

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 27.10.2016
Judgment pronounced on: 21.12.2016

CO.PET. 191/2016

IN THE MATTER OF:-

INTEC CORPORATION PRIVATE LIMITED Petitioner

Versus

**THE REGISTRAR OF COMPANIES,
N.C.T. OF DELHI & HARYANA** Respondent

Through: Mr. Bharat Beriwal,
Advocate for Petitioner.
Ms. Sunieta Ojha, Advocate
for ROC/Respondent.

**CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present petition has been filed under Section 560(6) of the Companies Act, 1956 (hereinafter referred to as the 'Act') by M/s Intec Corporation Pvt. Ltd. (hereinafter referred to as the 'Petitioner Company') praying for restoration of the name of the Petitioner Company in the Register

of Companies maintained by the Registrar of Companies, NCT of Delhi & Haryana (hereinafter referred to as the 'Respondent').

2. The Petitioner Company was incorporated under the Act, vide certificate of incorporation dated 27.12.2010 issued by the Respondent.

3. The main objects of the Petitioner Company as stated in the Memorandum of Association are, *inter alia*, as follows:-

“i. To carry on, in India and in any part of the world, the business of manufacture, produce, sell, repair, service, support, import, export, install, modify, fabricate, maintain, design, hire, assemble or otherwise engage generally, in the manufacture of production or dealing in all kinds of industrial equipment and appliances, whether manual, mechanical, Electrical, electronic or Computerized programmable of Air Conditioning Equipment, Refrigeration, Refrigeration equipments, industrial fans, Parts and sub-assemble of non-conventional sources of energy, Water, and Air Coolers, refrigerators, domestic and Industrial Air-conditioning plants, cooling towers, assemblies, sub-assemblies, components used for Air-conditioning including central air-conditioning, refrigeration, heating, water purification in vehicles, Industrial and commercial establishments, railways, Aircrafts, ships, boats, lorries, buses and residential units.”

4. The registered office of the Petitioner Company is stated to be situated at 108A, Madangir, New Delhi-110062, within the jurisdiction of this Court.

5. The Petitioner Company was incorporated with an authorised share capital of Rs.10,00,00,000/- divided into 1,00,00,000 equity shares of Rs.10/-

each and subscribed capital of Rs.2,49,00,010/-, divided into 24,90,001 equity shares of Rs.10/- each.

6. It has been stated by learned counsel appearing on behalf of the Petitioner Company that due to general depression in the market during the years 2011-2013, *inter alia*, the Petitioner Company could not commence its operations during the said period as the same required a huge amount of capital infusion. It has been further stated that during the said period even the subscribed capital was not received from initial subscribers and therefore the project remained a non-starter.

7. Additionally, it has been stated on behalf of the Petitioner Company that at the time of filing of the application for removal of its name from the Register of Companies maintained by the Respondent, the former was a completely defunct company, without any assets and liabilities. It has further been stated that there were no dues against the Petitioner Company towards income tax/sales tax/central excise, or against banks or financial institutions or any other central or state government authorities or local authorities.

8. It was under these circumstances that the Petitioner Company filed an application dated 10.10.2013; and Form FTE dated 30.10.2013 vide SRN no.B88130943, as per the Fast Track Exit Scheme, 2011, under Section 560 of the Act, with the Respondent, for striking off its name from the Register of Companies maintained by the Respondent.

9. Consequently, the Respondent struck off the name of the Petitioner Company from the Register of Companies maintained by the Respondent, after issuing notice, dated 14.03.2014, under Section 560(5) of the Act to the Petitioner Company. Publication in this behalf was carried out in the Official Gazette (for the week from 05.04.2014 to 11.04.2014). Thereby, the Petitioner Company was dissolved without being wound up.

10. The Petitioner Company, by way of present petition under Section 560(6) of the Act, seeks restoration of its name in the Register of Companies maintained by the Respondent, on the ground that there has been a change of business environment in the country. It has been stated by counsel appearing on behalf of the Petitioner Company that because of government's special attention towards ease of doing business in the country, there is a renewed excitement in the air-conditioning market and that it is expected to grow at a rapid pace of upto 12% per annum. It has been further stated that the Petitioner Company is contemplating to start a manufacturing unit for manufacturing roof mounted air conditioners for railway.

