

IN THE NATIONAL COMPANY LAW TRIBUNAL  
AT NEW DELHI

Company Petition No. 121/2017

In the matter of

M/s. Gill Heavens Farms Pvt. Ltd.

....Petitioner

Versus

The Registrar of Companies

...Respondent

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

Order Delivered on - 17.10.2017

Present- Mr. Sumeet Khanna, CA

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

1. The present petition has been filed under section 252(3) of the Companies Act, 2013 (hereinafter referred as to the 'Act') by. M/s Gill Heavens Farms Pvt. Ltd (hereinafter referred to as the 'Petitioner Company'), praying for restoring its name in the Register of companies maintained by the Registrar (hereinafter referred to as the 'Respondent').
2. The Petitioner Company was incorporated with the Registrar of Companies, N.C.T. of Delhi and Haryana, under the Act, vide certificate of incorporation dated 28.05.1997. Its registered office is stated to be situated at

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66, 6<sup>th</sup> Floor, Chiranjiv Tower, 43, Nehru Place, New Delhi-110019, within the jurisdiction of this Court.

3. The main objects of the Petitioner Company as stated in the Memorandum of Association are, inter alia, as follows:-

*“i.To carry on the business of dairy farming, stud farms, animal breeding including sheep, horses, rabbits, pigs, fisheries and other such operations and dairy farm produce of all kinds, milk, cream, butter, cheese, poultry, eggs, fruits and vegetables, condensed milk.”*

4. The name of the Petitioner Company was struck off from the Registrar of Companies under Section 560 of the 1956 Act, by a suo moto action of the Respondent, after issuing the notification under Section 560(5) in the Official Gazette dated 23.06.2007- 29.06.2007. The aforesaid action was taken on account of failure of the Petitioner Company to file its statutory returns and other documents since its incorporation, giving rise to the reasonable belief that the company was not operational.

5. In the Reply Affidavit filed by the Respondents, it is submitted that due steps had been taken in accordance with the statutory provisions before striking off the name of the petitioner company from their register. The action was initiated as the Petitioner Company did not file the Balance Sheet and Annual Returns since incorporation which was in contravention of section 159/220 of the 1956 Act, which compelled the RoC to believe that the petitioner company was not carrying on any business and not in operation.

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Further, the notices issued u/s 560 are not readily traceable as the records of RoC, NCT of Delhi & Haryana have been shifted to Indian Institute of Corporate Affairs (IICA).

6. The respondents however have failed to rebut the allegations that due steps were not taken in compliance of the mandatory provisions of Section 560(1), 560(2) and 560(3) of the 1956 Act, which are a pre requisite for striking off the name of a Company from its Register. In the absence of any material to substantiate adherence to the mandatory provisions, the impugned action of the Respondent would be arbitrary, illegal and against the principles of natural justice.

7. The Petitioner submits that the present petition is within the period of limitation stipulated by Section 560(6) of the Act.

8. The facts of the case are similar to the law laid down in the matter of ***Purushottamdass and Anr. (Bulakidas Mohta Co. P. Ltd.) V. Registrar of Companies, Maharashtra, & Ors., (1986) 60 Comp Cas 154 (Bom)***, wherein the **Hon'ble Bombay High Court** 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 period of 20 years, and give them an opportunity of carrying on the business only after the***

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*company judge is satisfied that such restoration is necessary in the interest of justice”*

The above said judgement was also followed by the **Hon'ble High Court** of Delhi in Co. Pet. 23/2016 titled as “**Ascot Shoes Private Limited Versus Registrar of Companies**” and in several other cases such as **Pancham Hotels Pvt. Ltd v. Registrar of Companies**, bearing Company Petition No. 554/2014; **M/s Medtech Pharma (India) Pvt. Ltd v. Registrar of Companies**, bearing Company Petition No. 241/2009; **M/s Santaclaus Toys Pvt. Ltd v. Registrar of Companies**, bearing Company Petition No. 271/2009; **M/s Deepsons Non- Ferrous Rolling Mills Pvt. Ltd v. Registrar of Companies, NCT of Delhi and Haryana**, bearing Company Petition No. 285/2009; **M/s Kakku E and P Control Pvt. Ltd v. Registrar of Companies, NCT of Delhi and Haryana**, bearing Company Petition No. 409/2008; **M/s Sohal Agencies Pvt. Ltd. Registrar of Companies, NCT of Delhi and Haryana**, bearing Company Petition No. 297/2009.”

9. In view of the foregoing, facts and circumstances, and in the light of the settled position of the law, we are of the view that it would be just and proper to order restoration of the name of the Petitioner Company in the Register of Companies maintained by the Respondent. 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, the primary responsibility for ensuring that proper returns and other statutory documents are filed, in terms of the statute and the rules, remains

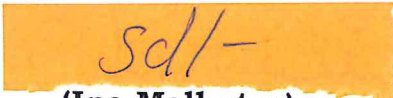
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that of the management.

10. Upon the Petitioner Company filing all the statutory documents i.e. Annual Returns and Balance Sheets along with the prescribed filing fee and additional fee in compliance with all the statutory requirements, the name of the Petitioner Company, its Director and member shall, stand restored to the Registrar of Companies maintained by the Respondent, as if the name of the Petitioner Company had not been struck off, in accordance with the Section 252(3) of the Act.

11. 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 1,00,000/-** to be paid to the Prime Minister Relief Fund, 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 within 8 weeks; the name of the petitioner company, its directors and members shall, stand restored to the Register of the respondent, as if the name of the company had not been struck off, in accordance with S.252(3) of the Companies Act, 2013.

12. Liberty is granted to the respondent to proceed with penal action against the petitioner, if so advised, on account of the petitioner's alleged defaults in compliance with any other provisions of the Companies Act, 2013 and Rules, including Section 192.

  
**(Ina Malhotra)**  
**Member Judicial**