
(2010) 04 DEL CK 0204

In the Delhi High Court

Case No : Company Petition No. 406 of 2008

Multichannel Technical Services Private Limited

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Companies Act, 1956 — Section 159, 162, 200, 560, 560(1)

Citation : (2010) 3 CompLJ 438

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Ashish Mldha, 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. Multichannel Technical Services Pvt. Ltd. was incorporated under the Companies Act, 1956 on 15 September, 1997, vide Certificate of Incorporation No. 55-89654 as a private limited company with the Registrar of Companies, NCT of Delhi and Haryana.

2. The Registrar of Companies, the Respondent herein, struck the Petitioner company's name off the register due to defaults in statutory compliances, namely, failure to file balance-sheets for the period 31.03.2001 to 31.03.2008 and failure to file annual returns for the period 30.09.2001 to 30.09.08. 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. I0343.

3. 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 balance sheet, as at 31.03.08, the profit and loss account, as at 31.03.08, and the income tax return for the year ending 2008, have been annexed to this petition.

4. 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 annexures, it appears the address of the registered office of the Petitioner company CP No. 410 of 2008 in the records of the Respondent, is incorrect. However, the Petitioner company has not placed on record any proof of intimation of the change of address of its registered office to the Respondent. Therefore, it is entirely possible that the notices issued u/s 560, by the Respondent were served at the old address of the Petitioner company's registered office.

5. It is stated by counsel for the Petitioner that the present petition is within the limitation period stipulated by Section 560(6) of the Companies Act, 1956, 20 years.

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 a Company Secretary, namely, Mr. Sunil Bahri, to perform the task of filing the returns with the office of the Registrar of Companies. It is submitted that from the year 2000, the said company secretary did not file the returns and other necessary documents with the Registrar of Companies and did not reveal this fact to the directors of the Petitioner company. It is further submitted that it was only in August, 2008, when the balance sheet as at 31.03.08 and the auditors report in respect thereof was ready to be filed with the Respondent 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.

7. Counsel for the Respondent does not have any objection to the revival of the company, subject to the Petitioner filing all CP No. 410 of 2008 outstanding statutory documents annual returns for the period 30.09.2001 to 30.09.2008, balance sheets for the period 31.03.2001 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. The Petitioner is stated to be a running company. It has filed this petition within the stipulated limitation period. In this context, the Bombay High Court in Purushottamdas and another (Bulakidas Mohta Co. P. Ltd.) Vs. Registrar of Companies, Maharashtra and others, 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. Accordingly, this petition deserves to be allowed. However, a greater degree of care was certainly required from the Petitioner company in ensuring statutory compliances. Looking to the fact that the annual returns for the period 30.09.1999 to 30.09.2008, as well as balance sheets for the period 31.03.1999 to 31.03.2008, were not filed, to my mind, this is not merely a case of negligence on the part of the firm of the company secretary. If any employee, whether part-time or full-time, defaults in his duties, the primary responsibility for ensuring statutory compliances, as per Section 159 and 200 of the Companies Act, 1956, remains that of the management. At the same time, since there is the possibility of the company to continue to function and recover its losses, even though it is stated to have run into accumulated losses of Rs. 2,94,018 in the year ending 31.03.2008, as held in *Purushottamdas and 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 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 Petitioners do pay to the Registrar of Companies his costs of, and occasioned by, the petition.

11. Here, not only have the Petitioners been negligent in ensuring regular filing of returns; they have also failed to produce any proof of intimation to the Registrar of Companies about the change in the Petitioner company's registered office. The only presumption, therefore, can be that the Registrar of Companies was not properly informed of this fact. Consequently, the Petitioner only has itself to blame if it did not receive the notices issued by the Registrar of Companies u/s 560 of the Companies Act. The Petitioners have, therefore, been remiss in not only in ensuring proper filing of the necessary records but also informing the Registrar of Companies of the CP No. 410 of 2008 change in the registered office. In addition, the publication of the fact that the name of the company has been struck off in the official gazette by the Registrar of Companies, which operates as public notice to all concerned, was also ignored by the Petitioners. For these reasons, the petition deserves to be allowed subject to payment of Rs. 22,000 as costs to the Registrar of Companies and further costs of Rs. 11,000 to be deposited in the common pool fund of the official liquidator. Costs to be paid within three weeks.

12. Consequently, the restoration of the Petitioner's name to the register

maintained by the Respondent will be subject to the payment of costs, as aforesaid, and the completion of all formalities, including payment of any late fee or any other charges which are leviable by the Respondent for the late deposit of statutory documents. The name of the Petitioner company, its directors and members shall, 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.

13. Liberty is granted of the Respondent to proceed with all further 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. 14. The petition is disposed of.