

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

% *Reserved on: 27<sup>th</sup> November, 2013*  
*Date of decision: 2<sup>nd</sup> December, 2013*

+ **CO. PET. No.174/2013**

M.A. PANJWANI ..... Petitioner  
Through: Mr. Ateev Mathur with Mr. Pankaj  
Gupta, Advocates.

versus

REGISTRAR OF COMPANIES & ANR. .... Respondents  
Through: Mr. K.S. Pradhan, Dy. ROC.  
Ms. Maneesha Dhir with Ms.  
Mithu Jain, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE R.V.EASWAR**

**JUDGMENT**

**R. V. EASWAR, J.:**

1. This is a petition filed by the petitioner i.e. M.A. Panjwani under Section 560 (6) of the Companies Act, 1956 read with Rules 9 & 92 of the Company Court Rules, 1959. The prayer in the petition is for directions to the Registrar of Companies, who is the respondent No.1, for restoring the name of respondent No.2 i.e. M/s. Alfa Impex Pvt. Ltd. (hereinafter referred to as "Company") to the register of companies maintained by respondent No.1.

2. It is necessary to briefly refer to the events that resulted in filing the present petition. The petitioner was residing in the United Kingdom. In the year 1979 he wanted to settle down in India. With this end in view, he engaged the services of respondent No.3 i.e. Mr. D.C. Singhanian for searching a suitable house in Delhi. Singhanian identified a property known as "Jodhpur Gardens" in village Gadaipur, Tehsil Mehrauli. On his request, the petitioner remitted a sum of Rs.3,00,000/- in November, 1979 in favour of Singhanian for the purchase of the aforesaid property. Singhanian took possession of the property as agent of the petitioner and confirmed the same in writing to the petitioner. In January, 1980, the petitioner remitted further sums from England in favour of Singhanian, being the balance of the purchase price of the property. In the same month, he visited Delhi with his family and stayed in the property. While at Delhi, he requested Singhanian to give him the conveyance deed in respect of the property but was told by Singhanian that it would take some time to get the original document. Trusting his word, the petitioner returned to England and between the years 1981 and 1986, repeatedly inquired about the conveyance deed with D.C. Singhanian, who, under some pretext or the other kept deferring the issue and giving evasive answers.

3. His suspicion having been excited, the petitioner made inquiries in Delhi through persons known to him who informed him that the property was registered in the name of the company and was in the possession and personal use of D.C. Singhanian since January, 1980. On being so informed, the petitioner filed a suit for declaration, mandatory injunction and damages. On 16.11.1989, the Civil Court granted stay in favour of the petitioner and restrained the defendants (the company, D.C. Singhanian & Solicitor Firm in which he was a partner) from alienating the property known as "Jodhpur Gardens" in any manner. In the written statement filed by Singhanian in the suit, he stated that the total amount of Rs.4,50,000/- remitted by the petitioner was used for allotting shares of the company in favour of the petitioner, thereby enhancing the share capital of the company.

4. After the proceedings in the suit had commenced, Singhanian would appear to have liaised with one Mr. S.A. Quli, who was an employee of the petitioner but had been dismissed in the year 1981 for misconduct. Pursuant to this, when the petitioner was away from U.K., Mr. Quli obtained an ex-parte order from the Chancery Division of the High Court of Justice in London claiming a sum of money for work which he claimed to have done for the petitioner. The judgment of the Court of the

Chancery Division was sought to be executed by Mr. Quli against the petitioner in India by filing Execution Proceedings No.40/1989. In the execution proceedings, the Court was informed that the matter was settled between the parties and the shares allotted to the petitioner in the company were transferred to Mr. Quli who had obtained the ex-parte decree from the Court in England. The settlement was also confirmed by one Mr. J.K. Gupta, who claimed himself to be a director of the company.

5. The result was that the petitioner was deprived of both the property known as “Jodhpur Gardens” as well as the shares allotted to him in the company.

6. In March, 1998, the Addl. District Judge directed that the shares which were transferred to Mr. Quli should be released in favour of the petitioner, consequent to the ex-parte judgment obtained by Mr. Quli from the Chancery Division in London having been set aside, apparently at the instance of the petitioner.

