

HONOURABLE SRI JUSTICE RAJA ELANGO

COMPANY PETITION No.338 OF 2016

ORDER:

The petition is filed under Section 560 (6) of the Companies Act, 1956 (for short 'the Act') to cancel striking off the name of petitioner company - M/s. Coromandel Fishing Nets Private Limited (for short 'the company') pursuant to application dated 18.01.2011 and to restore the name of company in the register maintained by the Registrar of Companies (ROC).

Heard and perused the material available on record.

The company was incorporated on 08.09.1986 for carrying on the business of manufacturing and dealers in plastics, PVC nylon, manmade and synthetic products and other mouldable and formulative products, nets, threads and raw materials and ingredients thereof of all goods, appliances, apparatus, and to acquire, collect and gather by fishing or purchase all varieties of sea food and to process them by using operations such freezing, filleting, skinning, meat picking, drying boiling to deliver for internal markets and also to export the same. However, due to non-availability of raw materials, funds and manpower, the company was inoperative for a long time and when there were no signs of improvement, the Board of the Company finally decided to close the same as a defunct company. The Ministry of Corporate Affairs, Government of India, has notified a Scheme for those companies who wish to close their companies, under Easy Exit Scheme (EES), 2011. The Board of the Company convened a meeting on 03.01.2011 at its registered office and resolved to make an application under Section 560 of the Companies Act and accordingly, filed an application for striking

off the name of the company under Easy Exit Scheme (EES) before the respondent. The respondent intimated the company, vide letter, dated 15.06.2011, that the name of the company was struck off in the register of the respondent. In view of the advent of technological improvements, availability of raw material, man power and also an improvement in the demand of Aquaculture and the market conditions, the company decided to restore its business and that the members and share holders of the company convened meeting on 01st August 2016 and expressed their desire to restore the business of the company and get the name of the company be restored in the register of the respondent, and hence, the present company petition is filed.

The Respondent filed counter affidavit stating that basing on the affidavits filed by the Directors of the company stating that there are no assets and liabilities in the petitioner company and the company is not in operation for the past three years and it has no plans to continue any more, the name of the company was struck off in the register of the respondent. It is further submitted that contrary to the said affidavits and statements, the Directors of the Company have decided to restore the business and filed the present petition under Section 560(6) of the Companies Act to restore its name and that after striking off the name of the petitioner company, till date the respondent has not allotted the name of the company to any other company.

This Court perused the material available on record and noted the submissions of the counsel for the petitioner, and in the considered view of this Court, the following point arises for consideration:

Whether the petitioner is entitled for cancellation of striking off company's name from register and consequently entitled for restoration of the name of company in the register maintained by the ROC?

The instant petition is made under Section 560 sub-section (6) of the Act. Section 560 of the Act reads as follows:

560. Power of Registrar to strike defunct company off register.

(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiry of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Official Gazette, and send to the company by registered post, a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company have been completely wound up, and any returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Official Gazette and send to the company or the liquidator, if any, a like notice as is provided in subsection (3).

(5) At the expiry of the time mentioned in the notice referred to in sub-section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette; and on the publication in the Official Gazette of this notice, the company shall stand dissolved: Provided that

(a) the liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this sub-section shall affect the power of the Tribunal to wind up a company the name of which has been struck off the register.

(6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the Tribunal, on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register;

and the (Tribunal) may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) Upon a certified copy of the order under sub- section (6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

(8) A letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or if no office has been registered, to the care of some director, the manager or other officer of the company, or if there is no director, manager or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

(9) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business.

Section 560 confers power on ROC to strike off defunct company from the register. The instant prayer is made under sub-section (6) of Section 560 of the Act. Under sub-section (6), a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, on an application made by the company, member or creditor before expiry of 20 years from the publication of official gazette of the notice aforesaid, the Court may, if satisfied that at the time of the striking off the name of company, the company was carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register and can issue such further directions in the context of restoration of name by the Registrar.

In the considered view of this Court, with the striking off the name of the company, the legal and corporate entity enjoyed by the company under the Act is completely denuded. Therefore, for all purposes, it became dead or non-existing in the eye of law. In view of demand in the Aquaculture business and development in the market conditions, the Board of Directors of the company have decided to

continue the business and the members and share holder of the company convened a meeting and decided to continue the business and the Managing Director of the Company made the present application to restore the name of the company. It is also stated by the Directors that there are no pending litigations and there are no creditors to the company. In view of the above this Court feels that it is just and proper to restore the name of the company in register of the respondent.

Hence, the company petition is allowed canceling striking off the name of the company and the Registrar of Companies – respondent is directed to restore the name of M/s. Coromandel Fishing Nets Private Limited in the register maintained by the Registrar of Companies. The petitioner is directed to take such other or further steps as are required under the Companies Act to formalize the restoration of company.

The Company Petition is allowed accordingly.

February 23, 2017
KTL

RAJA ELANGO, J

