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**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**T.P. No.63/560(6)/NCLT/AHM/2017(New)  
C.P. No. 543/560(6)/NCLT/AHM/2016(Old)**

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 07.02.2018**

Name of the Company: Shobhashree Spinners Pvt. Ltd. & Ors.  
V/s.  
Registrar of Companies, Gujarat

Section of the Companies Act: Sections 560(6) of the Companies Act, 1956

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
	Siddhi. Shah (Representative of M/s. Shilpi Thapar & Associates)	On behalf of	Petitioner	
1.	Amrita A Patel	Adv.	Petitioner	
2.	RITU SHAH FOR THARKAR AND PARIWA	Adv.	Resp. (Shareholder)	

**ORDER**

Learned Advocate Mr. Amrita Patel i/b Learned PCS Mr. Shilpi Thaper present for Petitioners. Learned Advocate Ms. Ritu Shah present for Shareholder.

Order pronounced in open court. Vide separate sheets.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 7th day of February, 2018.

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH**

**T.P. No. 63/560(6)/NCLT/AHM/2017 (New)**

**C.P. No. 543/560(6)/NCLT/AHM/2016 (Old)**

**[Tfd. From Hon'ble High Court of Gujarat]**

**In the Matter of:**

1. M/s. Shobhashree Spinners  
Private Limited,  
Registered Office at  
205/1, New Cloth Market,  
Raipur Gate,  
Ahmedabad-380002.
2. Mr. Surendrakumar Agarwal  
Director & Member of  
Shobhashree Spinners  
Private Limited,  
Residing at 11, Nilparana  
Society, Opp: L.I.C. Flats,  
Paldi, Ahmedabad-380007 : Petitioners.

Versus

The Registrar of Companies, Ahmedabad  
ROC Bhavan, CGO Complex,  
Near Ankur Char Rasta, Naranpura,  
Ahmedabad-380013 : Respondent.

Order delivered on 7<sup>th</sup> February, 2018.

**Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).**

**Appearance:**

Ms. Megha Jani, learned Advocate with Ms. Shilpi Thapper, learned PCS with Ms. Amrita Patel, on behalf of Shilpi Thaper & Associates, learned Advocates for the Petitioners.

Mr. Navin Pahwa, learned Senior Advocate with Ms. Natasha Sutaria, learned Advocate for objector, Mr. Rameshchandra Lajpatrai Agarwal.

None present for Registrar of Companies.

**ORDER**

1. M/s. Shobhashree Spinners Private Limited and its Director-cum-Member, Mr. Surendrakumar Agarwal filed Company Petition No. 543 of 2016 before the Hon'ble High Court of Gujarat, Ahmedabad under Section 560 sub-section (6) of the Companies Act, 1956, seeking restoration of the Company, M/s. Shobhashree Spinners Private Limited in the Register of Companies maintained by the Registrar of Companies, Ahmedabad.

2. The Hon'ble High Court of Gujarat, in view of Rule 3 of The Companies (Transfer of Pending Proceedings) Rules, 2016, transferred the Company Petition No. 543 of 2016 to the National Company Law Tribunal, Bench at Ahmedabad, and the said Petition came to be registered as "TP No. 63/560(6)/NCLT/AHM/2017".

3. The following are the facts, that are necessary for disposal of this Petition;

3.1. M/s. Shobhashree Spinners Private Limited [hereinafter referred to as "SSPL"] was originally incorporated on 15<sup>th</sup> May, 1976 under the name and style of Shobhashree Dyeing and Printing Private Limited with a main object of carrying on the business of processing, dyeing and printing textile products. Subsequently, the name of the Company was changed to "M/s. Shobhashree Spinners Private Limited". Since the date of incorporation, the Registered Office of SSPL is situated at 205/01, New Cloth Market, Raipur Gate, Ahmedabad.

3.2. Mr. Surendrakumar Agarwal, who is shown as "Petitioner No.2" in this Petition is the Promoter/Director of SSPL. He held 15 shares in SSPL as on 31<sup>st</sup> March, 2007.