7. On 14.05.2003, the suit was listed before the Civil Court for leading plaintiff's evidence. The counsel for the plaintiff (the petitioner herein) sought time to lead evidence but the trial court rejected the request and closed the plaintiff's evidence. The suit was also dismissed

on that date. The petitioner preferred an appeal before this Court in RFA No.42/2004 on 15.02.2012. This Court set aside the judgment and decree dated 14.05.2003 passed by the Civil Court and remanded the suit for trial. When the suit was taken up on 07.05.2012, counsel for the company, which was the first defendant in the suit (respondent No.2 herein) informed the trial court that the name of the company has been struck off the records by the Registrar of Companies and therefore the suit cannot proceed.

8. The present petition has been filed by M.A. Panjwani, the petitioner, under sub-section (6) of Section 560 of the Companies Act seeking restoration of the name of the company to the register of companies maintained by the ROC on the ground that it is “*just*” to do so having regard to the facts narrated above. It is pointed out that unless the name of the company is restored, the suit filed by the petitioner would be rendered meaningless or infructuous and there would be no effective remedy available to the petitioner to proceed against the company for the loss caused to him. It was contended on behalf of the petitioner that the respondents would get away with the property which rightfully belongs to the petitioner, if the name of the company is not restored to the register.

9. Counsel appearing for the Registrar of Companies took up a preliminary objection to the effect that a petition for restoration of the name of the company can be filed only by the company, member or creditor in terms of Section 560(6) of the Act and that the petitioner does not fall under any of these three categories. My attention was drawn to the annual return as on 30.09.2004 filed by the company with the Registrar of Companies in which only two persons were shown as shareholders – (i) Singhania Foundation Education Trust holding 29,999 shares and (ii) Sameer Rastogi, holding one share. Attention was also drawn to the director's report for the year ended 31.03.2004 in which it was stated that during the year, the company has not carried on any business which statement is also confirmed in the auditors' report and the annexure appended thereto. It is accordingly submitted on behalf of the Registrar of Companies that the Registrar of Companies was well within his rights in striking off the name of the company from the register, since admittedly the company was not carrying on any business which was the only condition for the applicability of Section 560. As regards the argument of the petitioner that it was "*just*" that the company be restored to the register having regard to the events narrated earlier, counsel for the Registrar of Companies submitted that the word "*just*" appearing in sub-

section (6) of Section 560 has to be given a limited or restricted meaning having regard to the context and construed *ejusdem generis* with the requirement that the company should be carrying on business and should be in operation, and the said word cannot be given any broader meaning.

10. In support of the contention that the petitioner had no locus to seek relief under Section 560(6) as he was not a creditor of the company at the time of the striking off of the name of the company, counsel for the Registrar of Companies referred to the judgment of the Chancery Division in **Re, Aga Estate Agencies Ltd. : (1986) BCLC 346 (Ch. D.)** and that of the Calcutta High Court in **Re: U.N. Mandal's Estate : (AIR 1959 Calcutta 493).**

11. On a careful consideration of the matter, I am of the view that the petition must succeed.

12. Under sub-section (6) of Section 560 of the Companies Act, 1956 the company court has the power to order restoration of the company's name to the register of companies on the application made by the company itself or its member or creditor. Such an application can be made at any time before the expiry of 20 years from the publication of the notice for striking off the name published in the official gazette. There

are only two circumstances in which the company court can exercise the power. The first is when it is satisfied that the company was, at the time of the striking off of its name from the register, carrying on business or was in operation. The second circumstance is when it appears to the company court that it is “*otherwise just*” that the name of the company be restored to the register. Obviously the petitioner is not the company itself and, therefore, he has to be either a member or creditor. It was submitted on behalf of the ROC that the petitioner is neither a member nor a creditor of the company.

13. Section 2(27) of the Act defines “member”, in relation to a company in a negative manner by saying that it does not include a bearer of a share warrant of the company issued in pursuance of Section 114. The definition does not assist in the resolution of the present controversy much, nor is the definition in section 41 helpful. *Prima facie* it would appear that a member of a company is a person who holds shares in the company as on the date on which the petition was filed. Undoubtedly the petitioner did not hold any share certificate of the company. However, shares had been allotted to him in the year 1989-90 for the amount of Rs.4,50,000/- which was remitted by him to the third respondent for the purpose of purchasing Jodhpur Gardens. The petitioner was allotted



