

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY JURISDICTION

COMPANY PETITION NO. 170 OF 2009

Reserved on : 10-05-2010

Date of pronouncement: 04-06-2010

M/s Model Machinery Co. (P) Ltd. through Anr.

.....Petitioner

Through Mr. P.K.Mittal, Advocate

Versus

Registrar of Companies

.....Respondent

Through Mr. V.K.Gupta, Dy. Registrar of Companies

CORAM :

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed under S.560(6) of the Companies Act, 1956, seeking restoration of the name of the petitioner company to the Register of Companies maintained by the Registrar of Companies. M/s Model Machinery Co. Pvt. Ltd. was incorporated under the Companies Act, 1956 on 29th April, 1987 vide

Certificate of Incorporation No. 27780 of 1987-88 as a private limited company with the Registrar of Companies, NCT of Delhi and Haryana.

2. The Registrar of Companies, i.e the respondent herein, struck the company's name off the Register due to defaults in statutory compliances, namely, filing annual returns for the period 30.09.1996 to 30.09.2008 and balance sheets for the period 31.03.1996 to 31.03.2008. Consequently, the Registrar of Companies initiated proceedings under S.560 of the Companies Act, 1956, for the purpose of striking the name of the company off the Register maintained by his office. It is stated by counsel for the respondent that the procedure prescribed under S.560 of the Companies Act, 1956 was followed, notices as required under S.560(1), S.560(2), S.560(3) and, ultimately, under S.560(5) were issued, and that the name of the petitioner company was published in the Official Gazette on 23rd June 2007 at S. No. 1485.

3. The petitioner states that the company has been active since incorporation. In support of this statement, copies of the Directors' Annual Report, as at 31st March, 2009, the auditor's report for the same period, the balance sheet, as at 31st March, 2009 and a bank statement for the period 1.06.2009 to 30.06.2009, have been annexed to this petition.

4. It is alleged that the company did not receive any show cause notice issued by the respondent in this regard, as the occupants/tenants of the property adjacent to the petitioner company's had somehow colluded with the postman to prevent any correspondence from reaching the petitioner.

5. It is also stated by counsel for the petitioner that the present petition is within the limitation period stipulated by S.560(6) of the Companies Act, 1956, i.e. 20 years from the date of publication of the notice in the Official Gazette.

6. The petitioner avers that due to various factors, such as the illnesses of its directors, considerable delay in the completion of construction of the company's building, paucity of funds, severe recession, as well as a general slump in the market, the company's business was not very successful after incorporation, and therefore, it was unable to file the necessary statutory documents with the respondent since the accounting year 1995-96. It is further averred that it was only in March 2009 that the fact of non-filing of the returns and other documents with the respondent, as well as the fact that the company's name had been struck off the Register maintained by the respondent, was known to the petitioner company.

7. Counsel for the respondent does not have any objection to the revival of the petitioner company, subject to the petitioner company filing all outstanding statutory documents, i.e. annual returns for the period 30.09.1996 to 30.09.2008 and balance sheets for the period 31.03.1996 to 31.03.2008, along with the filing 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.

8. In **Purushottamdas & Anr (Bulakidas Mohta Co P. Ltd) v Registrar of Companies**, [1986] 60 Comp Cas 154 (Bom),
CP No. 170/2009 Page 3 of 6

the Bombay High Court, in paragraph 20 thereof, has held, inter alia, that;

“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.”

9. Looking to the fact that the company is stated to be a better position commercially since 2006; that it is solvent and has assets in excess of Rs.1 crore; and that it showed some profit for the financial year ending 31st March, 2009, it appears that there is the possibility of the company to continue functioning, and as held in **Purushottamdas & Anr (Bulakidas Mohta Co P. Ltd) v Registrar of Companies (supra)**, therefore, it is only proper that the impugned order of the respondent, which struck off the company's name from the Register of Companies, be set aside.

10. I might notice that Rule 94 of the Companies (Court) Rules, 1959 states, inter alia, as follows;

‘Unless for any special reasons that the Court shall otherwise order, the order shall direct that the petitioners do pay to the Registrar of Companies his costs of, and occasioned by, the petition.’

To my mind, the expression ‘shall otherwise order’ used in Rule 94, as reproduced above, means that although, ordinarily, the costs of the Registrar of Companies must be paid by the petitioner, however, if the Court considers it necessary to do so, it may give other orders in this behalf also. From this it follows that it is open to the Court to issue

specific orders departing from the norm by imposing lower or no costs at all, or even levying further additional costs, depending on the circumstances.

11. The facts and circumstances of this case show that it is not merely a case where the interests of justice and requirements of the statute would be met merely by the payment of costs of the Registrar of Companies. It is difficult to believe that although the company was functioning for over twenty years, albeit in a period of financial uncertainty, the management was so preoccupied with other matters that they were unable to spare time to file the annual returns and other statutory documents with the respondent for over fourteen years. The whole matter has obviously been handled in a very casual manner and must be deprecated. To my mind, such conduct does not display sound and responsible business functioning expected of companies. The non-filing of returns and balance sheets with the respondent had also made it impossible for any interested party to find out about the financial health of the company over a span of fourteen years. Earlier decisions on the same lines are **M/s Santaclaus Toys Pvt. Ltd v Registrar of Companies**, CP. No.271/2009, decided on 16th February, 2010; **M/s Medtech Pharma India Pvt Ltd v Registrar of Companies**, CP.No.241/2009, decided on 19th April, 2010; and **Rajinder Bawa, Director, Baver Suspension (P) Ltd v Registrar of Companies**, CP No. 406 of 2008, decided on 27th April, 2010.

12. For all these reasons, the restoration of the company's name to the Register maintained by the respondent will be subject to

the payment of Rs. 1,00,000/- as exemplary costs, payable to the common pool fund of the Official Liquidator. In addition, further costs of Rs. 25,000/- be paid to the Registrar of Companies. Costs be paid within three weeks from today. The restoration of the petitioner company's name to the Register will be subject to the petitioner filing all outstanding documents required by law and completion of all formalities, including payment of any late fee or any other charges which are leviable by the respondent for the late filing of statutory returns. The name of the company, its directors and members shall then, as a consequence, stand restored to the Register of the Registrar of Companies, 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 company, if so advised, on account of the company's alleged default in compliance with S.162 of the Companies Act, 1956.

14. The petition is disposed of in the above terms.

SUDERSHAN KUMAR MISRA, J.

JUNE 04, 2010