3.3. It is stated by the Petitioners that on account of frequent change in textile policy Petitioner No.1 Company SSPL could not

sustain its business activities and had temporarily put its operation on hold. It is also stated by the Petitioners that in 2004 health of father of Petitioner No.2, namely late Shri Lajpat Rai Agarwal who was also a Director of the Company began to deteriorate due to which Petitioner No.2 was unable to concentrate on business operations and inadvertently failed to file Annual Returns of the Company with the Registrar of Companies ("ROC" for short). The Annual Returns of the Company for the year ended 31<sup>st</sup> March, 2003 showed that the Company had considerable investments in fixed assets and equity shares of Companies without any substantial liabilities. SSPL had not lost its financial substratum but had temporarily lost business activities with the intention to revive the operations in future. It is stated that the Petitioners came to know from the Master Data maintained in the website of MCA that SSPL was struck off from the Register of Companies with effect from 26<sup>th</sup> July, 2007. It is stated by the Petitioners that no notice had been received by the Petitioners from the ROC before striking off the Company. On enquiry Petitioners came to know that SSPL was struck off under the provisions of Section 560 of the Companies Act, 1956 [hereinafter referred to as "the Act"] and that Respondent had shown that he has addressed three notices to SSPL all with date 26<sup>th</sup> July, 2007. It is further stated by the Petitioners that ROC had struck off the Company from the Register of Members without following the procedure laid down under Section 560 of the Act; without giving any opportunity to the Petitioners to present their case; and without taking into the financial statements filed by SSPL for the year ended 31<sup>st</sup> March, 2003.

3.4. It is further stated that SSPL is holding about 1600 equity shares of one M/s. Patel Mills Limited which Company is in liquidation as per the orders of the Hon'ble High Court dated 22<sup>nd</sup> January, 1996. SSPL is still lawful shareholder of the equity shares of M/s. Patel Mills Ltd. The Official Liquidator after paying up all the liabilities of M/s. Patel Mills Ltd., is left with some surplus which is to be distributed among the shareholders of M/s. Patel Mills Ltd. SSPL being lawful owner of 1600 equity shares of M/s. Patel Mills

Ltd., is entitled to receive the dividend but for the illegal, invalid and erroneous striking out of the name of the Company SSPL from the Register. According to the Petitioners, the amount expected to be received as dividend by SSPL is proposed to be utilized for the purpose of reviving the business activities of the Company which would enure to the benefit of the shareholders and public at large. Petitioner No.2 by his letter dated 21<sup>st</sup> March, 2016 raised objections for transferring 1600 shares of M/s. Patel Mills Ltd held in the name of SSPL to Mr. Rameshchandra L. Agrawal, one of the shareholders of SSPL by ignoring the rights of Petitioner No.2. Petitioners stated that there are no creditors either secured or unsecured of SSPL.

4. Shri Rameshchandra Lajpatrai Agarwal, who is none other than brother of the Petitioner No.2 and who is also the shareholder in SSPL, filed Reply opposing the restoration of SSPL. It is stated by Shri Rameshchandra L. Agarwal that he is holding 20 shares in SSPL. The first objection of Shri Rameshchandra L. Agarwal is that SSPL cannot seek restoration of the Company since it is struck off by the impugned Notices dated 26.7.2007, and that when SSPL is not in existence, Petitioner No.2 cannot file any Affidavit on behalf of SSPL.

4.1. It is stated that Board of Directors of SSPL passed a Resolution in their meeting held on 19.3.2004 resolving to seek striking of the name of the Company under Section 560 of the Act and subsequent to the board meeting a letter dated 29.3.2004 was addressed to the ROC requesting to strike off the name of the Company. It is also stated that basing upon the said resolution and the letter sent by the SSPL, ROC struck off the name of the Company from the Register of Companies maintained by the ROC on 26.7.2007. According to the Respondent, these facts reflect in the order dated 1.3.2012 made by the Official Liquidator which order came to be passed pursuant to the directions of the Hon'ble High Court of Gujarat in Company Petition No. 278 of 2011 in order dated 12.12.2011. It is the specific case of Mr. Rameshchandra L. Agarwal

that the Company has been struck off on the request made by the Company.

4.2. It is further stated by Mr. Rameshchandra L. Agarwal that SSPL filed an Affidavit dated 29.3.2004 duly sworn before Notary stating that SSPL has assets worth 'Nil' and liabilities 'Nil' and that Affidavit was filed in order to get the Company struck off under the scheme for 'Exit'. It is also stated in the Affidavit dated 29.3.2004 that the Company has no assets and liabilities and it has not carried any business. According to Mr. Rameshchandra L. Agarwal the action taken by the ROC is according to law and justifiable one.