5,150 equity shares and for this purpose the share capital of the company was enhanced to Rs.15,00,000/- divided into 15,000 equity shares of 100 each in the year 1987. The annual report of the company filed with the ROC, Delhi on 30.12.1987 did show that the petitioner was holding 40% shares out of the total paid-up share capital. A copy of the said annual report is at Annexure-P6 filed with the petition. Thereafter, in the course of the Execution Proceedings No.40/1989 filed by Mr. Quli in order to execute the ex-parte order which he had obtained against the petitioner from the Chancery Division of the High Court of Justice in London, the shares held by the petitioner were transferred in the name of Mr. Quli, on the basis of a “no-objection” given by one J.K. Gupta, who was a director of the company at that time. However, the ex-parte judgment obtained by Mr. Quli against the petitioner was set aside, and therefore, the execution proceedings became *non est*. In the order passed by the Addl. District Judge on 18.03.1998, a direction was given that the shares transferred in the name of Mr. Quli be released in favour of the petitioner. This direction, however, was not given effect to by D.C. Singhania who proceeded to remove the name of the petitioner from the list of shareholders in the annual return of the company, which is Annexure P-7 to the petition. In these circumstances, when the shares allotted to the

petitioner were without his knowledge and consent transferred, it cannot be stated that the petitioner ceased to be a member of the company on his own volition. There is nothing in Section 41 of the Companies Act, which also defines “member”, which would militate against this view. It is pertinent to note that in the order passed by this Court on 27.03.2000 in Suit No.3340/1989, it was observed that the trial court and this court were *“misled to believe there was in fact a settlement between the plaintiff and Mr. S.A. Quli with regard to the subject matter of the suit when there was none and as such not only the settlement was void but the said order passed by this Court was non est and nullity in the eyes of law”*. The transfer of shares from the petitioner to Quli having been held by this Court to be collusive and the orders under which it was done having been declared to be a nullity, the petitioner never ceased to be a member of the company.

14. Even if the petitioner cannot be considered as a “member” of the company, he is certainly a “creditor” who can file the petition. On this aspect of the matter I may refer to the judgment of a learned Single Judge (A.S. Pachhapure, J.) of the Karnataka High Court in **Velu B. Pethi v. Kayesess Constructions Pvt. Ltd. & Ors.** : (2011) 163 Comp Cas 176. In this case the essential facts are somewhat similar to the facts of the

present case. In that case, the petitioner purchased a residential site from the respondent-company for a price. Sale deeds were also executed by the company in his favour. Later it was found that the company did not have title to the plots since the plots had been acquired by the City Improvement Trust Board 23 years earlier to the sale of the plot to the petitioner. The petitioner was, however, unaware of the acquisition proceedings. After buying the plot he had also put up a construction on the same. The company's challenge to the acquisition proceedings was dismissed in the year 2008. The authorities pulled down the fences put up by the company upon the plot and also the construction put up by the petitioner. Later, based on the closure of the company, its name was struck off from the register by the ROC on the ground that it was not carrying on any business. The petitioner in his petition under Section 560(6) seeking to have the name of the company restored to the register contended that he was a creditor, entitled to recover the loan due to him from the company and the company was liable to make good the loss sustained by the petitioner. The petition was opposed on the ground that the petitioner was not a creditor and, therefore, had no *locus standi* to file the petition. The learned Single Judge of the Karnataka High Court rejecting the contention of the respondent, held that since there was no

effective conveyance of any title over the land by the respondent in favour of the petitioner, the petitioner was entitled to claim the loss occasioned due to the sale transaction. The petitioner, it was held, acquired a right to recover damages from the respondent-company since the latter had no title to the property which it sought to sell to the petitioner. The Court noticed that the petitioner intended to initiate proceedings against the company for recovery of damages and it was just and proper to restore the name of the respondent-company to the register maintained by the ROC. It is significant to note that the Karnataka High Court referred to the judgment of the Chancery Division in **Harvest Lane Motor Bodies Ltd. In Re : (1968) 2 All ER 1012**, wherein the word “creditor” used in Section 353(6) of the Companies Act, 1948 (of England) was held to include a person who has a claim for the loss sustained at the instance of the company. Relying on this judgment, the Karnataka High Court held that the case of the petitioner fell in the category of “creditor”.

