(2011) 02 DEL CK 0498

In the Delhi High Court

Case No : Company Application No. 2111 of 2010 in Company Petition No. 437 of 2010

Mindtrac.Com India P. Ltd. APPELLANT

Vs

Registrar of Companies RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:
Companies (Court) Rules, 1959 — Rule 9
Companies Act, 1956 — Section 159, 160, 161, 162, 192

Citation : (2011) 3 AD 492 : (2011) 162 CompCas 570 : (2011) 2 CompLJ 440 : (2011) 122 DRJ 401

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Ashish Middha, for the Appellant; K.S. Pradhan, Deputy Registrar of Companies, for the Respondent

Judgement

Manmohan, J.—The present petition has been filed u/s 560(6) of the Companies Act, 1956 (for short "the Act") read with Rule 9 of the Companies (Court) Rules, 1959, for restoration of the Petitioner-company. It is stated that the annual returns and other statutory documents could not be filed by the Petitioner-company as it was totally dependent upon one of its employees, namely, Mr. S.S. Raju who was negligent in his job.

2. On a perusal of the reply-affidavit filed by the Registrar of Companies, it is apparent that there has been default in filing the statutory documents, that means, the annual returns for a period of ten years, that means, from 2001 to 2010.

3. However, Mr. K.S. Pradhan, the Deputy Registrar of Companies states that the Respondent has no objection for restoration of the name of the Petitioner-company provided the fees and penalties as stipulated for breach of Sections 159 and 220 of the Act are paid. He further states that though in the latest balance-sheet filed along with the petition, the Petitioner-company has shown its paid-up

capital as Rs. 5 lakhs, but in the records maintained by the Registrar of Companies the paid-up capital is being reflected as Rs. 20,000.

4. In the rejoinder, Mr. Middha states that though the paid-up capital has been increased from Rs. 20,000 to Rs. 5 lakhs but the same is not being reflected in the records maintained by the Registrar of Companies as in the meantime the Petitioner-company had been struck off the record u/s 560.

5. Having heard Mr. Ashish Middha, learned Counsel for the Petitioner-company and Mr. K.S. Pradhan, the Deputy Registrar of Companies, I find that the justification advanced by the Petitioner-company for non-filing of statutory documents is misconceived on facts and untenable in law.

6. A company is a socio-economic entity in which the public must have confidence. It must not only be transparent but also be accountable to the public at large. It is unimaginable that the company and/or its directors did not file a balance-sheet for a period of more than ten years. The excuse that the Petitioner-company was totally dependent upon one of its employees "cuts no ice" with this Court. I am also of the view that it is a statutory responsibility of the company and its directors/officials to file the annual returns and balance-sheets in accordance with the mandate of the Companies Act. Sections 162 and 611 of the Companies Act deal with penalties and fees payable on defaults. They are reproduced hereinbelow:

162. Penalty and interpretation.: (1) If a company fails to comply with any of the provisions contained in Sections 159, 160 or 161, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(2) For the purposes of this section and Sections 159, 160 and 161, the expressions ''officer'' and ''director'' shall include any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act.

611. Fees in Schedule X to be paid.: (1) In respect of the several matters mentioned in Schedule X, there shall, subject to the limitations imposed by that Schedule, be paid to the Registrar the several fees therein specified:

Provided that no fees shall be charged in respect of the registration in pursuance of Part IX of a company, if it is not registered as a limited company, or if, before its registration as a limited company, the liability of the shareholders was limited by some other Act of Parliament or any other Indian law or by an Act of Parliament of the United Kingdom, Royal Charter or Letters Patent in force in India:

Provided further that in the case of resolutions to which Section 192 applies, not more than one fee shall be required for the filing of more resolutions than one passed in the same meeting if such resolutions are filed with the Registrar at the same time.

(2) Any document required or authorised by this Act to be filed or registered, or any fact required or authorised by this Act to be registered, with the Registrar on payment of the fee specified therefor in Schedule X, may, without prejudice to any other liability, be filed or registered after the time, if any, specified in this Act for its filing or registration on payment of such additional fee not exceeding ten times the amount of the fee so specified as the Registrar may determine.

7. However, keeping in view the fact that the Petitioner-company has all throughout been functioning, I am inclined to allow the present petition provided the Petitioner-company pays costs of rupees one lakh to the Respondent within a period of four weeks from today.

8. After the said cost has been paid by the Petitioner-company, the name of the Petitioner-company shall stand restored and its status would be changed from inactive to active company. Thereafter within a period of three months, the Petitioner-company would file its statutory documents like the annual returns and balance-sheets for the outstanding period along with the prescribed fees u/s 611 of the Act.

9. With the aforesaid observations, the present petition and pending application stand disposed of.