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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CO.PET. 23/2016

IN THE MATTER OF :

ASCOT SHOES PRIVATE LIMITED

... Petitioner

Through: Mr.Satinder Singh Bawa, Advocate.

Versus

REGISTRAR OF COMPANIES

...Respondent

Through: Ms. Aparna Mudiam, AROC for RD.

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

% SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed by Ascot Shoes 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 23.04.1986 vide Certificate of Incorporation No. 23985 of 86-87 with the object of carrying on the business, *inter alia*, of manufacture, import, export, purchase, sell, process, design and otherwise deal in sports and other shoes, toys, casual apparels and manufacture, import, export, processing and developing of polyprothelene, P.V.C. plastics, adhesive, synthetic resins and compounds, rubbers, rexines, intermediates and compositions and bye-

products thereof. Presently, the registered office of the petitioner is stated to be situated at 823, Vikasdeep Building, Laxmi Nagar, District Centre, Delhi- 110092.

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 and Balance Sheets after 2002. 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 26.04.2008 mentioning the petitioner-company's name at Serial no.1291.
4. 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 certified copy of its annual returns and balance sheets from the year 2003, copies of all of which are annexed with the petition.
5. 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) only recently from portal of Ministry of Corporate affairs. Further, it is submitted that the petitioner company has been trying to maintain all its requisite documents as per the

provisions of the companies act, as applicable to it but owing to the inadvertent and unavoidable conditions, the statutory documents as required under the law could not be filed with ROC in time.

6. The petitioner also submits that the petitioner company owns a property bearing number Flat no. 4, First Floor, Jaiji Mansion- 41 Mere Weather Road, B.K. Boman Behram Marg, Mumbai 400039, which was used by one of the directors of the petitioner company for his own residence. That the said director intends to vacate the said property of the petitioner company and now the same can be let out, therefore the petitioner company is intending to enter into a lease deed for the purpose of letting out the said property on lease, which can fetch a rent of Rs 1 ,25,000/-,(Rupees One Lac Twenty Five Thousand Only) to the petitioner company, which the petitioner company would use towards discharging its outstanding liabilities to the tune of Rs. 37,53,704/- as on 31.03.2014.
7. 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.

8. 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 incorrect. The petitioner has not filed on record any proof of intimation of the change of the address of its registered office, to the respondent.
9. 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.
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 and balance sheets after 2002, 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 circumstances, it is entirely possible that the respondent had sent notices under S.560 to the petitioner on the old address of its registered office and the same may not have been received by the petitioner. 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 fourteen 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)

JULY 29, 2016