4.3. Coming to the transfer of shares of M/s. Patel Mills Ltd., held by SSPL, according to Mr. Rameshchandra L. Agarwal Petitioner No.2 has given no objection for transfer of 800 shares in his name and in that connection letter dated 3.1.2015 was executed by the 2<sup>nd</sup> Petitioner. According to Mr. Rameshchandra L. Agarwal even in respect of remaining 800 shares of M/s. Patel Mills Ltd he has submitted the Transfer Form in the office of Official Liquidator with a letter dated 12.5.2016.

5. Pursuant to the Notice issued by this Tribunal, the ROC filed Representation. It is stated by the ROC that as per the provisions of Section 560 of the Act notices were issued to the SSPL under Section 560(1), 560(2), 560(3) and 560(5) of the Act on 26.7.2007 due to non-filing of statutory returns; the Company had not responded to the notices issued by the ROC, Gujarat; and the Company had not filed statutory returns which are balance sheets and annual returns with the ROC. The ROC thought that it is a fit case to strike off the name of the Company on suo motu basis and accordingly issued final notice under Section 560(5) of the Act on 26.7.2007 and the same was published in the official gazette of the Government of India in due course of time. The ROC has also stated in his Representation that he has no objection if the Tribunal passes an appropriate order for restoring the name of the Company under

Section 560(6) of the Act subject to the filing of overdue statutory returns and a publication of notice in two leading newspapers circulating in the district and in official gazette in the Government of India in regard to the restoration of the name of the Company.

6. Heard the arguments of learned PCS for the Petitioners and learned Senior Advocate appearing for Shareholder, Mr. Rameshchandra L. Agarwal. Basing on the pleadings made by both the sides and the rival contentions, the following are the points that emerge for determination;

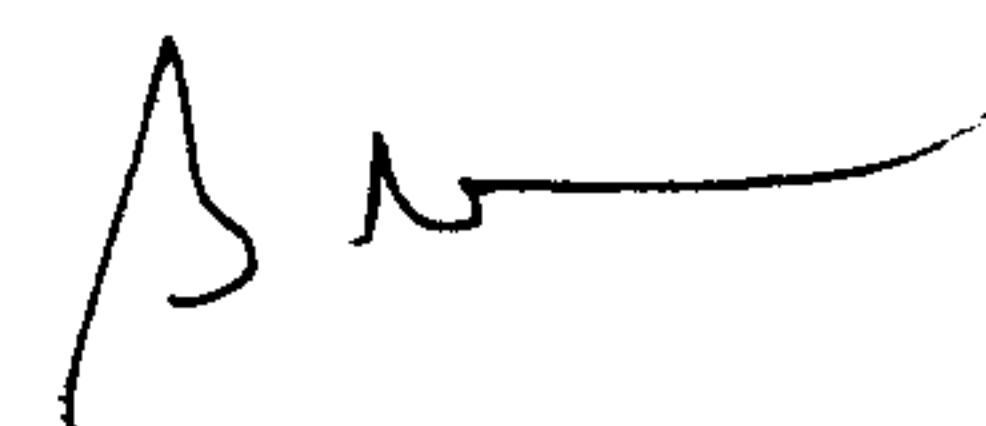
(i) Whether the SSPL was struck off by the ROC under the Simplified 'Exit' Scheme ('SES') on the request of the Company or on the ground that the Company has not filed statutory returns inspite of the notice;

(ii) Mr. Rameshchandra L. Agarwal one of the shareholders of SSPL opposed for restoration of the Company in the Register of Companies mainly on the ground that the Company voluntarily applied for striking off the name of the Company under the SES and therefore the Company is not entitled to seek restoration of its name.

