
(2009) 11 PAT CK 0031
In the Patna High Court

Tufail Ahmad Khan Constructions Pvt. Ltd. APPELLANT
Vs
The Union of India (UOI) and Another RESPONDENT

Date of Decision : 05-11-2009

Acts Referred:

Companies Act, 1956 — Section 560(1), 560(3), 560(5)

Citation : (2009) 11 PAT CK 0031

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Judgement

Ramesh Kumar Datta, J.—The petitioner is aggrieved by the striking off of its name from the register of Companies u/s 560(5) of the Companies Act by order dated 17.9.2007 published in the Gazette of India dated 6.10.2007.

2. The main contention of learned Counsel for the petitioner is that no notice was ever served upon it in accordance with the requirements of Sub-sections (1) (2) & (3) of Section 560 of the Companies Act. It is further submitted that the Company is continuously carrying on its business and has, been in operation at all relevant times It is also submitted that the Company has filed its statutory returns for the financial year ending on 31.3.2006 on 5.10.2007, the day before the publication of the notification dated 25.9.2007 in the Official Gazette dated 6.10.2007. However, on 11.11.2008 the Director of the Company learnt from the Registrar of Companies that the name of his company has been struck off by the aforesaid Gazette Notification.

3. In the supplementary counter affidavit filed on behalf of the Registrar of Companies it is stated that the first notice u/s 560(1) of the Companies Act was issued on 2.7.2007 and again the second notice u/s 560(2) of the Act was issued on 3.8.2007 directing the petitioner to furnish comments/reply within one month failing which it would be presumed that the petitioner has nothing to say in the matter and a notice will be published in the Official Gazette by striking off the name of the Company from the register of Companies. It is stated that only on the failure of the petitioner to respond to the notice the final order dated

17.9.2007 was passed which was published in the Official Gazette on 6.10.2007.

4. In the supplementary counter affidavit there is no statement that the second notice under Sub-section (2) was sent by registered post as is required by the said section. Apart from that after sending the notice under Sub-section (2) no steps were taken under Sub-section (3) to publish in the Official Gazette and send to the Company by registered post a notice that at the expiration of three months from the date of that notice, the name of the Company mentioned therein will, unless cause is shown to the contrary, be struck off from the register, of Companies and the Company will stand dissolved.

5. Learned Counsel for the R.O.C. submits that the publication, of notice under Sub-section (3) is not mandatory since the word "may" has been used with respect to the publication and sending by registered post and not the word "shall" as in the previous two sub-sections.

6. In my view the were use of the word "may" does not at all lead to the conclusion that the provision of Sub-section (3) are not mandatory. The pre condition for taking action under Sub-section (5) is inter alia the expiry of time mentioned in the notice referred to it in Sub-section (3). If the said pre-condition is not satisfied then there can be no occasion for the Registrar of Companies to exercise his power u/s 560(5) of the Act by striking off the name of the Company from the register of Companies. The laying down of the said precondition to the exercise of power under Sub-section (5) of Section 560 of the Act makes it evident that the publication of notice in the Official Gazette and sending the said notice to the Company by registered post as required by Section 560(3) are mandatory and not directory.

7. In view of the aforesaid discussions it is evident that there has not only been a violation of the provisions of, Sub-section (3) of Section 560 of the Act, but there is also no averment or evidence on the record that the second notice was sent by registered post, and therefore there has been a complete violation of the provisions of Section 560 of the Act.

8. In the said circumstances, the notice dated 17.9.2007 published in the Gazette of India dated 6.10.2007 cannot stand, being contrary to the mandatory provisions of Section 560 of the companies Act and it is, accordingly, quashed to the extent it concerns the petitioner Company.

9. Consequentially the name of the Petitioner Company shall stand restored to the register of Companies as though it had never been so struck off. It is, however, made clear, as undertaken by learned Counsel for the petitioner Company, that all the statutory returns shall be filed by it within a period of six weeks from today. It is also made clear that any right action which may have been in existence against may the company on the day the day its name was struck off from the register of companies, i.e., 6.10.2007 shall not be barred by the law of limitation which shall not run for the period from 6.10.2007 till today.