

(2009) 12 PAT CK 0002
In the Patna High Court

Sitaram Singh Construction P. Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Companies Act, 1956 — Section 560(1), 560(2), 560(5)

Citation : (2010) 156 CompCas 127 : (2011) 105 SCL 359

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.—Heard learned Counsel for the petitioner-company and learned Central Government counsel for the Registrar of Companies.

2. The petitioner seeks restoration of the name of the petitioner-company in the Register of Companies since the name of the petitioner-company has been struck off from the said register by order dated September 17, 2007, of the Registrar of Companies, Bihar and Jharkhand published in Gazette of India No. 40 dated December 6, 2007.

3. The case of the petitioner-company is that after its incorporation on February 23, 1990, it was carrying on its business of executing the works contract under various departments of the Government of Bihar including Water Resources Department, Minor Irrigation Department and the Road Construction Department. It is also its case that the annual returns including the balance-sheet and the profit and loss account were being filed regularly before the Registrar of Companies between the financial years 1989-90 to 2002-03 but the same could not be filed from the year 2003-04 onwards as the same had been entrusted to a chartered accountant who had failed to do so. Subsequently, in 2008, enquiries were made from the said chartered accountants and on finding that the annual returns from the financial year 2003-04 have not been filed, the work was entrusted to another firm of chartered accountants and the required

returns from the financial year 2003-04 onwards were sought to be filed but they were accepted only up to the financial year 2006-07 on the ground that the name of the petitioner-company had been struck off by the Registrar with effect from September 17, 2007. In the above circumstances, the present application has been filed.

4. The stand of the Registrar of Companies in his counter affidavit and supplementary counter affidavit is that the company had failed in filing its returns after the year 1998-99 and accordingly notice was issued u/s 560(1) of the Companies Act, 1956, inviting attention of the petitioner-company that it was not submitting its statutory returns. On no reply being received, another notice u/s 560(2) of the Act was sent stating that the Registrar had reasonable cause to believe that the petitioner-company was not carrying on business or was in operation and in case no reply was received within a month it would be presumed that the petitioner had nothing to say. Upon non-receipt of the reply the impugned notice dated September 17, 2007, u/s 560(5) of the Act was sent for publication in the Gazette of India and was published on October 6, 2007.

5. Learned Counsel for the petitioner submits that the company, not being a defunct company but carrying on its business continuously since its incorporation by executing the works of different departments of the Government of Bihar, in proof of which the balance-sheets and profit and loss accounts up to the year ending March 31, 2008, have already been filed which, according to learned Counsel, clearly show that the company is in operation and for the said reason alone it is submitted by learned Counsel that it is a fit case for restoring the name of the company in the Register of Companies.

6. It is further argued by learned Counsel for the petitioner-company that before striking off the name of the company from the Register of Companies, the Registrar of Companies has failed to comply with the mandatory provisions of Sub-section (3) of Section 560 of the Act by publishing the notice in the Official Gazette and giving a notice of three months for showing cause before finally striking off the name from the Register of Companies.

7. Learned Counsel for the Registrar of Companies, on the other hand, submits that the petitioner had not replied to any of the notices sent by the Registrar although receipt of the same is admitted and thus it was a fit case for striking off the name of the petitioner-company. It is also submitted that no grounds have been shown for approaching this Court after two years from the striking off the name of the company from the register.

8. On a consideration of the facts and circumstances of the case and the submissions of learned Counsels for the petitioner-company and the Registrar of Companies, this Court finds that there has been a clear violation of the mandatory requirements of Section 560(3) of the Act in the present matter. After the first two notices are sent under sub-Sections (1) and (2) of Section 560, it is an essential requirement that if the Registrar does not receive any answer within

one month of sending of the second notice then he has to publish in the Official Gazette and send to the company by registered post a notice that after expiration of three months from the date of notice the name of the company shall be struck off from the register and the company will be dissolved unless cause is shown to the contrary. Admittedly, no such publication has been made in the Official Gazette nor any notice sent by registered post as required by Sub-section (3) of Section 560 of the Act.

9. Moreover, it is evident from the materials on the record that the petitioner-company is not a defunct company but continuously carrying on its business although there appears to have been a serious omission in not filing its annual returns after the financial year ending March, 1999 according to the Registrar of Companies and admittedly, since the year 2003-04 according to the petitioner-company itself.

10. Be that as it may, since there has been non-compliance of mandatory requirement of Section 560(3), it is evident that the order dated September 17, 2007, of the Registrar-of Companies published in the Gazette of India dated October 6-12, 2007, cannot stand and is fit to be quashed. It is accordingly quashed in so far as it concerns the petitioner-company.

11. In the result the name of the petitioner-company shall stand restored in the Register of Companies. It is made clear, as also undertaken by learned Counsel for the petitioner-company, that all the statutory returns for the periods not yet filed, shall be filed by the petitioner-company within a period of three months from today. It is further made clear that any right of action which was enforceable on the date of the impugned order dated September 17, 2007, shall continue to be enforceable to the extent that the period of limitation shall not run from September 17, 2007, till today with respect to any such claim/right.

12. The petition is accordingly allowed.