

## Pancham Hotels Private Limited Vs Registrar of Companies

**Court:** Delhi High Court

**Date of Decision:** May 11, 2015

**Acts Referred:** Companies Act, 1956 - Section 162, 560, 560(1), 560(3), 560(5)

**Citation:** (2015) 7 AD 509 : (2015) 220 DLT 443

**Hon'ble Judges:** Sudershan Kumar Misra, J

**Bench:** Single Bench

**Advocate:** Alok Kumar Kuchhal, for the Appellant; Aparna Mudiam, Asstt. ROC, Advocates for the Respondent

**Final Decision:** Disposed off

### Judgement

Sudershan Kumar Misra, J.

This petition has been filed by Pancham Hotels Pvt. Ltd. (hereinafter called ""the petitioner"" ) under Section

560(6) of the Companies Act, 1956 praying for restoration of its name in the register of companies maintained by the Registrar of Companies.

2. The petitioner was incorporated with the Registrar of Companies, NCT of Delhi and Haryana (hereinafter called ""the respondent"" ) as a

company limited by shares on 18.06.1992 vide Certificate of Incorporation No. 55-49222 of 1992-93 with the object of carrying on the business,

inter alia, of hotels, resorts and restaurants. Presently, the registered office of the petitioner is stated to be situated at B-164, Vikas Nagar,

Ranhaulla Road, behind S.M. Tent House, Near Hastal Village, Uttam Nagar, New Delhi - 110059.

3. The respondent initiated the proceedings under S. 560 of the Companies Act, 1956 to strike the name of the petitioner off the register due to

defaults in statutory compliances, namely, non-filing of Annual Returns from 1998 to 2014, and Balance Sheets from 1998 to 2014. It has been

submitted on behalf of the respondent that procedure under S.560 was duly followed, with notices/letters as required under S.560(1) and

S.560(3) sent at the registered office address of the petitioner. It is further submitted that notice dated 31.05.2007 under Section 560(5) for

striking off the name of the petitioner from the register maintained by the respondent was given and the same was published in the Official Gazette

on 23.06.2007 mentioning the petitioner-company's name at Serial no. 7439.

4. The petitioner has, on the other hand, submitted that it has been functioning and carrying on business since its incorporation, and has also been

filing requisite documentation with the statutory authorities. In support of this statement, the petitioner has relied on its annual accounts for the

period 01.04.2010 to 31.03.2013, Balance Sheets with Schedule of fixed assets of the company and profit and loss account for the financial years

ending 31.03.2011 to 31.03.2013, and also the acknowledgement for Income Tax Returns for Assessment Years ending 31.03.2012 to

31.03.2014, copies of all of which are annexed with the petition.

5. It is further stated by the petitioner that it did not receive any notices/letters/show-cause notices as required under Section 560(1) and (2) of the

Companies Act, 1956, nor was it afforded any opportunity of being heard before action under S.560(5) was taken by the respondent. The

petitioner also averred that upon inspection of official records of the petitioner-company carried out by its authorised representative, no documents

pertaining to S.560 were found. It is further averred that no documents evidencing the basis on which the respondent came to the conclusion that

the petitioner-company was not carrying on its business was either provided to the petitioner or was available on the records maintained with the

respondent.

6. Admittedly, the registered office of the petitioner was changed from 46, Arakashan Building Road, Paharganj, New Delhi - 55 and to B-164,

Vikas Nagar, Ranaulla Road, Behind S.M. Tent House, Near Hastal Village, Uttam Nagar, New Delhi - 59. The petitioner is stated to have

duly filed Form 18 with the respondent notifying the change in situation of its registered office against receipt dated 03.06.1998 issued by the

respondent in this regard, copies of the said form and the receipt issued by the Registrar of Companies have been placed on record.

7. The petitioner averred its inability to file Balance Sheets with the respondent due to various constraints and market conditions which are claimed

to have been beyond the control of company's management and also due to delay in completion of company's projects. It is further averred that

only sometime in August 2014 the petitioner came to know that its name had been struck off from the register when the company was unable to

upload certain statutory documents with the respondent, per the information available on the web portal of the Ministry of Corporate Affairs and

subsequent inspection of the official records of the company carried out by company's authorised representative. The petitioner further came to

know that the change in situation of its registered office had not been updated in the official record.

8. It has been averred on behalf of the respondent that though the notices/letters under S.560(1) and (3) were sent, their copies and dispatch proof

are not traceable. It is pertinent to note here that since per the petitioner's enquiries and inspection of its official record the updated address of the

registered office of the petitioner-company was not reflected in the records of the respondent; and further, in absence of any submission and/or

documents to the contrary, it is entirely possible that the respondent had sent notices under S.560 to the petitioner on the old address of its

registered office and the same may not have been received by the petitioner.

9. Counsel for the respondent has submitted that the respondent has no objection to the restoration of the petitioner company's name under

Section 560(6) of the Companies Act, 1956, subject to the petitioner filing all statutory documents, i.e. annual returns from 1998 to 2014 and

balance sheets as at 1998 to 2014, and other requisite documents along with filing fee and additional fee, as applicable on the date of actual filing.

10. In *Purushottamdass and another (Bulakidas Mohta Co. P. Ltd.) Vs. Registrar of Companies, Maharashtra and others*, (1986) 60 CompCas

154, the Bombay High Court has held, inter alia, that;

18. 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.

This decision has been followed by this Court in *M/s. Medtech Pharma (India) Pvt. Ltd. v. Registrar of Companies*, CP No. 241/ 2009; *M/s.*

*Santaclaus Toys Pvt. Ltd. v. Registrar Of Companies*, CP 271/2009; *M/s. Deepsons Non-Ferrous Rolling Mills Pvt. Ltd. v. Registrar of*

*Companies*, NCT of Delhi and Haryana, CP No. 285/2009; *M/sKakku E and P Control Pvt. Ltd. and Anr. v. The Registrar of Companies, NCT*

*of Delhi and Haryana*, CP No. 409/2008 and *M/s. Sohal Agencies Pvt. Ltd. v. Registrar of Companies, NCT of Delhi and Haryana*, CP No.

297/2009.

11. Under the facts and circumstances, it is possible that notice in respect of action under S.560 of the Companies Act, 1956, was not sent to the

registered office of the company. Consequently, the condition precedent for the initiation of proceedings to strike off the name of petitioner from

the Register maintained by the respondent, was not satisfied. And looking to the fact that the petitioner is stated to be a running company; and that

it has filed this petition within the stipulated limitation period; and also to the decision of the Bombay High Court in *Purushottamdass and Anr.*

*(Bulakidas Mohta Co. P. Ltd.) v. Registrar of Companies, Maharashtra, and Ors. (supra)*; it is only proper that the impugned order of the

respondent dated 23.06.2007, which struck off the name of the petitioner from the Register of Companies, be set aside. At the same time,

however, there is no gainsaying the fact that a greater degree of care was certainly required from the petitioner company in ensuring statutory

compliances. Looking to the fact that annual returns and balance sheets were not filed for almost sixteen years, the primary responsibility for

ensuring that proper returns and other statutory documents are filed, in terms of the statute and the rules, remains that of the management.

12. Accordingly, the petition is allowed. The restoration of the company's name to the Register maintained by the Registrar of Companies will be

subject to payment of costs of Rs. 22,000/- to be paid to the common pool fund of the Official Liquidator, within three weeks; and on 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 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.

13. Liberty is granted to the respondent to proceed with penal action against the petitioner, if so advised, on account of the petitioner's alleged

default in compliance with S.162 of the Companies Act, 1956.

14. The petition is disposed of.