

**NATIONAL COMPANY LAW TRIBUNAL**  
**PRINCIPAL BENCH**  
**NEW DELHI**

C.P NO. 511/2015  
CA NO.

CORAM:

PRESENT: CHIEF JUSTICE M. M. KUMAR  
Hon'ble President

SH. R.VARADHARAJAN  
Hon'ble Member (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF PRINCIPAL BENCH OF THE  
NATIONAL COMPANY LAW TRIBUNAL ON 14.03.2017

NAME OF THE COMPANY: Poly Auto System Pvt Ltd

SECTION OF THE COMPANIES ACT: 560(6)

<u>S.NO.</u>	<u>NAME</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Vivek Gupta	Applicant		
2.	Manish Raj	For ROC Delhi		

**ORDER**

Poly Auto Systems Private Limited has filed the instant Petition under Section 560 (6) of the Companies Act, 1956 with a prayer for restoration of the Company on the register of the Registrar of Companies (ROC). The Company was incorporated under the provisions of the Companies Act, 1956 with the ROC vide Certificate of incorporation No.8815 of 1977 – 78 dated 17.12.1977 as a private Limited Company. It has its registered office at C-33, Wazirpur Industrial Area, Delhi. The object of the Company was to carry out the business of manufacturing, assembling, repairing of all kinds of spare parts and accessories for automobile vehicles. It also dealt with import, export, distribution of all kinds of spares parts and the accessories.

The other facts necessary for the disposal of the Petition are that the paid up capital of the company was Rs.15,68,800/- divided into 15688 equity shares of Rs.100/- each. The authorized capital of the company was Rs. 22 lacs. The Company had three Directors who were also the shareholders. The Company and the management remained involved in carrying out the business although it was struggling with financial crisis. All the same the assets of the company remained intact and it never became defunct nor a situation arose for winding up of its business. It has, thus, remained functional from 1996 to August, 2014. It has its Bank account in Punjab & National Bank, A-17, Gujrawala Town, Delhi under the Account No. 1470002100019173. Ld. Counsel for the petitioner relies on the statement of the accounts and submitted that the Company has been running its business upto 2014-15 . It has also held and convened its Annual General Meeting regularly. Therefore, it cannot be concluded that the petitioner Company is a defaulter or non-functional or a defunct company within the meaning of Section 560 of the Companies Act, 1956.

The Petitioner concedes that it has not been able to file its Annual Return and the Balance Sheet with the Registrar of Companies, from April, 1996 to August, 2014 as the Company was taken over by the present Directors on 15.10.1996. The earlier Directors, Mr. C.M. Sahni, Mr. Anil Gupta, Mr. M.L. Agarwal and Mr. Y.K. Malik resigned from the Company and the new present Directors were appointed.

After the appointment of the present Directors, it is cleaned that the affairs of the company are being monitored properly. The entire record of the company including the previous Balance Sheet, Profit & Loss account and all other necessary documents were with the previous Directors. They failed to supply the same to the petitioner Company despite repeated requests by them. As a result, the auditors reports , Balance Sheet and Profit & Loss account for the subsequent year could not be filed.

On 15.2.2014, a meeting of the Board of Directors was held with the intention to carry forward the transactions of the company. The Board of Directors came to know about the default in filing the necessary compliances before the ROC. Accordingly, the Directors decided to submit all relevant documents to the authority for smooth and regular functioning of the company. It is, thus, prepared and ready with all the documents. However, they realized from the MCA website that the status of the company has been described as 'Strike Off'. After enquiry, the Petitioner came to know that the name of the company has been struck off from the rolls U/s. 560 (3) of the Companies Act. The Petitioner alleges that there was issued no notice nor any opportunity was granted to them. According to the provisions of Section 560 (3), the ROC is required to give three months 'Show cause notice'. However, the ROC has issued the order striking off the name of the

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company arbitrarily as is evident from the Gazette Notification dated 26.3.2007 where the name of the company figures at serial No.1948.

The Petitioner claims that the accounts of the company have been audited every year during the period 1996 to 2014. It has also been asserted that the P&L accounts of the company and its Balance Sheet has been duly audited by the Chartered Accountant. It has not sold its assets and it has cash and Bank balance in the Account during the period 1996 to 2014. It is in operation and involved in carrying on the business. All necessary documents including the Balance Sheet, audit reports and Profit & Loss account from 1996 to 2014 are ready with the company for submission before the respondent.

The Registrar of the Company has filed its reply and has controverted certain facts. According to the ROC, there are only two Directors, namely, Sh. S. Randhir Singh & Sh. S. Prehlad Singh, who are residents of House No.5/5, Model Town, New Delhi. The authorized share capital was 22 lakhs and the subscribed capital of the company was Rs.15,68,800/- as per the last annual report available on record.

