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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CO.PET. 263/2014

M/S S. AUTOMOBILES SPECIALITIES
& LUBRICANTS P LTD ..... Petitioner
Through: Mr. Vipin Singhania and Mr. Ram Anugrah Singh, Advocates

versus

REGISTRAR OF COMPANIES, NCT OF DELHI
AND HARYANA ..... Respondent
Through: Ms. Aparna Mudiam, Advocate

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% **20.01.2016**

CA 930/2014 (Exemption)

1. Allowed subject to just exceptions.

CA 2118/2015 (condonation of delay)

2. This is an application filed on behalf of the Registrar of Companies (ROC) to seek condonation of delay in filing its reply.

2.1 According to the ROC, there is a delay of 75 days.

3. For the reasons given therein, the delay is condoned and the application is allowed.

4. The reply is, thus, formally taken on record.

CP 263/2014

5. This is petition filed under Section 560 (6) of the companies Act, 1956 (in short the Act). By virtue of this petition, the petitioner seeks restoration of its name in the register of companies maintained by the ROC, NCT of Delhi and Haryana.

6. The petition has been filed in the background of the following broad facts :-

(i). The petitioner was incorporated in the first instance on 15.09.1987. The first Directors and subscribers to the Memorandum and the Articles of Association of the petitioner were Mr. Sonil Narula, Mr. Tek Chand Narula and Mr. Avinash Vohra. The petitioner, thus got incorporated with an authorised share capital of Rs.5 Lakhs, divided into Rs.5,000/- equity shares of Rs.100/- each. The balance sheet of 2008-2009 though shows that the authorised share capital of the petitioner is Rs.10 Lakhs, divided into 10,000 equity shares of Rs.100 each. As per the said balance sheet, the entire share capital stands issued, subscribed and paid up. Resultantly, the issued, subscribed and paid up capital of the petitioner is Rs.10 Lakhs, divided into 10,000 share of Rs.100 each.

(ii). The petitioner, it appears, filed its annual return for the last time with the ROC on 29.09.1999, at which point in time, Mr. Sonil Narula, Mr. Rishi Narula and Ms. Madhu Narula were on its Board of Directors. Since 2000, the petitioner, evidently, neither filed its annual returns nor its balance sheet.

(iii). On account of the above, the ROC, took recourse to proceedings under Section 560 of the Act for striking off the name of the petitioner from the register of companies. The ROC, issued a notice in that behalf, on 31.03.2008, which was published in the official gazette for the period 26th April to 02nd May 2008.

7. It is, in this background, that the petitioner has approached this court for restoring its name in the register of companies maintained by the ROC.

7.1 It is the case of the petitioner that its day to day affairs were, essentially, being looked after since the date of its incorporation by Mr. Tek Chand Narula, with other directors working under his guidance. The petitioner has averred that Mr. Tek Chand Narula fell ill in 1995, and therefore, put in his resignation on 23.01.1997. The petitioner avers that, while the other directors continued to carry on the business and, for that purpose, prepared annual accounts, they inadvertently, failed to file the annual returns and balance sheets with the ROC.

7.2 It is averred that this deficiency was brought to the notice of its Directors by its company secretary when, deliberations were being held to consider enhancement of the authorised share capital of the petitioner. It is further averred that it is at that point in time the company secretary discovered that the petitioner's name had been struck off from the register of companies by the ROC.

7.3 The petitioner, however, claims that no prior notice, as required, was issued and / or received by the petitioner prior to the issuance of the impugned order striking out the petitioner's name from the register of companies under Section 560(1) and 560(2) of the Act. It is further averred that no notice of the publication in the official gazette, as required under Section 560(3) of the Act, was given to the petitioner.

7.4 The petitioner though has taken the stand that the failure to file returns and balance sheets was inadvertent, and therefore, the order striking out its name from the register of companies should be recalled.

7.5 On behalf of the ROC, the stand taken, is that, while it has no objection to the name of the petitioner being restored on the register of companies, the fact remains that the petitioner failed to file its statutory returns which includes the annual return and the balance sheet since 1999-2000.

8. Arguments on behalf of the petitioner were advanced by Mr. Vipin Singhania, while ROC is represented by Ms. Aparna Mudiam, Assistant Registrar. Both sides have argued in line with the pleadings filed before me.

9. Having perused the record and heard the arguments on behalf of the parties, the following aspects clearly emerge :

(i). First, there is nothing, placed on record by the ROC to demonstrate that there was due compliance of the provisions of Section 560(1), 560(2) and 560(3) of the Act.

(ii). Second, the petitioner's name was struck off from the register of companies on 31.03.2008 and, the said notice, was published in the official gazette for the period 26th April to 02nd May, 2008.

(iii). Third, the petition has been filed in April, 2014 and, is thus, within the prescribed period of limitation (i.e. 20 years from the date of publication in the official gazette, of the notice striking off the name of the petitioner), as provided in Section 560(6) of the Act.

(iv). Lastly, the ROC has clearly indicated in its reply that it has no objection to the prayer made by the petitioner that its name be restored in the register of companies provided, it files the statutory documents i.e. the annual return since 1999-2000 and its balance sheets for the period 1999 to 2013, alongwith other statutory documents.

10. Having regard to the aforesaid facts emerging in the case, I am inclined to grant the relief sought for by the petitioner for the reason that there is nothing on record which is suggestive of the fact that the petitioner's assertion to the effect that it continues to carry on business is not correct. The petitioner has placed on record balance sheets for the period 2008-2009 to 2012-2013 to establish this fact.

10.1 A perusal of the balance sheets filed would show that as on 31.03.2013, the petitioner appears to have assets worth Rs.80,46,360/- It also appears to have reserve and surplus of Rs.29,31,763/- as on 31.03.2013. For the financial year 2012-2013, the petitioner's profit and loss account shows that it has earned revenue from operations amounting to Rs.39,82,651/-. For the same period it has profit before tax equivalent to Rs.33,25,818/-. After taking into account the tax and previous year's adjustment for the same period, it appears that it earned profit in the sum of Rs.26,12,669/-. The balance sheet of the petitioner ending as on 31.03.2013 shows that there are two secured creditors. These being: ICICI Bank Ltd. and HDFC Bank Ltd. The sums due to the two banks are as follows :

ICICI Bank Ltd.	-	Rs.82,673/-
HDFC Bank Ltd.	-	Rs.32,34,289/-

10.2 Both loans appear to have been taken for purchase of vehicles / cars.

10.3 Therefore, failure to file statutory returns and balance sheets with the ROC appears to be a mistake stemming, more from a failure to comprehend the fine requirements of law than with an idea of withholding necessary information from the ROC. The infraction of law being curable, I am persuaded to allow the petition, as prayed. Any other course would result not only in a death knell for the business activity carried out by the petitioner but would also impact creditors.

11. Accordingly, notice dated 31.03.2008 striking off the name of the petitioner is recalled. The petitioner's name shall stand restored to the register of companies subject to payment of cost of Rs.50,000/-, which would be deposited with the Common Pool Fund of the O.L.

11.1 Needless to say, the petitioner will complete all statutory formalities, which would include deposit of filing fee and / or other fee / charges as may be applicable as on date, which may be necessary to effectuate the order of restoration passed today.

12. The petition is disposed of, in the aforesaid terms.

RAJIV SHAKDHER, J

JANUARY 20, 2016
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