11. The Board of Directors of the Petitioner Company have unanimously passed a resolution dated 18.01.2016 seeking revival of the Petitioner Company. A copy of the said resolution dated 18.01.2016 has been placed on record.

12. Notice in the present petition was issued to the Respondent by way of order dated 08.03.2016. Pursuant to the issuance of notice, reply of the Respondent dated 26.08.2016 has been filed, wherein no objection to the relief prayed for in the present petition has been raised, however, subject to the Petitioner Company filing all the Annual Returns and Balance Sheets till date, pertaining to the Petitioner Company alongwith the prescribed filing fee and additional fee as on the date of actual filing, as per the provisions of the Act.

13. Before I proceed to deal with the relief prayed for in present petition, it would be relevant to extract Section 560(6) of the Act, which reads as hereunder:-

“(6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the Court, 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 Court 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.”

14. A bare reading of Section 560(6) of the Act reveals that for the name of the Company to be restored in the Register of Companies, the petition should be instituted either by the company or any creditor or member thereof,

aggrieved by the name of the company being struck off, within a period of twenty years from the date of publication of the notice under Section 560(5) of the Act. The said Section further provides that it is only if the Court is satisfied that the company at the time when its name was struck off from the Register of Companies maintained by the Registrar of Companies, was carrying out business or was in operation or otherwise if the Court is of the view that it would be just to restore the name of the company to the Register of Companies maintained by the Registrar of Companies, that the Court would exercise the discretion conferred under Section 560(6) of the Act.

15. The present petition under Section 560(6) of the Act, seeking restoration of the name of the Petitioner Company has been instituted by Mr. Ronsher Singh Sindhu, Director of the Petitioner Company, who has been duly authorized by the said Board of Directors resolution dated 18.01.2016 to institute the present petition. Further, it is noted that the present petition is within the period of limitation as prescribed for under Section 560(6) of Act.

16. The issue whether the name of a company which has been struck off under the Fast Track Exit Scheme can be restored subsequently, under Section 560(6) of the Act, has been dealt with by the decision of this Court in **Siddhant Garg and Anr vs. Registrar of Companies and Anr.** reported as **(2012) 187 DLT 501**. In this decision, the Court whilst considering a petition under Section 560 of the Act, for restoration of the company's name in the

Register of Companies, which was struck off under Simplified Exit Scheme, 2003, observed in para 26 of the report as follows:-

“As a matter of law, it cannot be said that where the company’s name has been struck off on an application filed under Simplified Exit Scheme, the company cannot be restored. In fact, the Madhya Pradesh High Court in *VI Brij Fiscal Services P. Ltd. v. Registrar of Companies*, (2010) 155 Comp.Cas. 157 (MP) has restored a company which had been struck off under the Simplified Exit Scheme”

17. In view of the foregoing, and upon considering the facts and circumstances of the present case, I am of the view that it would be just and proper to order restoration of the name of the Petitioner Company in the Register of Companies maintained by the Respondent.

18. Upon the Petitioner Company filing all the statutory documents i.e. Annual Returns and Balance Sheets till date, along with the prescribed filing fee and additional fee in compliance with all the statutory requirements, the name of the Petitioner Company, its directors and members shall, stand restored to the Register of Companies maintained by the Respondent, in accordance with Section 560(6) of the Act, as if the name of the Petitioner Company had not been struck off,.

19. The Petitioner Company is directed to deliver to the Respondent a certified copy of this order, in compliance with Rule 93 of the Companies

(Court) Rules, 1959. The Respondent shall, thereafter, proceed in this matter in accordance with the Act and the Rules framed thereunder.

20. No order as to costs.

21. The present petition is accordingly disposed of in the aforesaid terms.

SIDDHARTH MRIDUL, J

DECEMBER 21, 2016

ap/mk