As per the record of the ROC, the petitioner Company has not filed any statutory documents i.e. Balance Sheet and Annual Return which is against the provisions of Sections 159 and 220 of the Companies Act, 1956 and the default is liable to punishment/penalty. After the non-filing of the Balance Sheet, for the consecutive three years, the respondent has struck off the name of the company

from the register of the ROC U/s. 560 of the Act which was duly published in the official Gazetted on 23.6.2007 (Annexure-I). it is wrongly asserted that the company has been running upto the year 2014-15. The documents annexed with the petition were not filed with the ROC . It is also incorrect that the Company has been regularly audited since 1996 as no audited documents concerning the financial requirements have been filed since 1996 before the ROC.

The ROC, has, however, represented that it has no objection to the revival of the company subject to the filing of the statutory documents from the date statutory documents were lastly filed with the ROC.

We have heard the Counsel for the parties and have perused the Paper Book with their able assistance. The revival of the Company is permissible within the period of 20 years from the date of publication of the order in the Official Gazette. It may be profitable to read Section 560 of the Act which is as under :

*560. Power of Registrar to strike defunct Company off register –(1)  
Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.  
(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiry of the month, send to the company by post a registered letter*

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*referring to the first letter, and stating that no answer thereto has been received and that , if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of company off the register.*

*(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter received any answer, he may publish in the Official Gazette , and send to the company by registered post, a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.*

*(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company have been completely wound up, and any returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Official Gazette and send to the company or the liquidator, if any, a like notice as provided in sub-section (3).*

*(5) At the expiry of the time mentioned in the notice referred to in sub-section (3) or (4), the Registrar may , unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette , and on the publication in the Official Gazette of this notice, the company shall stand dissolved.*

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*Provided that –*

*(a) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved, and*

*(b) Nothing in this sub-section shall affect the power of the Court to wind up a company the name of which has been struck off the register.*

*(6) If a company or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the Tribunal, on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and the Tribunal, may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.*

*(7) Upon a certified copy of the order under sub-section (6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off.*

*(8) A letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or if*

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*no office has been registered, to the care of some director, manager or other officer of the company or if there is no director, manager or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.*

*(9) A notice to be sent under the section to a liquidator may be addressed to the liquidator at his last know place of business”.*

A perusal of Section 560 of the Act would show that Registrar of the Companies has to comply with comprehensive procedural obligations before passing the final order of striking off the name of a company from the register of the companies. In the reply filed by the Registrar, no reference has been made concerning issuance of one month notice in terms of Sec. 560 (1) nor any publication made in Official Gazette has been placed on record showing that notice, if any, was published as per the requirements of Section 560 (2) & (3) of the Act. All that has been placed on record is a copy of the order published in the Official Gazette on 23.06.2007 (Annexure-I) striking off the name of the petitioner company from the register of the ROC. The reason for the striking off as given in the reply is non-filing of Annual Return and Balance Sheets under Sections 159 and Section 220 of the Act for a period of more than three years. The ROC should have filed a detailed reply by disclosing substantive facts in accordance with the provisions of Section 560 (1) to (5) of the Act. We do not approve the casual approach adopted by the ROC which results in abrupt conclusion and then sermonizing the Tribunal that it





may pass any order and that the ROC has no objection to restoration of the name of the petitioner company. How the new Directors have come on record of the ROC is not clear to us.

Be that as it may. The petitioner has made numerous claims. The fact remains that at the time of striking off the name of the petitioner company, it was not a defunct company. There is change of management also as the earlier Directors have resigned and there are two new Directors, namely, S. Randhir Singh and S. Prehlad Singh as per the reply and record of the ROC. The ROC has also not opposed grant of relief to the petitioner by restoring the name of the petitioner Company on the register of the ROC. The petition otherwise has been filed within 20 years and is thus within the period of limitation. Therefore, we are inclined to accept the prayer of the petitioner subject to the fulfillment of the requirements of various provisions of the Act.

As a sequel to the above discussion, this petition succeeds and is allowed. The order striking the name of the petitioner's company as published in the official Gazette on 26.03.2007 is declared illegal. The petitioner company shall file all statutory compliances to the satisfaction of ROC which shall remain subject to all the provisions of the Companies Act, 1956 including the one providing for penalty, punishment and prosecution. Our order has expressed no opinion on penalty,

punishment and prosecution nor there could be such prayer in respect of those issues in this petition.

The petition stands disposed off in the above terms.

14.03.2017

Sd/-  
(CHIEF JUSTICE M.M. KUMAR)  
PRESIDENT

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(R. VARDHARAJAN)  
MEMBER (JUDICIAL)