7. In support of his contention, learned Senior Counsel appearing for Mr. Rameshchandra L. Agarwal cited the following decisions;

(a) Decision of **Hon'ble NCLT, Principal Bench, New Delhi** in **Company Petition No. 528(ND)/2015** in the matter of Revival of Delhite Niphko (India) Private Ltd;

(b) Decision of **Hon'ble National Company Law Appellate Tribunal, New Delhi**, in **Company Appeal (AT) No. 202 of 2017** in the matter of **Delhite Niphko (India) Pvt.Ltd.& Anr. vs. ROC**, Delhi and Haryana;



(c) Decision of **Hon'ble National Company Law Appellate Tribunal, New Delhi** in **Company Appeal (AT) No. 197 of 2017** in the matter between ***Rahul Rice Mills Pvt.Ltd. and ROC, New Delhi.***

8. In the above said three decisions, it is held that when the Company voluntarily chose to have its name struck off from the Register being maintained by the ROC and when it was not an act done suo motu by the ROC, it is not open to the Company to seek for restoration of its name in the Register of Companies under sub-section (6) of Section 560 of the Act.

9. On behalf of the Petitioners, the following decisions are cited on the aspect whether a Company can seek restoration of its name in the Register of Companies maintained by the ROC when the Company itself chose to opt for voluntary Exit Scheme and got its name struck off;

(a) Decision of **Hon'ble Delhi High Court** in **Company Petition No. 200 of 2011** in the matter between **Siddhant Garg. Vs. Registrar of Companies**, reported in **2012 SCC Online Del.802**;

In the above decision, the Company was struck off from the Register of Companies under SES of 2003. The Creditors of the Company filed a Petition aggrieved by the said striking off. In that decision, in Para No.16 after perusing Section 560, it is held as follows;

*"16. From a perusal of the said Section, it is apparent that this Court on an application filed either by the company or by any shareholder or by a creditor can restore the company, provided it is carrying on business or if this Court is convinced that it is 'just' to restore the company."*

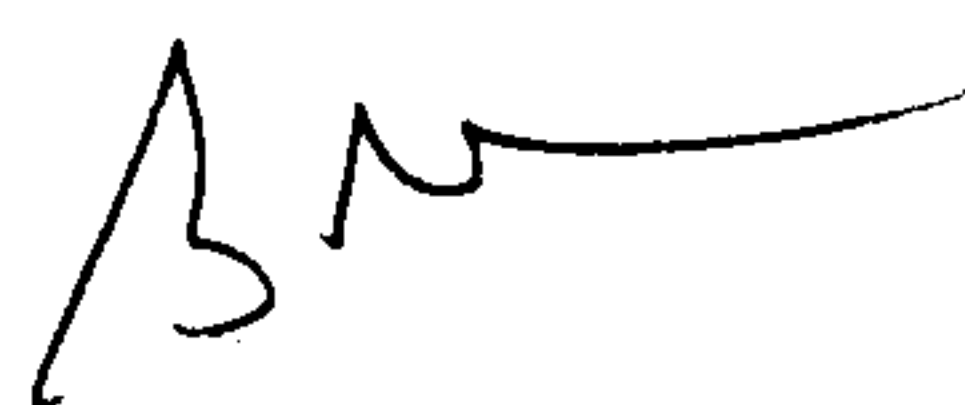
(b) Decision of **Hon'ble High Court of Madhya Pradesh** in the matter between **Vibrij Fiscal Services P Ltd. And Registrar of Companies** reported in **LAWS (MPH) 2010 (2) 119.**

In the above decision, the Company basing on the Resolution of the Board of Directors made an application before the ROC under SES framed by the Government of India under Section 560 of the said Act. The Registrar in exercise of his powers under Section 560(3) of the Act declared the company “defunct” and published the said declaration in the Official Gazette in terms of the provisions contained in Section 560 of the Act. In that case, shareholders of the company took a joint decision and decided to revive the company and accordingly filed a petition under Section 560(6) of the Act seeking a direction to the ROC to restore the Company. The Hon’ble Madhya Pradesh High Court allowed the petition for restoration and directed the Registrar accordingly.

(c) Decision of the **Hon’ble High Court of Andhra Pradesh** in Company Petition No. 250 of 2015, in the matter of ***Velamati Chandrasekhara Janardan Rao Vs. M/s. Sree Raja Rajeswari Paper Mills Limited And Another***, reported in **LAWS (APH) 2016 (7) 33**.

In the above said decision also, on the basis of a Resolution passed by the Board the name of the Company was struck off from the Register of Companies but later on a Shareholder of the Company who is the Chairman of the Board of Directors of the Company having got knowledge about certain assets of the Company at a later point of time moved the Company Court for restoration of the Company. The Hon’ble Andhra Pradesh High Court, after giving elaborate reasons, allowed the Petition for restoration of the Company and accordingly gave directions to the Registrar of Companies.

