

(2013) 11 AP CK 0067
In the Andhra Pradesh High Court
Case No : O.S.A. No. 47 of 2011

Sono Printers Pvt. Ltd.

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Citation : (2014) 1 ALD 517

Hon'ble Judges : M.S.K. Jaiswal, J; L. Narasimha Reddy, J

Bench : Division Bench

Advocate : V. Ravinder Rao, for the Appellant; Ponnam Ashok Goud, for the Respondent

Final Decision : Disposed Off

Judgement

L. Narasimha Reddy, J.—This appeal is filed against the order, dt. 12.07.2011 passed by a learned single Judge of this Court in C.A. No. 568 of 2011. The background of the case, in brief, is as under:

The appellant was incorporated as a Company under the Companies Act, 1956 (for short "the Act") on 17.11.1989 with its registered office in Hyderabad. According to its Memorandum of Association, it is supposed to carry on the business of printing, lithographers, stereotypers, electrotypes, photographic printers etc. It is stated that to carry on the objectives, the Appellant has acquired a plot of about 2100 sq. meters at Nanded on allotment by the Maharashtra Industrial Development Corporation (for short "MIDC"). According to the appellant, its sister concern Company, by name, Sono Plast Pvt. Ltd., was supposed to undertake certain activities, which in turn would provide considerable business of printing. It is also stated that on account of certain initial problems, none of the Companies could commence the business.

The Respondent herein issued a notice under sub-section (1) of Section 560 of the Act to the Appellant on 09.03.2007 requiring it to explain as to why its name shall not be struck off from the Register, since it has not commenced the

business. Because no reply was received from the Appellant, another notice under sub-section (2) of Section 560 of the Act was issued on 10.09.2007 and ultimately through an order dt. 29.04.2008, the Respondent struck off the name of the Appellant Company from the Register.

The Appellant filed an application i.e., C.A. No. 568 of 2011 before this Court under sub-section (6) of Section 560 of the Act with a prayer to direct the respondent to restore its name in the Register. It was pleaded that the Company was unable to carry out its activity and business in the year 2008, but thereafter, it has acquired the resources and has established the factory also. Reference was made to the levy of penal charges by the MIDC. The said application was opposed by the Respondent. The learned single Judge dismissed the application through the order under appeal.

2. Sri V. Ravinder Rao, learned counsel for the Appellant submits that it is always open to a Company, whose name is struck off in exercise of powers under sub-section (5) of Sec. 560 of the Act, to submit an application for restoration thereof within a period of twenty years, and that in the instant case, the application was filed within the stipulated time, and that the requirements stipulated under law were complied with. He submits that no prejudice can be said to have been caused either to the Respondent or to any other agency on account of striking off the name of the Appellant Company nor its restoration would be detrimental to the interests of anyone.

3. Sri Ponnam Ashok Goud, learned Assistant Solicitor General, on the other hand, submits that sub-section (6) of section 560 of the Act provides for the circumstances under which a restoration can be ordered and that the Appellant did not fulfill the same.

4. The Respondent is conferred with the right and endowed with the responsibility to register the companies and to maintain a Register for that purpose. The existence of name of a Company in the Register maintained by the Respondent has its own significance, and various rights and obligations, mentioned in the relevant provision of the Act, flow there from.

5. Obviously, to ensure that the Register maintained under the Act does not contain the names of nominal or non-functional Companies, the Parliament conferred powers on the Registrar of Companies to take steps for striking off the names of such companies from the Register. If the Registrar entertains any doubt as to the non-functionality of a Company, he can issue a notice under sub-section (1) of Section 560 of the Act, requiring it to explain as to why its name be not struck off. If there is no reply to the notice or if the reply submitted by the Company is not satisfactory, then further steps need to be taken. If a decision is taken to strike off the name, it culminates in the publication of the concerned order in the official gazette.

6. Even where the name of a Company is strike off from the Register, a facility is provided for under the Act, for restoration of the same. Sub-section (6) of Sec.

560 of the Act reads as under:

If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the Tribunal, on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register; and the Tribunal may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

7. Fairly, long period of twenty years is stipulated within which, a company can seek restoration of its name. The conditions that are required to be complied with for restoration of the name of a Company, which is struck off from the Register, are not so specific or exhaustive. The provision simply refers to the factors such as, whether the company is carrying on the business or is in operation. Once the Court is satisfied on these aspects, it can exercise the power, to restore the name of the Company. On such restoration, the Company acquires a right to undertake its activities in the name and style, as registered, at the initial stage.

8. Striking off the name of a Company may not cause any prejudice to others. The detriment if at all would be to the Company itself. Equally, restoration of its name does not cause any prejudice to others. It is only when the Registrar informs the Court that the name has since been allotted to another applicant and a company with that name is functioning, that the Court may express its inability to accede to the request for restoration of the said name. Another eventuality may be that any penal proceedings are initiated in this behalf. In the instant case, neither the name of the Appellant Company was allotted to another entity nor it was alleged that any rights and obligations have flown vis-a-vis others, ever since the name of the Appellant was struck off from the Register.

9. The learned single Judge was mostly impressed by the fact that the petitioner did not respond to the notice that was issued under sub-section (1) of Sec. 560 of the Act and that the decision to strike off the name of the company was published. Reference to those factors virtually becomes impermissible while dealing with sub-section (6) of Section 560 of the Act. The reason is that the occasion to file an application under sub-section (6) of Sec. 560 would arise only after the decision to strike off the name of the company is published in the gazette under sub-section (5) of Sec. 560 of the Act. No other reason was mentioned. The plea of the Appellant that it has since taken all the steps to commence the activity was not at all controverted by the Respondent. We, therefore, allow the appeal and set aside the order dt. 12.07.2011 passed in C.A. No. 568 of 2011 by the learned single Judge. Further, C.A. No. 568 of 2011 shall

stand ordered and, as a result, all the consequences provided under sub-section (6) of Sec. 560 of the Act shall follow. There shall be no order as to costs.

The miscellaneous petition filed in this appeal shall stand disposed of.