

Rajinder Bawa, Director, Baver Suspension (P.) Ltd. Vs Registrar of Companies

Court: Delhi High Court

Date of Decision: April 27, 2010

Acts Referred: Companies (Court) Rules, 1959 " Rule 94
Companies Act, 1956 " Section 162, 560, 560(1), 560(2), 560(3)

Citation: (2010) 3 CompLJ 448 : (2010) 119 DRJ 302 : (2010) 102 SCL 234

Hon'ble Judges: Sudershan Kumar Misra, J

Bench: Single Bench

Advocate: Pradeep Dhingra, for the Appellant; V.K. Gupta, for the Respondent

Judgement

Sudershan Kumar Misra, J.

This petition has been filed u/s 560(6) of the Companies Act, 1956, seeking restoration of the name of the

M/s. Baver Suspension Pvt. Ltd. to the Register of Companies maintained by the Registrar of Companies. M/s. Baver Suspension Pvt. Ltd.

("company") was incorporated under the Companies Act, 1956 on 16-8-1993 vide Certificate of Incorporation No. 55-54845 as a private

limited company with the Registrar of Companies, NCT of Delhi and Haryana.

2. The petitioner herein is Mr. Rajinder Bawa, who is a member as well as a Director of M/s. Baver Suspension Pvt. Ltd.

3. The Registrar of Companies, i.e., the respondent herein, struck the company's name off the Register due to defaults in statutory compliances,

namely, failure to file annual returns for the period 30-9-2001 to 30-9-2008, and failure to file balance sheets for the period 31-3-2001 to 31-3-

2008. Consequently, the Registrar of Companies initiated proceedings u/s 560 of the Companies Act, 1956, for the purpose of striking the name

of the company of the Register maintained by the Registrar of Companies. It is stated by Counsel for the respondent that the procedure prescribed

u/s 560 of the Companies Act, 1956 was followed, notices as required u/s 560(1), Section 560(2), Section 560(3) and, ultimately, u/s 560(5)

were issued, and that the name of the petitioner-company was published in the Official Gazette on 23-6-2007 at S. No. 1977.

4. The petitioner states 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, copies of Income Tax returns for the assessment years 2005-06, 2006-

07, 2007-08; sales tax returns for the years 2002-08; bank statements for the years 2003-04, 2004-05, 2005-06, 2006-07 and 2007-08 up to

10-9-2008, have been annexed to this petition.

5. It is further stated by the Counsel for the petitioner that the registered office of the company had shifted in 2006, and that the responsibility for

intimating the respondent of that fact was given to M/s. Shaival and Sunil, Chartered Accountants. This was admittedly not done by the said

Chartered Accountants. Consequently, the company did not receive any show-cause notice, nor was it afforded any opportunity of being heard

before the aforesaid action was taken by the respondent. It is categorically stated by the respondent that his office received no intimation of the

change of address of the registered office of the company in the requisite Form 18.

6. It is stated by Counsel for the petitioner that the present petition is within the limitation period stipulated by Section 560(6) of the Companies

Act, 1956, i.e., 20 years.

7. The petitioner avers that the accounts of the company were prepared and audited every year, and that the company had engaged the services of

the aforesaid Chartered Accountants, i.e., M/s Shaival and Sunil, to perform the task of filing the returns with the office of the Registrar of

Companies. It is submitted that the aforesaid Chartered Accountants did not file the returns and other necessary documents with the Registrar of

Companies and did not reveal this fact to the Directors of the company, who were concentrating on other affairs of the company as business

flourished. It is further submitted that it was only in August 2008 that the fact of non-filing of the returns and other documents with the respondent,

as well as the fact that the company's name had been struck off the Register maintained by the respondent, was known to the company, when it

tried to file Form 8 in respect of a charge created on the property of the company with the Central Bank of India.

8. Counsel for the respondent does not have any objection to the revival of the company, subject to the company filing all outstanding statutory

documents, i.e., annual returns for the period 30-9-2001 to 30-9-2008, and balance sheets for the period 31-3-2001 to 31-3-2008, along with

the filing and additional fee, as applicable on the date of actual filing. The certificates of "No Objection" of the Directors, to the restoration of the

name of the company to the Register maintained by the respondent, have also been placed on record.

