

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI**

**Company Petition No.528 (ND)/2015**

**Present: CHIEF JUSTICE (Retd.) SHRI M.M.KUMAR, HON'BLE PRESIDENT**

**&**

**SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**In the matter of:**

**COMPANIES ACT 1956 (1 OF 1956) SECTIONS 560(6)**

**AND**

**In the matter of Scheme of Revival of**

**DELHITE NIPHKO (INDIA )PRIVATE LTD.**

**.....Petitioner No.1 Company**

**AND**

**MR. INDER DEV SHARMA**

**.....Petitioner No.2**

**Company**



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**VERSUS**

**REGISTRAR OF COMPANIES DELHI AND HARYANA**

.....Respondent

**ADVOCATE FOR THE PETITIONERS:**  
**Advocate**

..... Mr. Naresh Kumar,

**ORDER**

This is a joint petition filed by the petitioners namely M/s Delhite Niphko (India) Pvt. Ltd. and one Mr. Inder Dev Sharma under the erstwhile provisions of Section 560 (6) of the Companies Act, 1956 before the Hon'ble High Court of Delhi seeking restoration of the name of the first petitioner company on the Register of the Respondent, namely Registrar of Companies, NCT of Delhi and Haryana. However, in view of the notification of the provisions of Companies Act, 2013 and taking into consideration notification REG/MO.B.L-33004/99 dated 07.12.2016 issued by the Ministry of Corporate Affairs and in particular clause 3 thereof, the above Company Petition has been transferred by the Hon'ble High Court of Delhi vide order dated 10.01.2017 to the Principal Bench, National Company Law Tribunal, New Delhi. As directed, the matter was listed before this Bench on 09.03.2017 as well as on subsequent dates of hearing. This Tribunal heard the

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submission made on behalf of the petitioner as well as the Registrar of Companies, NCT Delhi and Haryana who has been impleaded as the respondent in the above Petition. The facts in brief as can be culled out from the Petition and based on the submissions made on behalf of the Petitioners by their Learned Counsel are as follows:

2. The 1st petitioner Company as named above was incorporated on 4<sup>th</sup> April, 1979 and the respondent had also issued a Certificate of Incorporation bearing No. U74999DL1979PTC009536. It is further discerned from the perusal of the Petition that in the year 2003, the Company had opted to avail the Simplified Exit Scheme (SES-2003) for having its name struck off from the register of Respondent as a defunct Company.

3. In the absence of any correspondence from the Respondent in relation to the application filed under SES-2003, the Petitioner has stated that in the year 2006 it had given a letter to the Respondent seeking to withdraw the application filed earlier to have its name struck off from the Register maintained by the Respondent as a defunct company.

4. While so, it has recently come to the knowledge of the first Petitioner Company that its name has been struck off and that the withdrawal letter which



was given in the year 2006 has not been acted upon and in view of the same, the Board of Directors of the Petitioner Company on 4.7.2015, had considered to apply for the revival of the Petitioner No. 1 Company under the provisions of the erstwhile Companies Act, 1956. Further, it is also averred that the Petitioner Company has been regular in filing the income Tax Returns during all these years and in view of the above facts, the following reliefs have been prayed for:

- A. Pass appropriate orders under Section 560(6) of the Companies Act, 1956, for revival/restoration of the name of the Petitioner No.1 Company – Delhite Niphko (India) Pvt. Ltd. in the Register of Companies maintained by the Registrar of Companies, Ministry of Corporate Affairs, New Delhi;
- B. Pass appropriate orders under Section 560(6) of the Companies Act, 1956, for placing the Petitioner No.1 Company and all other persons in the same position as nearly as may be as if the name of the Petitioner No.1 Company had not been struck off;
- C. Direct the office of the Registrar of Companies to allow the Petitioner No.1 Company to file the certified copy of the Order of this Hon'ble Court within the requisite time, without filing Form 61 and/or other requisite form in view of the fact that technically e-filing is not possible for the Company whose name has been struck off; and
- D. Pass such other/further order(s) as this Hon'ble Court may deem fit and proper.

5. The Respondent has filed detailed reply and a perusal of which discloses that the Petitioner Company has not filed the statutory documents in the form of balance sheet and annual accounts made upto 31.3.2006 and as per the relevant



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provisions of the Companies Act, 1956 they are liable for punishment/penalty. It is further stated in the objections filed by the Respondents that the 1st Petitioner itself had under the SES,2003 had opted to have its name struck off from the Register of the Respondents and in pursuant to the same the name of the First Petitioner was struck off from the Register. A Notification under Section 560(5) was also issued and published in the Official Gazette of India on 8.9.2006, as evident by Annexure-I of the reply.

6. Learned Counsel for the Respondent also strenuously stated that the First Petitioner had exercised the option voluntarily to have its name struck off from the Register being maintained by the Respondents and it was not an act done suo moto by the Respondent's. In the above circumstances the option of sub-Section (6) of Section 560 of the Companies Act, 1956 to have its name restored to the Register of the Respondents shall not be available to it as it has been done on its own volition and in the circumstances the Judgement of the Hon'ble High Court of Madras rendered in the case of Dasaprakash Private Limited v. Registrar of Companies (being in CP No. 31/2012 decided on 3.8.2012 a copy of which was filed before this Tribunal) will apply.



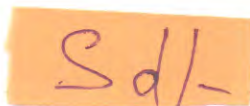


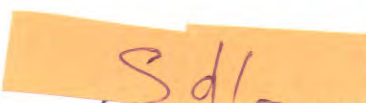


7. We have carefully considered the rival submissions of the parties before us. It is evident from the fact as narrated above that the First Petitioner Company has on its own volition submitted an application under the relevant Scheme of 2003 for having its name struck off from the Register maintained by the Respondents. Under similar circumstances the Scheme being of 2011 titled as Fast Track Exit Scheme, 2011 instead of SES,2003, this Tribunal after detailed discussions has already held in the case of Rahul Rice Mills Private Limited v. Registrar of Companies (CP No.171/2016 decided on 21.4.2017) that subsequent petition under Section 560(b) will not be maintainable.

8. In view of the above this Petition is dismissed. No cost.

01.05.2017

  
(CHIEF JUSTICE M.M.KUMAR)  
PRESIDENT

  
(R.VARADHARAJAN)  
MEMBER (JUDICIAL)