
(2014) 06 GUJ CK 0061
In the Gujarat High Court

Case No : O.J. Appeal No. 14 of 2014 in Company Petition No. 267 of 2013

Pramod Kumar Sharma

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision : 24-06-2014

Acts Referred:

Companies Act, 1956 — Section 560, 560(1), 560(5), 560(6)

Citation : (2014) 06 GUJ CK 0061

Hon'ble Judges : V.M. Sahai, J;R.P. Dholaria, J

Bench : Division Bench

Advocate : Narendra L. Jain, Advocate for the Appellant

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—The present O.J. Appeal has been filed by the appellant challenging the order dated 23.10.2013 passed by the learned Company Judge in Company Petition No. 267 of 2013.

2. The brief facts of the present case in nutshell are that the appellant -company, which was private limited company was struck-off from the register of the companies register on the application made by the appellant under the Easy Exit Scheme 2010 framed by the Ministry of Corporate Affairs. Subsequently, the appellant moved an application for restoration of the company on the company register on the ground that the circumstances have changed and, therefore, the appellant wants to do business under the name of aforesaid company. The learned Company Judge has considered the arguments and by impugned judgment dated 23.10.2013 rejected the application filed by the appellant.

3. Learned advocate appearing on behalf of the appellant has placed reliance on the judgment of Madhya Pradesh High Court in the case of VI Brij Fiscal Services P. Ltd. Vs. Registrar of Companies, wherein in similar facts and almost under similar scheme, the company whose name was struck-off from the register was restored back to the register on the application filed by the appellant.

Learned Company Judge has considered the case law relied upon by learned advocate appearing on behalf of the appellant and held that it did not apply to the facts of the instant case.

4. The findings recorded by learned Company Judge in paragraph Nos. 6 to 7.16 read as under:-

6. I have heard Mr. Jain, learned Counsel for the petitioner at length and I have also considered the documents placed on record and the decisions relied on by the learned Counsel for the petitioner.

7. From the facts stated by the petitioner one important fact emerges and becomes clear viz. it was the company itself who had, on its own motion and to take benefit of the scheme -more particularly the benefit of easy and quick exit without passing through the regular and detailed procedure-voluntarily made an application under a scheme launched by the Ministry of Corporate Affairs and requested the ROC that it may be struck-off from the register in accordance with the terms of the scheme and it was in pursuance of the company's request and at the behest of the company that the ROC struck off the company from the register.

7.1. Another important aspect which emerges from the record is that the application was made by the company under a scheme launched by the Ministry of Corporate Affairs and the company was not struck-off by the Registrar from the register in ordinary course and not for any reason mentioned in Section 560(1) to Section 560(5) of the Act.

7.2. It is pertinent to note that in present case the ROC had not issued any notice and not taken any action and did not pass any order on his own motion but the action was taken at the request of the company and under a special scheme and outside the purview of Section 560 of the Act.

7.3. Now, after having voluntarily applied under specially launched scheme and after having voluntarily got itself struck-off from the register, present petition is taken out seeking above quoted relief.

7.4. The scheme is not placed on record. However, it is not disputed even by the learned Counsel for the petitioner that the said scheme does not offer option/remedy to the company to subsequently, and at any time, make application u/s 560(6) of the Act and ask for recalling the action of striking off the company from the register. It is not even urged by the applicant that the scheme provides such option/remedy by way of application u/s 560(6) of the Act. Unless any provision under the scheme expressly provide for such application under subsection (6) of Section 560 of the Act, remedy by way of an application - request u/s 560(6) would not be available and so far as the scheme in question is concerned, it is not claimed even by the petitioner that the said scheme contains such express and specific provision.

7.5. Such application would not lie u/s 560(6) of the Act, unless the scheme itself

specifically provides such remedy whereas in present case, it is not in dispute that the scheme does not provide for and does not permit a company who makes exit under the scheme to subsequently apply for re-entry and restoration by making an application u/s 560(6) of the Act.

7.6. It is pertinent that it is not the case of the petitioner that the said scheme itself, as an inbuilt mechanism/provision, provide for reentry or restoration of the company in the register after having made voluntary exit under the provisions of the scheme.