9.1. In the case on hand, this Petition is not filed by the Company alone. It is also filed by a Member of the Company, i.e., the 2<sup>nd</sup> Petitioner. No doubt, the 2<sup>nd</sup> Petitioner is also a Director of the Company.



10. The decisions relied upon by the learned Counsel for the Petitioners go to show that a Company cannot be restored if it chooses to opt for SES. Those decisions were rendered by the Hon'ble NCLT, Principal Bench, Delhi and the Hon'ble National Company Law Appellate Tribunal, New Delhi. The decisions rendered by the Hon'ble Madhya Pradesh High Court, the Hon'ble Delhi High Court and the Hon'ble Andhra Pradesh High Court, relied upon by the learned Counsel for the Petitioners go to show that a Company can be restored if there are just grounds even in case if the Company was struck off under the Simplified Exit Scheme.

11. In the case on hand, according to the Petitioners, the Company was struck off by the Registrar of Companies, suo motu, under Section 560(5) without giving notices by stating the reason for non-filing of statutory returns by the Company.

12. According to the learned Senior Advocate appearing for the objector, Mr. Rameshchandra L. Agarwal, the Company was struck off under the SES. To support his case, Mr. Rameshchandra L. Agarwal is relying upon certain portions in the order of the Official Liquidator dated 1<sup>st</sup> March, 2012. The relevant portion of the order is as follows;

*"7.3. Further the transaction of sale of shares is entered into on 01.03.2004. The directors of M/s. Shobhashree Spinners Pvt.Ltd. submitted an affidavit dated 29.03.2004 under the authority of resolution of board of directors in a meeting held on 19.03.2004 (very soon after entering into transaction of sale of shares on 01.03.2004) to the Registrar of Companies on 29.03.2004 with a request to struck off the name of M/s. Shobhashree Spinners Pvt.Ltd. from the Register of Companies u/s. 560 of the Companies Act, 1956. Thereupon, the Registrar of Companies, after following the procedure, has published a notice in the Official Gazette on 26.07.2007 u/s. 560(5) of the Companies Act 1956 notifying that the name of M/s. Shobhashree Spinners Pvt.Ltd. has been struck off the register and the said company is dissolved. Therefore by*



*statutory presumption and by necessary implication M/s. Shobhashree Spinners Pvt.Ltd. stood dissolved on 26.07.2007.”*

Mr. Rameshchandra Lajpatrai Agarwal also relied upon Indemnity Bond and Affidavit dated 29<sup>th</sup> March, 2004 given by Shri Surendrakumar Agarwal and the Affidavit given by Shri Lajpatrai Agarwal wherein it is stated that the Company is defunct and the requested the ROC to strike off the name under Section 560 of the Act.

13. Contra to these documents, Petitioners placed on record three notices issued by ROC on 26.7.2007 under Section 560 sub-section (1), 560 sub-section (2), and 560 sub-section (3) and submitted that on 26.7.2007 itself the ROC struck off the Company under Section 560 sub-section (6) of the Act and thereafter issued publication in the Gazette. The ROC in his Representation also clearly stated that M/s. Shobhashree Spinners Private Limited was struck off from the Register of Members after issuing notices under Section 560(1), (2) and (3) after issuing final notice under Section 560(5) of the Companies Act on suo motu basis for the reason of non-filing of statutory returns. No document is placed on record by Mr. Rameshchandra L. Agarwal to show that the Indemnity Bond and the Affidavit dated 29<sup>th</sup> March, 2004 were filed before the Registrar of Companies and the ROC acted upon those documents. Mr. Rameshchandra L. Agarwal failed to place any order of the ROC that basing upon the Resolution of the Company or basing on the Affidavit and Indemnity Bond dated 29.3.2004, the Company was struck off. Therefore, the order, dated 1<sup>st</sup> March, 2012, of the Official Liquidator is not based upon any order of the Registrar of Companies. Moreover, the notices issued by the ROC and the Representation of the ROC filed before this Tribunal clearly go to show that the Company was struck off, *suo motu*, on the ground that annual returns were not filed by the Company. Therefore, it is not a case where the Company was struck off because it opted to have an Exit under 'SES'. To further clarify this aspect, Mr. Rameshchandra L. Agarwal himself

enclosed a Circular dated 25<sup>th</sup> March, 2013 issued by the Government of India along with his Reply Affidavit. A perusal of the said Circular goes to show the procedure to be followed in the case of Simplified Exit Scheme as follows;

