

Delhi High Court

M/S Auto Kashyap India Private ... vs Registrar Of Companies on 7 April, 2010

Author: Sudershan Kumar Misra

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY JURISDICTION

COMPANY PETITION NO. 166 OF 2009

Reserved on : 12-03-2010

Date of pronouncement: 07-04-2010

M/s Auto Kashyap India Private Limited & Anr.

.....Petitioners

Through Mr. Mahesh Sukhija, Advocate

Versus

Registrar of Companies..... Respondent

Through Mr. V.K.Gupta, Dy. Registrar of Companies

CORAM :

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

SUDERSHAN KUMAR MISRA, J.

1. This petition has been filed under S.560(6) of the Companies Act, 1956, seeking restoration of the name of the petitioner No.1 on the Register of Companies maintained by the Registrar of Companies.

2. M/s Auto Kashyap India Private Ltd., i.e. petitioner No.1, was incorporated under the Companies Act, 1956 on 17th June, 1994 vide Certificate of Incorporation No. 55-59689 as a private limited company with the Registrar of Companies, NCT of Delhi and Haryana. Petitioner No.2 is Mr. Anand Kashyap, a Director of petitioner No.1.

3. The petitioner company is stated to be engaged in the business of automobile and vehicle trading and related services.

4. The Registrar of Companies, i.e the respondent herein, struck the petitioner No.1s name off the Register for defaults in statutory compliances, namely, failure to file balance-sheets for the period 31.03.1999 to 31.03.2008 and failure to file annual returns for the period 30.09.1999 to 30.09.2008. The respondent had initiated proceedings under S.560 of the Companies Act, 1956, for the purpose of striking the name of the company off the Register maintained by the respondent. It is submitted that the procedure prescribed under S.560 of the Companies Act, 1956 was followed, notices as required under S.560(1), S.560(2), S.560(3) and, ultimately, under S.560(5) were issued, and that the name of the petitioner company in this regard was published in the Official Gazette on 23rd June, 2007 at S.No. 6256.

5. The petitioners state that the 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, certified copies of the audited annual accounts for the financial years ending 31st March, 2002 to 31st March, 2008, have been annexed to this petition.

6. It is further stated by the counsel for the petitioners that they did not receive any show cause notice, nor were they afforded any opportunity of being heard before the aforesaid action was taken by the respondent. However, the address of the registered office of the petitioner company in the records of the respondent is the same as that stated by the petitioners. In the circumstances, the petitioners are presumed to have been served the requisite notices under S.560 of the Companies Act, 1956.

7. The petitioners aver that the accounts of the petitioner company were prepared and audited every year, and that the company had engaged the services of a Chartered Accountant firm to perform the task of filing the returns with the office of the Registrar of Companies. It is submitted the returns and other necessary documents were not filed with the Registrar of Companies as "the said firm has not carried out the job entrusted upon them". It is further submitted that it was only sometime in December 2008, that the fact of non- filing of the returns and balance sheets, well as the fact that the petitioner No.1s name had been struck off the Register maintained by the respondent, was known to the petitioners.

8. Counsel for the respondent does not have any objection to the revival of the company, subject to the petitioners filing all outstanding statutory documents i.e. annual returns for the period 30.09.1999 to 30.09.2008, and balance sheets for the period 31.03.1999 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 and the shareholders, to the restoration of the name of the company to

the Register maintained by the Registrar of Companies, have been placed on record as well.

9. The petitioner claims to be a running company. It has filed this petition within the stipulated limitation period. The decision of the Bombay High Court in *Purushottamdas & Anr (Bulakidas Mohta Co P. Ltd) v Registrar of Companies*, [1986] 60 Comp Cas 154 (Bom), in paragraph 20 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."

10. 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 Chartered Accountants. If any employee, whether part-time or full-time, defaults in his duties, the primary responsibility for ensuring statutory compliances, as per S.159 and 200 of the Companies Act, 1956, remain that of the management. At the same time, the company is stated to be functioning one, and as held in *Purushottamdas & 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 petitioners name from the Register of Companies, be set aside.

11. I might notice that Rule 94 of the Companies (Court) Rules, 1959 state, 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.'

12. Consequently, the restoration of the companys name to the Register maintained by the Registrar of Companies will be subject to the payment of Rs. 22,000/- as costs, payable to the Registrar of Companies within 3 weeks from today.

13. Consequently, the restoration of the companys name to the Register maintained by the Registrar of Companies will be subject to the payment of costs, as aforesaid, and 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 impugned order dated 31st May, 2007 for striking off the name of the petitioner company shall then stand set aside. The name of the petitioner company, its directors and members shall, as a consequence, stand restored to the Register of the respondent, as if the name of the company had not been struck off, in accordance with S.560(6) of the Companies Act, 1956.

14. Liberty is granted to the respondent to proceed with all other action against the petitioner, if so advised, on account of the petitioners alleged default in compliance with S.162 of the Companies Act, 1956.

15. The petition is disposed of.

SUDERSHAN KUMAR MISRA, J.

April 07, 2010