7.7. Even if it is assumed that the scheme contains such option and provides for such avenue then also it would be an independent remedy i.e. the said remedy/said option would be under the scheme, and not u/s 560(6) of the Act inasmuch as even according to the petitioner the scheme does not specifically and expressly provide for an option to subsequently make (if the applicant company so desires) application u/s 560(6) of the Act to recall the action and to restore the company to the register. However, if the scheme, outside and dehors the Section 560(6) of the Act -provides -as an inbuilt mechanism -such option/remedy then the petitioner can make appropriate application under such provision in the scheme.

7.8. In the aforesaid background and in view of the facts of present case, even if it is assumed, for sake of examining the petitioner's request, that the application and request by the petitioner falls within the purview of sub-section (6) of Section 560 of the Act then also, the request will have to be tested on the touchstone of the two criterion mentioned in the said subsection (6) of Section 560 of the Act viz. (a) at the time of striking off whether the company was carrying on business or whether it was in operation; and (b) whether it is just to restore the company to the register.

7.9. According to the said provision satisfaction of the Court on the aforesaid two counts is necessary for entertaining and accepting the request made by virtue of application under sub-section (6) of Section 560 of the Act. This is evident from the language of the said subsection (6) of Section 560 of the Act, more particularly the expression " if satisfied" which connotes that the satisfaction of the Court would be necessary in considering and deciding the application made u/s 560(6) of the Act. The said sub-section also confers discretion on the Court, which is evident from the expression " it is just that the company be restored". When the provision confers discretion to the Court, the discretion has to be exercised judiciously and upon such judicious exercise of discretion the Court should be satisfied that the company be restored.

7.10. In view of the fact that the petitioner has repeatedly asserted in the petition that the petition is taken out under sub-section (6) of Section 560 of the Act, it has to be treated as an application under said subsection and has to be considered in light of the said provision.

7.11. So as to consider the petitioner's request it would be relevant and

appropriate to take into account the fact that until the time the company voluntarily made the application and requested that it may be struck-off, the paid up and subscribed capital of the company was only Rs. 400/-.

7.12. Even according to the petitioner, the provision under the Act requires that the private limited company must have minimum paid -up capital of Rs. 1 lac. As against the said requirement the company's subscribed and paid-up capital was only Rs. 400/-.

7.13. Another relevant fact is that before it came to be stuck-off pursuant at its own request, the company was in existence as a "private limited" company which had only three Directors viz. Mr. Pramodkumar Sharma, Smt. Seema Sharma and Shri Sushil Kumar Sharma, and all of them appear to be family members. Thus, it was a very closely Private Limited Company.

7.14. Moreover, it is also relevant to note that the petitioner company itself has admitted in the petition that much before time when the company made the request under the Easy Exit Scheme, it was not carrying business and was actually not in operation. The petitioner has averred in paragraph No. 6 of the petition that:

....the company did well for some time and thereafter, the business fell and the company was not in a position to get more business for sustaining despite numerous efforts put by all the directors and hence, the company was not in a position to file its returns etc., with the office of the Registrar of Companies since 2006 and the company decided to take benefit of the Easy Exit Scheme of the Ministry of Corporate Affairs during the year 2011 and applied for being struck off.....

7.15. Thus, since 2006, and particularly when the company made the application in 2011, the company was virtually not in operation and was virtually not carrying on business. Therefore, the first criteria under the said sub-section is not fulfilled.

7.16. Now so far as the exercise of Court's discretion is concerned, the sub-section postulates that the Court should be satisfied that it would be just to restore the company. From the above referred facts i.e. inspite of statutory requirement that the paid up capital of the company should be at least Rs. 1 Lac, the subscribed and paid-up capital of the company was only Rs. 400/- and the fact that since long time the company was actually not in operation, and more important fact that except the stipulation by other two family members there is nothing on record to satisfy the Court that the company/petitioner has sufficient funds/capital to fulfill even minimum requirement prescribed by the Act, the Court, even otherwise, cannot be said that it would be just to restore the company.

5. We have gone through the impugned judgment. We agree with the view taken by the learned Company Judge that the application u/s 560(6) of the Companies

Act is not tenable. Moreover, the decision of the Madhya Pradesh High Court relied on by the appellant is distinguished. We do not find any illegality committed by the learned Company Judge in the judgment and order dated 23.10.2013 passed in Company Petition No. 267 of 2013.

6. This O.J. Appeal fails and deserves to be dismissed. Accordingly, the appeal is dismissed summarily.