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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Co.Pet. 163/2016

APRA AUTOMOBILES PRIVATE LIMITED ... Petitioner
Through: Ms. Poonam Anand and Mr. Ishan
Madan, Advocates
Versus

REGISTRAR OF COMPANIES ...Respondent
Through: Ms. Bhawna Messay, Advocate

CORAM:
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed by Apra Automobiles 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 31.05.1995 vide Certificate of Incorporation No. 5569250 of 95-96 with the object of carrying on the business, *inter alia*, of import, export, buy, sell, stock, supply, distribute, wholesale and retail dealers of motor cars, motor buses, omnibuses, motor lorries, station wagons, motor trucks etc. and to manufacture and produce all kinds of spear parts, engines, chassis, bodies, tools and implements and to carry on the business or body builders of motor vehicles and trucks

and secondary object of construction, acquisition, selling of all kinds of movable and immovable properties. Presently, the registered office of the petitioner is stated to be situated at 5, Bahadur Shah Zafar Marg, Pratap Bhawan, New Delhi.

3. The petitioner submits that pursuant to its incorporation, the Petitioner Company on 04.07.1995 also purchased a parcel of land in Village Silokhera, District Gurgaon, Haryana for the purpose of carrying out commercial activities in pursuit of its objects. Thereafter due to some peculiar circumstances within the family of the Directors of the Petitioner Company, all commercial activities were put on hold. The office of the Petitioner Company, instead of being operative at the registered address, was being operated from 32nd Milestone, NH-8, Gurgaon. All the business activities of the Petitioner Company since then have been conducted from the premises located at Gurgaon and not from the Registered Office.
4. The petitioner further submits that it was granted license on 20.03.2008 to set up a commercial complex in Village Silokhera, District Gurgaon, Haryana by the Department of Town & Country Planning, Government of Haryana, and the application for license was made prior to the striking off the name which shows that in the year 2006 company was commercially operative and was doing its business in the normal course.
5. 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 and Balance Sheets after 1999. 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 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 mentioning the petitioner-company's name at Serial no.8694.

6. The petitioner has, on the other hand, submitted that it has been an active company and carrying on its business since its incorporation. In support of this statement, the petitioner has relied on license granted to the company to set up commercial complex, entering into collaboration agreements, owning land for commercial activities, copies of all of which are annexed with the petition.
7. The petitioner states that it came to the notice of the petitioner company that the name of the petitioner company has been struck off under section 560(5) somewhere in January, 2016 through its Bankers. The Petitioner Company had approached the Bank which was nominated to be the Escrow Bank under the Collaboration Agreement dated 21.08.2015.
8. The petitioner submits that it has been maintaining the relevant documentation since its incorporation; but the professionals employed by the Company have failed to file the necessary documents with the Registrar of Companies. The Petitioner Company has also been

informed that the relevant documents; including those pertaining to the striking off of the Petitioner Company are not traceable at the Office of the Registrar of Companies.

9. 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 on the record. It is further averred that no documents evidencing the basis on which the respondent came to the conclusion that the petitioner-company was not carrying on its business was either provided to the petitioner or was available on the records maintained with the respondent.
10. 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 different from the place from where the company is actually working. The petitioner has not filed on record any proof of intimation of the change of the address of its registered office, to the respondent.
11. 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.

12. 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 and balance sheets after 1999, 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, to the restoration of the name of the company to the Register maintained by the respondent, have also been placed on record.

13. 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 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.**

14. Under the circumstances, it is entirely possible that the respondent had sent notices under S.560 to the petitioner on the address of its registered office but the same may not have been received by the petitioner. 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 seventeen 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.
15. 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.

16. Liberty is granted to the respondent to proceed with penal action against the petitioner, if so advised, on account of the petitioner's alleged defaults in compliance with any other provisions of the Companies Act, 1956 and Rules, including Section 162.
17. The petition is disposed off.

SUDERSHAN KUMAR MISRA
Judge

AUGUST 29, 2016