
(2010) 04 DEL CK 0192

In the Delhi High Court

Case No : Company Petition No. 241 of 2009 and Company Application No. 85 of 2010

Medtech Pharma (India) (P) Ltd.

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Companies Act, 1956 — Section 162, 560, 560(1), 560(2), 560(3)

Citation : (2010) 3 CompLJ 444

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : H.D. Sharma and J.K. Sharma, for the Appellant; V.K. Gupta, Dy. Registrar of Companies, for the Respondent

Judgement

Sudershan Kumar Misra, J.—This petition has been filed u/s 560(6) of the Companies Act, 1956, seeking restoration of the name of the company on the Register of Companies maintained by the Registrar of Companies. Medtech Pharma (India) Private Ltd. was incorporated under the Companies Act, 1956 on 17 March, 1998 vide Certificate of Incorporation No. 55-92763 as a private limited company with the Registrar of Companies, NCT of Delhi and Haryana.

2. The main business of the Petitioner company is stated to be of cost and freight agents with pharmaceutical companies operating in Delhi.

3. The Registrar of Companies, the Respondent herein, struck the Petitioner Company's name off the Register due to defaults in statutory compliances, namely, annual returns for the period 30.9.2000 to 30.9.2008 and balance sheets for the period 31.3.2000 to 31.3.2008. Consequently, the Registrar of Companies initiated proceedings u/s 560 of the Companies Act, 1956, for the purpose of striking the name of the company off the register maintained by the Registrar of Companies. It is stated by counsel for the Respondent that the procedure prescribed u/s 560 of the Companies Act, 1956 was followed, notices as required u/s 560(1), Section 560(2), Section 560(3) and, ultimately, u/s

560(5) were issued, and that the name of the Petitioner company was published in the official gazette on 23 June, 2007 at S.No. 10629.

4. The Petitioners state that the Petitioner company has been active since Incorporation, and has also been maintaining all the requisite documentation, as per the provisions of the Companies Act, 1956. In support of this statement, a copy of the annual return for the year 2007-2008, a balance sheet as at 31 March, 2008, and copies of income tax returns for the assessment years 2004-05 to 2009-10 have been annexed to this petition.

5. It is further stated by the counsel for the Petitioner that the Petitioner company did not receive any show cause notice, nor was it afforded any opportunity of being heard before the aforesaid action was taken by the Respondent. On examination of the petition, the annexure thereto and the Respondent's reply, it appears the address of the registered office of the Petitioner Company in the records of the Respondent is correct. In the circumstances, the Petitioner is presumed to have been served with the requisite notices u/s 560 the Companies Act by the Respondent.

6. The Petitioner avers that the accounts of the Petitioner company were prepared and audited every year, and that the company had engaged the services of an accountant to perform the task of filing the returns with the office of the Registrar of Companies. It is submitted that, after incorporation, the Petitioner company did not get much business, and that there were frequent changes in the company's staff, including the Accountant, and therefore, the returns and other necessary documents were not filed with the Registrar of Companies, even though the same had been prepared and even signed by the managing director. It is further submitted that it was only sometime in May 2009 that the fact of nonfiling of the returns and other documents with the Respondent, as well as the fact that the Petitioner company's name had been struck off the register maintained by the Respondent, was known to the Petitioner company, when it was left "high and dry due to frequent changes in its hired Accountant and other staff.

7. Counsel for the Respondent does not have any objection to the revival of the company, subject to the Petitioner filing all outstanding statutory documents, annual returns for the period 30.09.2000 to 30.09.2008 and balance sheets for the period 31.03.2000 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. Looking to the fact that the Petitioner is a running company, that it has filed this petition within the stipulated limitation period, and to the decision of the Bombay High Court in Purushottamdass and another (Bulakidas Mohta Co. P. Ltd.) Vs. Registrar of Companies, Maharashtra and others, thereof, wherein it has been 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.

This decision has been followed by this Court in *Deeps one Non-Ferrous Rolling Mills (P) Ltd. v. Registrar of Companies, NCT of Delhi and Haryana*, Company Petition No. 285 of 2009; *Kakku E. and P. Control P. Ltd. and Another Vs. Registrar of Companies, NCT of Delhi and Haryana*, and *Sohal Agencies Private Limited and Another Vs. Registrar of Companies, NCT of Delhi And Haryana*, .

9. To my mind, this petition deserves to be allowed, although 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 filed-for almost eight years, the primary responsibility for ensuring that proper returns and other statutory documents are filed, in terms of the statute and that rules, remains that of the management. At the same time, since here is the possibility of the company continuing to function, as held in *Purushottam Das and Anr. Bulakidas Mohta Co (P) Ltd. v. Registrar of Companies*, supra, therefore, it is only proper that the impugned order of the Respondent dated 31 May, 2007, which struck off the Petitioner'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 Petitioner do pay to the Registrar of Companies his costs of, and occasioned by, the petition.

11. To my mind, the expression "shall otherwise order" used in Rule 94 as reproduced above, means that costs may be imposed on the petitioning party which cover the costs of the Registrar of Companies' involvement in the proceedings, but are not limited to the same, unless the court otherwise orders.

12. As has also been held in *Santa Claus Toys (P) Ltd. Vs. Registrar of Companies*, by this Court, 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 Petitioner company was functioning for eight years, along with a properly staffed secretarial department, even though the same suffered frequent changes, the management was so preoccupied with other matters that they were unable to spare time to inquire from its staff as to whether the annual returns and other statutory documents were being filed. It is also equally improbable that the staff of the company was precluded from informing the managing director, or other directors, of the fact that the statutory returns mandated under the Companies Act are not being filed. 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 eight years.

13. For all these reasons, the restoration of the Petitioner's name to the register, maintained by the Respondent will be subject to the payment of Rs. 50,000 as exemplary costs, payable to the common pool fund of the official liquidator. In addition, further costs of Rs. 11,000 be paid to the Registrar of Companies. Costs be paid within three weeks from today. The restoration of the Petitioner's name to the Register will also be subject to the completion of all formalities, including payment of any late fee or any other charges which are livable by the Respondent for the late deposit of statutory documents. The impugned order dated 31 May 2007 shall then stand set aside. The name of the Petitioner 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 Section 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 Section 162 of the Companies Act, 1956.

15. The petition is disposed of.