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

+ **Co.Pet. 787/2015**

BANDHU SYSTEMATIX PRIVATE LIMITEDPETITIONER

Through Mr. Anuj Kumar, Advocate.

Versus

REGISTRAR OF COMPANIESRESPONDENT

Through Ms. Aparna Mudiam, Asstt. ROC.

(Restoration of company's name in the register)

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

% SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed by Bandhu Systematix 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 17.07.1984 vide Certificate of Incorporation No. 18703 of 1984-85 with the object of carrying on the business, *inter alia*, as manufacturers and/or dealers in all types of machinery, plant equipment accessories and spares required for and

used for printing, binding, perforating, folding, stitching or manufacture of other stationery used for such purposes. Presently, the registered office of the petitioner is stated to be situated at 8-B, Bahadur Shah Jafar Marg, New Delhi- 110002.

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 2000 to 2015, and Balance Sheets from 1998 to 2015. 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 notification under Section 560(5) was issued and published in the Official Gazette on 23.06.2007 mentioning the petitioner-company's name at Serial no.1503.

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. 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.

5. 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.

6. The petitioner avers that the petitioner company has all through since its incorporation has been a working concern and at no point of time the petitioner has ever stopped carrying on the business or stopped its business operations. The petitioner also avers that the company is not only a running concern but is expected that in future the company is going to be a profit making concern. In support of this statement, the petitioner has relied on certified copy of its annual accounts for the period 2000 to 2014 and the income tax returns for the year 2004 to 2014, copies of all of which are annexed with the petition.

7. The petitioner avers that the accounts of the company were prepared and audited every year, and the same is reflected by the annexures attached to the petition. The directors of the company signed the annual accounts of the company but because of lack of legal knowledge, inadvertence and unawareness regarding the annual filing with the Registrar of Companies did not ever question or took steps to carry the statutory compliance. The accountant of the company was aware and duly received all the documents to be filed with the various authorities but he failed to do so. It was submitted that none of the directors of the company were aware that the Registrar of Companies documents have not been filed by the accountant on whom the responsibility was given. It was further submitted that none of the directors, other than Sh. VishwaBandhu Gupta, had the details of the

functioning of the company or the knowledge of the statutory obligations of the company.

8. Counsel for the petitioner submits that it was after substantial efforts of the directors that they were able to locate the documents pertaining to the company including the auditor report, income tax returns but returns filed with Registrar of Companies could not be located and the accountant was not available. It is further submitted that the directors, on taking services of a company secretary in the month of July 2015, were informed that the name of the company has been strike-off from the records of the Registrar of Companies, NCT of Delhi & Haryana.

9. 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 2015 and balance sheets as from 1998 to 2015, 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.

10. 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.

11. 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 **Purushottamdas 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.

12. 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.

13. 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.

14. The petition is disposed off.

SUDERSHAN KUMAR MISRA
(Judge)

MAY 24, 2016