(1) *"The Registrar of Companies on receipt of application shall publish in the prescribed proforma (Annexure 'D') in one local and in one national daily, the list of companies that have applied, and are under consideration, for being struck off u/s 560 of the Companies Act, 1956.*

(2) *ROC's shall send this list of companies to the Department to enable it to put the list on the web sites of the Department/ICAI/ICSI; and also to Indian Banks Association (IBA) at Unit No.1, 2 and 4, 6<sup>th</sup> Floor, Centre I Building, World Trade Centre Complex, Cuffe Parade, Mumbai-400005, for circulation amongst their constituents/members.*

(3) *Thirty days after publication as aforesaid and 45 days after dispatch of the proforma to IBA, if no objections are received, and if the case is otherwise in order, the Registrar of Companies will strike off the name of the companies from the Register and get them duly published in the Official Gazette."*

But the above said procedure has not been followed by ROC, Since the striking of name of company was not under 'SES'.

14. In view of the above finding of facts, it is not necessary to go into the legal aspect whether the Company that chose to exit under the Simplified Exit Scheme can be restored or not.

15. Now coming to the aspect whether the Company, SSPL can be restored or not, it appears that the Company was having assets by the year 2003. The material on record clearly go to show that there is a dispute with regard to 1600 shares of M/s. Patel Mills Ltd., held by SSPL, between the 2<sup>nd</sup> Petitioner and Mr. Rameshchandra Lajpatrai Agarwal. The Hon'ble High Court of Gujarat by Order dated 10.2.2015 passed in Company Application No. 196 of 2012 upheld the order of the Official Liquidator dated 1<sup>st</sup> March, 2012 wherein the request of Mr. Rameshchandra L. Agarwal was rejected. Mr. Rameshchandra L. Agarwal again filed Miscellaneous Civil

Application (OJ) No. 105 of 2015 in Company Application No. 196 of 2012 to review the order dated 10.2.2015 passed in Company Application No. 196 of 2012. The Hon'ble High Court of Gujarat by order dated 5<sup>th</sup> August, 2015, directed the Official Liquidator to consider the question of transfer of shares raised by Mr. Rameshchandra L. Agarwal in the light of the letter given by the 2<sup>nd</sup> Petitioner on 30.11.2013 stating no objection to transfer 800 shares in the name of Mr. Rameshchandra L. Agarwal. The Hon'ble High Court of Delhi, in the decision of **Siddhant Garg** (Supra), referred to the observations made in its own decision in the case of *Kesinga Paper Mills Private Limited v. Ministry of Corporate Affairs*, reported in 2010 (101) SCL 321 (Del.) as follows;

"10. Further, when a litigation is pending by or against a company, it is only proper that its name be restored to the Register to enable the matter to be carried to its conclusion, as has been held by this Court in Indian Explosives Ltd. v. Registrar of Companies, CP No. 185/2008, decided on 21<sup>st</sup> April, 2010".

In the case on hand, admittedly, there is a litigation/dispute pending between the 2<sup>nd</sup> Petitioner and Mr. Rameshchandra L. Agarwal on respect of the shares of M/s. Patel Mills Ltd., held by the Company, SSPL. More over, it is stated by the Petitioners that they intend to run the Company. Petitioners also filed the Consent Letters of other shareholders. It appears that the majority of the shareholders are willing to revive the Company. It appears that, it is only Mr. Rameshchandra Lajpatrai Agarwal who is opposing the restoration of the Company.

