

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 1ST DAY OF MARCH, 2013

BEFORE

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

COMPANY PETITION NO.156/2012

BETWEEN:

M/S. BHAVANI BOARDS PVT. LTD.
HAVING ITS REGISTERED OFFICE AT
L.I.G. 24, HOUSING BOARD COLONY,
BIDAR – 585 407, REPRESENTED BY
ITS DIRECTOR

MR.GANJI DAMODHAR

...PETITIONER

(By Sri.M.R.NARAYAN, FOR M/S.M.R.NARAYAN & CO.,
ADVS.)

AND:

THE REGISTRAR OF COMPANIES (KARNATAKA)
2ND FLOOR, B-WING,
KENDRIYASANDA,
KORAMANGALA,
BANGALORE-560 034

...RESPONDENT

(BY SRI.K.S.RAVI, CGC FOR ROC)

THIS COMPANY PETITION IS FILED UNDER SECTION
560(6) OF THE COMPANIES ACT, 1956, READ WITH RULE 9
OF THE COMPANIES (COURT) RULES, 1959, PRAYING TO
DIRECT THE RESPONDENT TO RESTORE THE NAME OF
THE PETITIONER COMPANY IN THE REGISTRAR OF
COMPANIES, AND ETC.,

THIS COMPANY PETITION IS COMING ON FOR
ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner is seeking for a direction to the Registrar of Companies (hereinafter referred to as 'ROC' for short) to restore the name of petitioner-company in the Register of the Registrar of Companies.

2. I have heard the arguments of Sri.M.R.Narayan, learned counsel appearing for petitioner and Sri.K.S.Ravi, learned CGC appearing for Registrar of Companies. Perused the contents of the petition as well as the statement of objections filed by learned CGC for ROC.

3. Petitioner-company was incorporated on 12.06.1987 under the provisions of The Companies Act, 1956 (hereinafter referred to as the 'Act' for short) as per the certificate of incorporation produced at Annexure-A and it is having its registered Office at the address shown in the cause title of the petition. Memorandum and Articles of Association appended to the petition would

indicate that said company was incorporated to carry on the business as manufacturers, processors, dealers, distributors, merchants, exporters, stockists, agents of all kinds of paper and paper boards and allied products whether in raw form, semi-finished or finished form whether in India or abroad. The averments made in the petition would indicate that petitioner is carrying on the business till date and its accounts have been regularly audited upto the year ending 31.03.2002 by M/s. Venkataram & Co., Chartered Accountants and thereafter by Mr. Swamy Reddy, Chartered Accountant, and M/s.D. Swamy Reddy & Co. It is stated that on account of petitioner-company embarking upon research program for manufacturing of special type of papers, Board of Directors were concentrating on research work and reduced their regular activities to considerable extent. It is also contended that Board of Directors of petitioner-company failed to verify whether the statutory auditors had complied/adhered to the laws in general and in particular The Companies Act, 1956, on belief.

4. Petitioners have further contended that in their 23rd Annual General Meeting they appointed M/s.Shonalal & Associates, Chartered Accountants as statutory auditors of the petitioner-company in place of M/s.D.Swamy Reddy & Co., on account of demise of Sri.D.Swamy Reddy and newly appointed Chartered Accountants have informed the Board of Directors of the petitioner-company about the name of petitioner-company having been struck off from the Register of the Registrar of Companies on account of non-filing of annual returns, balance sheets, in exercise of powers conferred under Section 560 of the Act in the year 2007 itself. It is also contended that before striking off the name of petitioner-company, no notice was issued and on enquiry with the Office of Registrar of Companies, they were informed of the said fact and Gazette having been published in this regard on 23.02.2008-Part III-Section 1 is produced at Annexure-D.

5. It is contended that petitioner-company has not filed its annual returns and statutory reports with the ROC for 10 years as per ROC and efforts made by Directors of the petitioner-company namely to secure the file from the Office of late D.Swamy Reddy was not fruitful. It is also stated that annual returns and balance sheet for the financial year 2001-02 was filed under receipt No.278349 dated 24.04.2002 issued by the Registrar of Companies, Karnataka and said records are not available in the Office of the ROC. It is further contended that petitioner-company is carrying on its business in the regular course and on account of its name having been struck off, they are unable to carry on the business and as such they have sought for the prayer being granted as prayed for in the petition.

6. The ROC of Karnataka has filed statement of objections contending interalia that petitioner-company filed its annual returns, balance sheet and profit & loss account for the financial year ending 1991-92 and 2001 since it is incorporated on 12.06.1987 and as such it is

not able to ascertain whether the company is in operation. It is further stated that petitioner-company is required to file every year minimum two annual documents with the ROC i.e., balance sheet and profit & loss account as required under Section 220 and Annual Returns under Section 159 of the Act, which would be available in the public domain for inspection. It is further contended that non-filing of these documents would attract penal action and same being a continuing offence they are liable to pay Penalty of Rs.500/- per day and as such, it is contended that petitioner-company would be liable to pay the penalty amounting to Rs.36,50,000/- as of now, which would be in addition to the additional fee required to be paid under Section 611 of the Act. It is further stated that balance sheet, profit & loss account and annual returns have been filed for eight financial years till date and petitioner may be directed to produce balance sheet, profit & loss account and annual returns for ten financial years. Subject to same, it is stated that the ROC has no objection for

restoring the name of the petitioner-company under Section 560 (6) of the Companies Act, 1956, and payment of fine and additional fee. It is contended that petitioner-company be imposed with exemplary cost as held by the High Court of Delhi in the case of Model Machinery Company Pvt. Ltd. vs. ROC, Delhi, passed in Co.P.No.170/2009 dated 04.06.2010.