9. In *Purushottamdas v. Registrar of Companies* (1986) 60 Comp. Cas. 154, the Bombay High Court, 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.

This decision has been followed by this Court in Deepsons Non-Ferrous Rolling Mills (P.) Ltd. v. Registrar of Companies, NCT of Delhi and

Haryana CP No. 285 of 2009; Kakku E. and P. Control P. Ltd. and Another Vs. Registrar of Companies, NCT of Delhi and Haryana, and Sohal

Agencies P. Ltd. and Another Vs. Registrar of Companies, NCT of Delhi and Haryana,

10. Looking to the fact that the company is a running company, that its Director has filed this petition within the stipulated limitation period, and to

the decision of the Bombay High Court, this petition deserves to be allowed. However, a greater degree of care was certainly required from the

company in ensuring statutory compliances. Here, annual returns for the period 30-9-2001 to 30-9-2008, and balance sheets for the period 31-3-

2001 to 31-3-2008, were not filed. Furthermore, the company did not even bother to intimate the RoC of the change of its registered office to a

new address. To my mind, this is not merely a case of negligence on the part of the Chartered Accountants whose services had been engaged. If

any employee, whether part-time or full-time, defaults in his duties, the primary responsibility for ensuring statutory compliances remains that of the

management. At the same time, since there is the possibility of the company to continue functioning, therefore, and as held in Purushottamdas" case

{supra}; it is only proper that the impugned order of the respondent, which struck off the company"s name from the Register of Companies, be set

aside.

11. I might notice that Rule 94 of the Companies (Court) Rules, 1959 states, 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. To my mind, the expression "shall otherwise order" used in Rule 94, as reproduced above, means that although, ordinarily, the costs of the

Registrar of Companies must be paid by the petitioner, however, if the Court considers it necessary to do so, it may give other orders in this behalf

also. From this it follows that it is open to the Court to issue specific orders departing from the norm by imposing lower or no costs at all, or even

levying further additional costs, depending on the circumstances.

13. As has also been held in Santaclaus Toys (P.) Ltd. v. Registrar of Companies, (2010) 154 Comp. Cas. 412 (Delhi) and in Medtech Pharma

India (P.) Ltd. v. Registrar of Companies C.P. No. 241 (Delhi) of 2009, dated 19-4-2010), by this Court; the facts and circumstances of this case

show that it is not merely a case where the interests of justice and requirements of the statute would be met merely by the payment of costs of the

Registrar of Companies. It is difficult to believe that although the company was functioning for eight years, the management was so preoccupied

with other matters that they were unable to spare time to inquire from its staff as to whether the annual returns and other statutory documents were

being filed. It is also equally improbable that the staff of the company was precluded from informing the Managing Director, or other Directors, of

the fact that the statutory returns mandated under the Companies Act are not being filed. There is also no excuse for not having informed the

respondent of the change in address of its registered office. The whole matter has obviously been handled in a very casual manner and must be

deprecated. To my mind, such conduct does not display sound and responsible business functioning expected of companies. The non-filing of

returns and balance sheets with the respondent had also made it impossible for any interested party to find out about the financial health of the

company over a span of eight years.

14. For all these reasons, the restoration of the company's name to the Register maintained by the respondent will be subject to the payment of

Rs. 50,000 as exemplary costs, payable to the common pool fund of the Official Liquidator. In addition, further costs of Rs. 25,000 be paid to the

Registrar of Companies. Costs be paid within three weeks from today. The restoration of the petitioner-company's name to the Register will be

subject to the petitioner filing all outstanding documents required by law and completion of all formalities, including payment of any late fee or any

other charges which are leviable by the respondent for the late filing of statutory returns. The name of the company, its directors and members shall

then, as a consequence, stand restored to the Register of the Registrar of Companies, as if the name of the company had not been struck off, in

accordance with Section 560(6) of the Companies Act, 1956.

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

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

16. The petition is disposed of.