

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM

The Honourable MR. JUSTICE T.S.SIVAGNANAM

Company Petition No.168 of 2016

M/s.Paramount Gensets Industries Private Limited
Having Registered Office
Bhatia Building,
No.26, 27, Errabalu Chetty Street,
Chennai-1.

rep. by its Director

Mr.Prakash Premchand Bhatia

... Petitioner

vs.

1. The Registrar of Companies,
Tamil Nadu,
Shasthri Bhavan,
26, Haddows Road,
Chennai-6.

2. The Pondicherry Industrial Promotion Development
and Investment Corporation Limited
rep. by its Managing Director,
Puducherry-605 001.

... Respondents

Company Petition is filed under Section 560 (6) of the
Companies Act, 1956 for restoration of the Company's name into
the Registrar of Companies.

For Petitioner : Mr.Anil K Cella

for M/s.K.Jayaraman

For 1st Respondent : Mr.T.L.Thirumalaisamy, CGSC

For 2nd Respondent: Mr.T.P.Manohar

for M/s.T.M.Naveen

ORDER

Heard Mr.Anil K.Cella for Mr.K.Jayaraman, learned Counsel for the petitioner and Mr.T.L.Thirumalaisami, learned Central Government Standing Counsel for the 1st respondent and Mr.T.P.Manohar, learned Senior Counsel assisted by Mr.T.M.Naveen, learned Counsel for the 2nd respondent, who was directed to be impleaded by order dated 01.06.2016.

2. This application has been filed by the petitioner under Section 560(6) of the Companies Act, 1956.

3. The prayer sought for is to direct the respondent to restore the name of the petitioner to the Register under Section 560(6) of the Act w.e.f. 27.06.2011, the date on which the company was struck off in the register maintained by the 1st respondent.

4. The petitioner company was incorporated as a Private Limited Company on 11.04.1986 in the name and style of "M/s.Paramount Cap Industries Private Limited" bearing Registration No.12896 of 1986 in the State of Tamil Nadu. During 1992, the name of the company was changed to the present name, namely, "M/s.Paramount Gensets Industries Private Limited". The

registered office of the company is at Chennai. The company was established to carry on the business of manufactures, buyers, sellers of generators etc. The company is said to have commenced business on 01.04.2008. It is stated that during 2011, the directors, who are also the share holders of the company, were not interested in carrying on the business and therefore, on 04.04.2011, a resolution was passed by the Directors, giving consent to strike off the name of the company under Section 560 of the Act. The said Board Resolution along with the application form was filed before the 1st respondent on 04.04.2011 along with the Statement of Accounts as on 01.04.2011. On receipt of the said application, the 1st respondent sent a notice dated 30.04.2011 to the company under Section 560(3) of the Act and it appears that the company did not respond to the notice and after the expiry of 30 days, the 1st respondent on 27.06.2011 passed an order striking off the company under Section 560(5) of the Act. The same was published in the Government Gazette on 29.06.2011.

5. The petitioner had been carrying on business in a leasehold property which was developed by Pondicherry Industrial Promotion Development and Investment Corporation Limited (hereinafter referred to as, "PIPDIC"), a State Owned Corporation/the 2nd respondent herein. The Petitioner Company,

after having been struck off from the Register of Companies, the petitioner wanted to transfer the leasehold right to some other company for which the petitioner applied for a "No Objection Certificate" (NOC) from the PIPDIC/2nd respondent. The petitioner submitted a Board Resolution authorising two Directors to sign necessary documents for transferring the leasehold right vide letter dated 20.01.2016. Before the company was struck off, there were two Directors, namely, Mr.Premchand Dayaldis Bhatia and the petitioner Mr.Prakash Premchand Bhatia. The 2nd of the Director being the son of the 1st Director. The 1st director, namely, Mr.Premchand Dayaldis Bhatia, the father of the petitioner, expired on 16.07.2011. According to the petitioner, since the company was struck off, and one of the Directors passed away, they could not submit the Board Resolution for transfer of the leasehold right. Therefore, they seek for restoration of the company's name in the Register maintained by the 1st respondent and for this purpose, the present application has been filed.