15. Quite apart from the above position, the sub-section recognises that if the Court is of opinion that it is “*otherwise just*” that the company be restored to the register, restoration can be ordered. The argument addressed on behalf of the ROC to the effect that the word “*just*” has to

be understood in the background of the specific language of the sub-section on the basis of the principle of *ejusdem generis* does not appeal to me. As I read the sub-section, there are two situations in which the company court can order restoration. One is when the company was carrying on business or was in operation at the time of striking off its name. The second situation, which is an alternative situation, is one where it appears “*just*” to the company court that the name of the company be restored to the register. I do not see any scope for the application of the rule of *ejusdem generis* because of the presence of the words “*or otherwise*” between the words providing for the two types of situations. The presence of the words “*or otherwise*” denotes that even if the company was not carrying on any business or was not in operation at the time of striking off, it is still open to the company court to order restoration if it appears to the Court to be “*otherwise just*”. I may add that the words “*or otherwise*” have not been generally construed *ejusdem generis* as seen from the judgments of the Supreme Court in **Lilawati Bai vs. State of Bombay** : (AIR 1957 SC 521) and **Kavallappara Kottarathil Kochuni v. State of Madras** : (AIR 1960 SC 1080).

16. In **Helen C. Rebella vs. Maharashtra S.R.T.C.** : (1999) 1 SCC 90, it was observed by the Supreme Court that the word “*just*” denotes

equitability, fairness and reasonableness having a large peripheral field. In understanding its scope, one must take into account all the facts and circumstances of the case and then decide what would be just and equitable. In **M.A. Rahim and Anr. vs. Sayari Bai** : (AIR 1973 Mad. 83) it was held by a Division Bench of the Madras High Court that the word “*just*” connotes reasonableness and something conforming to rectitude and justice, something equitable and fair. In **Sidhant Garg and Anr. vs. Registrar of Companies & Ors.** : (2012) 171 Comp. Cas. 326 it was held by this Court (*Manmohan, J.*) that the word “*just*” would mean that it is fair and prudent from a commercial point of view to restore the company and that the Court has to examine the concept of “*justness*” not exclusively from the perspective of a creditor or a member or a debtor, but from the perspective of the society as a whole. The special facts of the present case attract this principle. The respondent has received monies from the petitioner. He was entrusted with the job of finding a house for the petitioner in Delhi. The averments in the petition *prima facie* indicate that the property “Jodhpur Gardens” was purchased not in the name of the petitioner but in the name of the company. The shares held by the petitioner in the company were also taken away from him without his knowledge or consent. The settlement entered into between

Quli and Singhanian by which the shares were transferred to Quli was held by this Court to be collusive. These are disputes which are pending in the trial court. The company is a defendant in the trial court. If its name is not restored, it would cause injustice to the petitioner and also cause prejudice to the trial as a whole. The message sent to the society as a whole, if the name of the company is not restored to the register, would be quite disturbing. The petitioner has to be protected in the litigation pending before the trial court. As observed by the Indore Bench of the Madhya Bharat High Court in **Bhogi Lal Chiman Lal vs. Registrar, Joint Stock Companies** : AIR 1954 M.B. 70, the effect of the order of the Registrar of Companies striking off the name of the company from the register would be that the company will be deemed to be dissolved and it may be difficult for the petitioner to obtain any relief in the suit pending before the trial court. It is not also known whether the company had brought to the notice of the ROC about the pendency of the litigation in the trial court. If it had, perhaps the ROC would not have struck off the name from the register.

17. It was submitted on behalf of the Registrar of Companies that in striking off the name of the company, the procedure prescribed in Section 560 of the Act was followed. That may be so. Sub-section (6) of Section

560 gives power to the company court to order restoration of the name of the company if it finds that such a course was “*just*”. The fact that the ROC did follow the due procedure prescribed by law while striking off the name cannot, therefore, be an answer to a petition filed on the ground that it would be “*just*” to restore the name of the company.

18. On the facts of this case there is every reason to hold that it would be “*just*” to restore the name of the company to the register of companies. The Registrar of Companies is directed to do so. The observations made herein are only for the purpose of disposal of the petition and shall not be taken as any expression on the merits of the suit pending in the trial court.

19. The company petition is allowed.

**(R.V. EASWAR)**  
**JUDGE**

**DECEMBER 2, 2013**  
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