16. The meaning of word 'just' is discussed by the Hon'ble Delhi High Court in **Siddhant Garg** (Supra), in Para No. 18 as follows;

"18. Further in the opinion of this Court, the expression 'just' would mean that it is fair and prudent from

*a commercial point of view to restore the company. The Court has to examine the concept of 'justness' not exclusively from the prospective of a creditor or a shareholder or a debtor, but from the prospective of the society as a whole. Once this Court is convinced that it is just to restore the company, then to refuse the relief because some third party may be inconvenienced by it, would be harsh."*

17. The Hon'ble Andhra Pradesh High Court in the Judgment delivered in the case of **Velamati Chandrasekhara Janardan Rao** (*Supra*), in Para No. 11 has held as follows;

*"11. In M.A. Panjwani v. Registrar of Companies and another, considered 4 scope of Section 560(6) and the meaning of words 'otherwise just' held as follows;*

*11. Under sub-section (6) of Section 560 of the Companies Act, 1956 the company court has the power to order restoration of the company's name to the registrar of companies on the application made by the company itself or its member or creditor. Such an application can be made at any time before the expiry of 20 years from the publication of the notice for striking off the name published in the official gazette. There are only two circumstances in which the company court can exercise the power. The first is when it is satisfied that the company was, at the time of striking off its name from the register, carrying on business or was in operation. The second circumstance is when it appears to the company court that it is "otherwise just" that the name of the company restored to the register. Obviously petitioner is not the company itself therefore, he has to be either a member creditor. It was submitted on behalf of ROC that the petitioner is neither member nor a creditor of the company.*

*14. Quite apart from the above position, the sub-section recognises that if the Court is of opinion that it is "otherwise just" that the company be restored to the register, restoration can be ordered. The argument addressed on behalf of the ROC to the effect that the word "just" has to be understood in the background of the specific language of the sub-section on the basis of the principle of ejusdem generis does not appeal to me. As I read the sub-*

section, there are two situations in which the company court can order restoration. One is when the company was carrying on business or was in operation at the time of striking off its name. The second situation, which is an alternative situation, is one where it appears "just" to the company court that the name of the company be restored to the register. I do not see any scope for the application of the rule of ejusdem generis because of the presence of the words "or otherwise" between the words providing for the two types of situations. The presence of the words "or otherwise" denotes that even if the company was not carrying on any business or was not in operation at the time of striking off, it is still open to the company court to order restoration if it appears to the Court to be "otherwise just". I may add that the words "or otherwise" have not been generally construed ejusdem generis as seen from the judgments of the Supreme Court in *Lilawati Bai v. State of Bombay*: (AIR 1957 SC 521) and *Kavatlappara Kottarathil Kochuni v. State of Madras*: (AIR 1960 SC 1080).

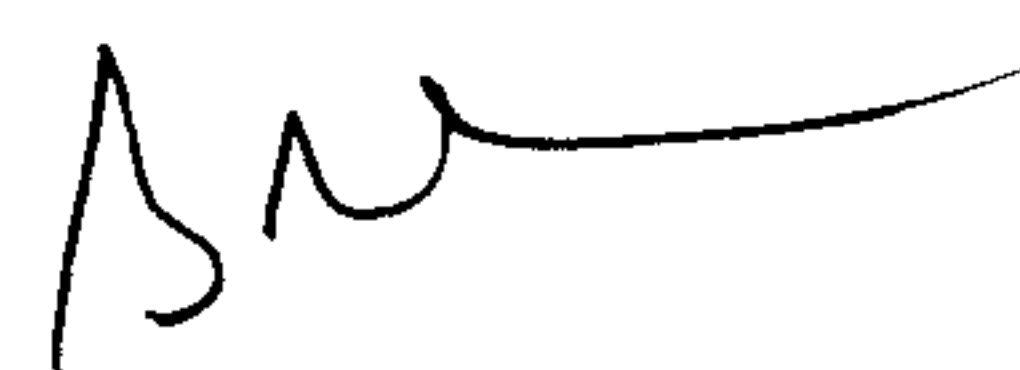
15. In *Helen C. Rebella v. Maharashtra S.R.T.C.*: (1999) 1 SCC 90, it was observed by the Supreme Court that the word "just" denotes equitability, fairness and reasonableness having a large peripheral field. In understanding its scope, one must take into account all the facts and circumstances of the case and then decide what would be just and equitable. In *M.A. Rahim and another v. Sayari Bai*: (AIR 1973 Mad.83) it was held by a Division Bench of the Madras High Court that the word "just" connotes reasonableness and something conforming to rectitude and justice, something equitable and fair. In *Sidhant Garg and another v. Registrar of Companies and others*: (2012) 171 Comp.Cas.326 it was held by this Court (Manmohan, J.) that the word "just" would mean that it is fair and prudent from a commercial point of view to restore the company and that the Court has to examine the concept of "justness" not exclusively from the perspective of a creditor or a member or a debtor, but from the perspective of the society as a whole. The special facts of the present case attract this principle. The respondent has received monies from the petitioner. He was entrusted with the job of finding a house for the petitioner in Delhi. The averments in the petition prima facie indicate that the property "Jodhpur Gardens" was purchased not in the name of the petitioner but in the name of the company. The shares held