6. The Deputy Registrar of the Companies has filed a counter affidavit stating that the petitioner company was incorporated on 11.04.1986 to carry on the objects as set out in the Memorandum of Understanding. In paragraph 4 of the Counter

Affidavit, it is stated that as per the records of the 1st respondent, the petitioner company has filed Balance Sheet and Annual Returns up to 2004 and therefore, the 1st respondent initiated action under Section 560 of the Companies Act, 1956 for striking off the name of the company. It is further submitted in para 5 of the counter that since no reply has been received from the company, on notice issued under Section 560(1) of the Act, action under Sections 560(3) and 560(5) were initiated and consequently, the petitioner's company was struck off from the Register of Companies w.e.f. 23.07.2011 and published in the Gazette of India dated 23rd-29th July, 2011. With regard to the prayer sought for in this petition, the response of the 1st respondent is that the petitioner is at liberty to revive the company before the expiry of 20 years from the publication in the Official Gazette of the notice issued under Section 560(5) of the Act.

7. Admittedly, the petition for restoration/revival is well within the said period. Further, it is stated in the counter affidavit that the 1st respondent neither supports nor opposes the petition and in case, an order is passed by the Hon'ble Court for revival of the company, the same has to be subject to the filing of all overdue documents, statutory filing, namely, Annual Return and Balance

Sheet from the date of default by the petitioner company with the respondent. Thus, the 1st respondent does not have serious objection to the petitioner requesting for revival of the company subject to the condition of filing of all over due documents, namely, Annual Return and balance sheet from the date of default by the petitioner company with the respondent. Thus, under normal circumstances, the Court without any hesitation would have directed the 1st respondent to consider the plea raised by the petitioner company. However, the Court on 01.06.2016, thought it fit to issue notice to PIPDIC/the 2nd respondent herein on whose property the petitioner company had been carrying on business and the said property was given on lease to the petitioner and PIPDIC/2nd respondent being noticed have filed an affidavit supported by documents, one of which dated 23.12.2016 would be very relevant.

8. This is an order passed by the 2nd respondent in terms of Clauses 6(i) and 7 of the terms and conditions of lease resuming possession of the property-in-question. The reason for resuming possession is that the petitioner company had kept the unit closed without any industrial activity for quite a long period of time and this is in violation of the terms and conditions of the lease and that the petitioner submitted letters dated 09.12.2013 and 16.12.2013 with a consent letter from Vijayarasi Industries requesting the 2nd

respondent to issue a "No Objection Certificate" for transfer of the leasehold right in favour of the said V.R.Industries. The petitioner further sent a Fax message on 21.08.2014 along with the Board Resolution of their company, which according to the 2nd respondent is not a valid one. The 2nd respondent vide their letter dated 15.09.2014 informed the petitioner company to submit a Certified True copy of their Original Board Resolution and the details of the present Directors of the company. However, they failed to submit the same and this was followed by the reminder dated 06.11.2014 and even after lapse of 3 months, no reply was received by the 2nd respondent. Therefore, the 2nd respondent opined that it cannot allow to keep the factory premises closed for a long time, particularly, when a number of entrepreneurs are seeking for allotment of industrial plots. It is further stated that the 2nd respondent vide their letters dated 01.12.2015 and 22.1.2016 has requested the petitioner company to furnish the Board Resolution for induction of Mr.Prakash Bhatia as a Director, the Board Resolution authorising two Directors to sign the necessary documents for transfer of the leasehold rights and an acknowledgment from the Registrar of Companies for induction of new Directors. According to the 2nd respondent, till date, the petitioner company has not complied with the same. Therefore, the

2nd respondent concluded that the company having been struck off from the Register of Companies, it is not in legal existence on and after 27.06.2011 and the lease of the industrial plots have automatically got lapsed and terminated. Further, the petitioner has completely suppressed the fact of dissolution of the company and made false representation as if it is continuing as a Registered company having legal existence and requested to transfer the leasehold rights.

