence of the words "or otherwise" between the words providing for the two types of situations. The presence of the words "or otherwise" denotes that even if the company was not carrying on any business or was not in operation at the time of striking off, it is still open to the company court to order restoration if it appears to the Court to be "otherwise just". I may add that the words "or otherwise" have not been generally construed ejusdem generis as seen from the judgments of the Supreme Court in [Lilawati Bai vs. State of Bombay](#) : (AIR 1957 SC

521) and [Kavallappara Kottarathil Kochuni v. State of Madras](#) : (AIR 1960 SC 1080).

15. In [Helen C. Rebella vs. Maharashtra S.R.T.C.](#) : (1999) 1 SCC 90, it was observed by the Supreme Court that the word "just" denotes equitability, fairness and reasonableness having a large peripheral field. In understanding its scope, one must take into account all the facts and circumstances of the case and then decide what would be just and equitable. In [M.A. Rahim and Anr. vs. Sayari Bai](#) : (AIR 1973 Mad.83) it was held by a Division Bench of the Madras High Court that the word "just" connotes reasonableness and something conforming to rectitude and justice, something equitable and fair. In [Sidhant Garg and Anr. vs. Registrar of Companies & Ors.](#) : (2012) 171 Comp. Cas. 326 it was held by this Court (Manmohan, J.) that the word "just" would mean that it is fair and prudent from a commercial point of view to restore the company and that the Court has to examine the concept of "justness" not exclusively from the perspective of a creditor or a member or a debtor, but from the perspective of the society as a whole. The special facts of the present case attract this principle. The respondent has received monies from the petitioner. He was entrusted with the job of finding a house for the petitioner in Delhi. The averments in the petition prima facie indicate that the property "Jodhpur Gardens" was purchased not in the name of the petitioner but in the name of the company. The shares held by the petitioner in the company were also taken away from him without his knowledge or consent. The settlement entered into between Quli and Singhania by which the shares were transferred to Quli was held by this Court to be collusive. These are disputes which are pending in the trial court. The company is a defendant in the trial court. If its name is not restored, it would cause injustice to the petitioner and also cause prejudice to the trial as a whole. The message sent to the society as a whole, if the name of the company is not restored to the register, would be quite disturbing. The petitioner has to be protected in the litigation pending before the trial court. As observed by the Indore Bench of the Madhya Bharat High Court in [Bhogi Lal Chiman Lal vs. Registrar, Joint](#)

Stock Companies : AIR 1954 M.B. 70, the effect of the order of the Registrar of Companies striking off the name of the company from the register would be that the company will be deemed to be dissolved and it may be difficult for the petitioner to obtain any relief in the suit pending before the trial court. It is not also known whether the company had brought to the notice of the ROC about the pendency of the litigation in the trial court. If it had, perhaps the ROC would not have struck off the name from the register.

The additional material papers filed by the petitioner discloses that the petitioner in *bona fide* belief applied for striking off name of the company on the ground that company had no assets and liabilities and the company was not carrying on business or in operation. Further, what remained was the share capital of the members of the company. Therefore, in *bona fide* belief that the company had no business or was not in operation, the petitioner would have, in the peculiar facts and circumstances of this case, requested for striking off the name of the company.

Further, the pleadings and other material filed in the petition show that the assets owned and held by the company were not within the knowledge of the persons who were on the board when the resolution was passed to request for striking off the name of the company. The petitioner was the Chairman when a request was made. Therefore, on coming to know full details and information on the assets of company with a view to enabling company to claim its assets or administer for the benefit of shareholders prays for restoration of the name in the register. In the considered view of this Court, with the striking off the name of the company, the legal

and corporate entity enjoyed by the company under the Act is completely denuded. Therefore, for all purposes, it became dead or non-existing in the eye of law. Therefore, either to claim the assets of company or answer the claims of third parties against the company, the restoration of company in the register of companies is otherwise just. Therefore, this Court holds that the petitioner, though was not aggrieved on the day when the application was made, but with the acquisition of subsequent knowledge or information about the assets of the company, the petitioner being the ex-chairman/shareholder of the company is a person aggrieved against the striking off the name of company from the register and can apply for cancelling the striking off and restoring the name in the register. Hence, a case is made out that otherwise it is just and proper to restore the name of the company in register.

For the above reasons, the company petition is ordered, striking off name of the company is cancelled and the Registrar is directed to restore the name of M/s Sree Raja Rajeswari Paper Mills Limited in the register maintained by the ROC. The petitioner is directed to take such other or further steps as are required under the Act to formalize the restoration of company.

The Company Petition is ordered as indicated above.

S.V.BHATT, J

Date: 01.07.2016
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