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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
Co.Pet. 592/2014

January 27,2016

NANDA INDUSTRIAL CONSULTANTS PRIVATE
LIMITED

.....Petitioner

Versus

REGISTRAR OF COMPANIES

....Respondent

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

% JUSTICE SUDERSHAN KUMAR MISRA

1. This petition has been filed by Nanda Industrial Consultants 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 08.02.1979 vide Certificate of Incorporation No. 55-009440 of 1979-80 with the object of carrying on the business, inter alia, of Engineering and Industrial matters and rendering of services and assistance of all kinds to industries and industrial concerns. Presently, the registered office

of the petitioner is stated to be situated at 4/23, Shanti Niketan, New Delhi- 110018.

3. 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 from 2001 to 2014, and Balance Sheets 2001 to 2014. 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 registered office address of the petitioner. It is further submitted that notice dated 31.05.2007 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.3782.
4. The petitioner however states 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.

5. It has also been averred on behalf of the respondent that although the notices/letters under S.560(1) and (3) were sent, their copies and dispatch proof are not traceable. Furthermore, the notice dated 31.05.2007 of striking off the name of the petitioner company from the register of Registrar of Companies under section 560(5) of the Companies Act, 1956 was also given and published in the Official Gazette of India on 23.06.2007 mentioning the petitioner-company's name at Serial no.3782.
6. 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.
7. The petitioner avers that the company could not submit the annual returns and other documents from 2000-2006 due to the disputes between the family members of the principal and the majority shareholder. The petitioner also avers that there were pending litigations with regard to the properties left by the deceased Col. C.M.Nanda, including the shares of the petitioner company. Ultimately, that litigation was settled and the terms of Settlement dated 12.3.2008 between Smt.Raj Nanda, Mrs Radhika Bym and Sh.Vidur Nanda were duly recorded vide common order dated 12.3.2008.
8. That after the death of Smt. Raj Nanda on 09.11.2009, Smt.Radhika Bym filed a probate case in the court in respect of the Will which was contested by Sh.Vidur Nanda and thereafter the

matter was referred to mediation and the disputes and differences were finally settled between the parties and the petitions finally disposed off on 1.4.2014.

9. It is further averred that the petitioner came to know that its name had been struck off from the register when the petitioner-company was unable to upload certain statutory documents with the respondent, per the information available on the web portal of the Ministry of Corporate Affairs.
10. 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 from 2000 to 2014 and balance sheets as at 2000 to 2014, 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.
11. 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.

12. Under the facts and circumstances, it is possible that notice in respect of action under S.560 was not sent to the registered office of the company. Consequently, the condition precedent for the initiation of proceedings to strike off the name of petitioner from

the Register maintained by the respondent was not satisfied. 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 twenty three 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.

13. 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.

14. Liberty is granted to the respondent to proceed with penal action against the petitioner, if so advised, on account of the petitioner's alleged default in compliance with S.162 of the Companies Act, 1956.
15. The petition is disposed off.

SUDERSHAN KUMAR MISRA

(Judge)

JANUARY 27, 2016