9. The 2nd respondent also noted that one of the two directors of the petitioner company has passed away on 16.07.2011. Thus, it is reiterated that the petitioner company has suppressed the fact of the demise of one of the Directors, dissolution of the company and the state of non-existence of the company as well as keeping idle the premises closed without any industrial activity for a long period.

10. The learned Senior Counsel appearing for the 2nd respondent submitted that the petitioner does not deserve any indulgence as they have fabricated a resolution and suppressed facts before the 2nd respondent and the unit having not been utilised for several years, this company petition has been filed only with an intention for obtaining "No Objection Certificate" from the

2nd respondent.

11. The learned Counsel for the petitioner on instructions from his client, who is present in Court, submitted that the 2nd respondent was fully aware of all the facts and the Director has been in constant touch with the officers of the 2nd respondent and several correspondences between the company and the 2nd respondent would clearly show that they were processing the company's application for grant of "No Objection Certificate". In any event, this Court cannot examine this disputed question of fact since this Court is not deciding the correctness of the order passed by the 2nd respondent dated 23.12.2016. Therefore, it would not be necessary for the Court to state anything further on the issue and the above facts have been set out to show that an order has been passed by the 2nd respondent to resume possession of the plot-in-question and that order, as of now, remains unchallenged. Be that as it may, this Court is concerned as to whether the petitioner is entitled for any direction for the purpose of reviving the company whose name was struck off from the Register.

12. The Registrar of Companies has not raised any objections in his counter affidavit rather would state that the petitioner is at liberty to revive the company before the expiry of 20 years from the publication in the Official Gazette of the notice issued

under Section 560(5) of the Act. As observed earlier, the application is well within 20 years.

13. The only objection raised by the Registrar of Companies is that in case, an order is passed for revival of the company, the same shall be subject to the filing of all overdue documents, statutory filing, namely, Annual Return and Balance Sheet from the date of default by the petitioner company with the respondent. Therefore, if the petitioner is able to file all the overdue documents as called for by the Registrar of Companies, it is for the Registrar of Companies to consider as to whether the company can be revived. Therefore, at this juncture, the question of issuing a positive direction for reviving the company does not arise and this Court can only direct the Registrar of Companies to consider the application or the request made by the petitioner for revival of the company subject to statutory compliances as may be required by the Registrar of the Companies.

14. In the result, this Petition is disposed of giving liberty to the petitioner to file an application before the Registrar of Companies along with a copy of this Order seeking revival of the company and if such application is filed, the Registrar of the Companies shall consider the same in accordance with the

provisions of the Companies Act and the rules framed thereunder within a period of four weeks from the date of filing such application complete in all respects. It is clarified that this Court has not decided the correctness of the order passed by the 2nd respondent- PIPDIC dated 23.12.2016. Therefore, any contention advanced by the petitioner in this Company Petition on the validity of the order dated 23.12.2016 is of little avail as the facts or the main issues in these proceedings pertain only to the revival of the company. The action initiated by the 2nd respondent has not been adjudicated and it is left open to the parties to raise all contentions before the appropriate forum and in the event, the petitioner questions the order dated 23.12.2016, the 2nd respondent will be entitled to raise all the objections before the concerned Forum and any observations made in this order will not prejudice the rights of PIPDIC/the 2nd respondent.

15. At this stage, the learned Counsel for the petitioner submitted that till the Registrar of Companies considers their application, the interim order which was granted in this company petition may be continued.

T.S.SIVAGNANAM, J.

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16. This Court is of the considered view that when the Company Petition having been finally disposed of, an interim order passed pending proceedings cannot continue in favour of the petitioner and this being a settled legal position, is, in fact accepted by the learned Counsel for the petitioner.

17. With the above observation, the Company Petition is disposed of.

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Index : Yes/No
Internet : Yes/No
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