7. On perusal of records, I am of the view that following point would arise for my consideration:

“Whether the name of petitioner-company is to be restored by setting aside the order of the Registrar of Companies and consequential Gazette Notification issued on 23.02.2008 published in Part III - Section 1?”

8. In order to examine the rival contentions, it would be appropriate to extract Sub-Section (6) of Section 560 of the Act, which has a bearing on the issue and it reads as under:

“560 (6): If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the Court, 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 Court 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”.

9. In the instant case, it is noticed that name of petitioner-company was struck off on account of default committed by company itself namely, non-filing of balance sheet, profit & loss account as also Annual Returns, which was required to be filed mandatorily under Section 220 and 159 of the Act. The reason assigned for non-filing of said returns is that the Board of Directors were concentrating on the research work and had given up their regular and routine activities and were

under the bonafide impression that statutory auditor appointed by the company would have filed such returns. It is required to be noticed that a duty is also cast on Board of Directors to file annual returns annually, as also the balance sheet and profit & loss account. The fact that remains that prior to striking off the name of petitioner-company, no notice was issued to petitioner-company. Sub Section (1) of Section 560 casts an obligation on the Registrar to issue notice to the company, when he has a reasonable belief that it is not carrying on business or the said company has ceased to be in operation and if the ROC does not receive any reply within 30 days from the date of issuance of notice, he is required to despatch a registered letter within 14 days after the expiry of 30 days intimating the company that no answer has been received and if no reply is received for the second letter within one month from the date thereof, notice will be published in the Official Gazette striking off the name of the company in the Register. Statement of objections filed would not indicate that

either such notice having been issued by the ROC to the petitioner-company before striking off the name.

10. Be that as it may. The fact that remains is petitioner-company admittedly has not filed the balance sheet, profit & loss account and its annual returns as required under Section 159 and 220 of the Companies Act, 1956. In fact the ROC himself has given his consent in the counter statement for restoration of the company with a rejoinder namely to direct the petitioner-company to file its annual returns, profit & loss account and balance sheet as required under Section 159 and 220 of the Act, subject to payment of penalty by way of fine and additional fee. In other words, he has consented for the revival of petitioner-company and its name being restored, subject to fulfillment of the requirement of the above sections.

11. In view of the fact that the ROC has no objection for restoring the name of petitioner-company,

the prayer sought for in the petition deserves to be granted.

12. Insofar as levy of penalty and additional fee is concerned, it is to be noticed that by virtue of this order of restoring the name of the petitioner-company, order of striking off would get extinguished or in other words, company would be deemed to be in existence from the date of incorporation, and as such the balance sheet of the petitioner company, profit & loss account including its annual returns, are required to be filed under Section 159 and 220 of the Act, so as to comply with the mandatory provisions of the Act. As otherwise, it would be contrary to the very statutory provisions itself.

13. Under the Act time limit has been fixed for filing of the balance sheet, profit & loss account and annual returns and in the event of there being any default committed, ROC would be empowered to levy and collect ten times the fee prescribed, as provided under Sections (2) of Section 611 of the Companies Act.

14. The averments made in the petition would indicate that petitioner-company has undertaken to file the balance sheet, profit & loss account and annual returns for the periods for which it has not been filed, though two documents which is said to have been filed and which is not available with the ROC, within an outer limit of six weeks from the date of receipt of copy of this order. On such returns being filed, ROC shall determine the fee payable as contemplated under Section (2) and Section 611 read with Schedule X of the Companies Act. It is also made clear that non-filing of balance sheet, profit & loss account and annual returns that benefit of this order would not be available to the petitioner-company.

15. In view of the fact that petitioner would not have the benefit of filing the returns for a period of ten years and now the company is sought to be revived and also in view of the fact that ROC has entered appearance and spent considerable time by filing a detailed

statement of objections, it would suffice if costs of Rs.10,000/- is ordered to be paid to the ROC, apart from the fee that would be determined by the ROC, while accepting the accounts/returns that would be filed by the petitioner-company within six weeks as undertaken by petitioner counsel as recorded hereinabove.

16. For the reasons aforesaid, point formulated hereinabove is answered in favour of petitioner. Hence, following order is passed:

ORDER

- i. Company petition is hereby allowed.
- ii. Order of striking out the name of the petitioner-company as published in the Official Gazette of India dated 23.02.2008-Part III-Section 1, insofar as it relates to the petitioner-company is hereby set aside, subject to observation made hereinabove. Same is ordered to be restored and it shall be continued in the Register of the Registrar of Companies.
- iii. It is also made clear that deposit of costs of Rs.10,000/- as ordered hereinabove, shall be a

condition precedent for examining and scrutiny of annual returns, balance sheet and profit and loss account by the Official Liquidator.

**Sd/-
JUDGE**

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