*by the petitioner in the company were also taken away from him without his knowledge or consent. The settlement entered into between Quli and Singhania by which the shares were transferred to Quli was held by this Court to be collusive. These are disputes which are pending in the trial court. The company is a defendant in the trial court. If its name is not restored, it would cause injustice to the petitioner and also cause prejudice to the trial as a whole. The message sent to the society as a whole, if the name of the company is not restored to the register, would be quite disturbing. The petitioner has to be protected in the litigation pending before the trial court. As observed by the Indore Bench of the Madhya Bharat High Court in Bhogi Lai Chimun Lai v. Registrar, Joint Stock Companies: AIR 1954 M.B. 70, the effect of the order of the Registrar of Companies striking off the name of the company from the register would be that the company will be deemed to be dissolved and it may be difficult for the petitioner to obtain any relief in the suit pending before the trial court. It is not also known whether the company had brought to the notice of the ROC about the pendency of the litigation in the trial court. If it had, perhaps the ROC would not have struck off the name from the register."*

18. Considering all the aforesaid aspects, this Tribunal is of the view that it is just to restore the name of the Company in the Register of Companies maintained by the Registrar of Companies, Gujarat.

19. In view of the above, this Petition is allowed. The Registrar of Companies, Gujarat, Dadra & Nagar Haveli is directed to restore the name of the Company, M/s. Shobhashree Spinners Private Limited to the Register of Companies upon the Petitioners complying with the following conditions;

(i) The Petitioners shall file all over due statutory returns with fee and additional fee as required under the Companies Act;

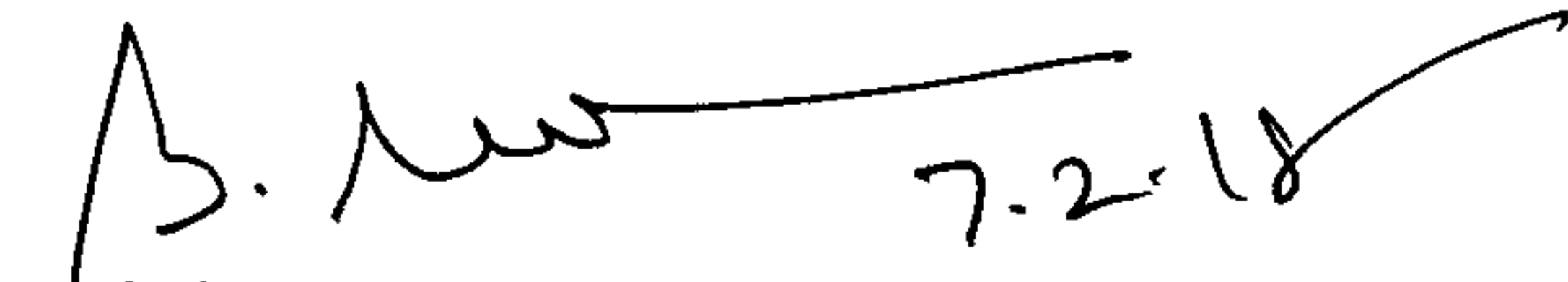


(ii) The Petitioners shall publish a Notice in leading newspapers circulating in the District as well as in the Official Gazette of the Government of India with regard to the restoration of the name of the Company in the Register of Companies maintained by the Office of the Registrar of Companies, as per the draft notice approved by the Registrar of Companies at the expenses of the Petitioners;

(iii) The Petitioners shall also pay an amount of Rs. 10,000/- to the Ministry of Corporate Affairs by way of Demand Draft drawn on Nationalised Bank towards the cost incurred by the Government in striking off the name of the Company within 3 (three) weeks from the date of this order.

20. The Petition stands disposed of accordingly.

Signature:

  
**Sri Bikki Raveendra Babu,**  
**Member (Judicial)**

Rmr..