

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**ALLAHABAD BENCH**

CP No.7/2015

*(under Section 560(6) of the  
Companies Act, 1956, read with  
rule 9 of the Companies Rules,  
1956)*

**IN THE MATTER OF**

Red Diamond Granite Stone Pvt. Ltd.

A company incorporated under Companies Act, 1956

And having its Regd. Office at 20/3 Labour Colony,

Firozabad through one of its Directors Sri Shamshad Ahmed.

..... Petitioner

*Versus*

Registrar of Companies for the State of Uttar Pradesh & Uttaranchal  
At 37/17 Westcott Building, The Mall, Kanpur-208 001.

.....Respondents.

**JUDGMENT/ORDER DELIVERED ON 11.08.2017**

**Coram** : Hon'ble Shri H.P. Chaturvedi, Member (J)

**For the petitioner** : Sh. Anshul Kumar, Advocate

**For the Central Govt.** : Sh. M.K. Bagri, OL Allahabad

**As per.....** Hon'ble Shri H.P. Chaturvedi, Member (Judicial)

**Order/Judgment**

**1. The Company Petitioner- Red Diamond Granite Stone Pvt. Ltd.**

**files the present petition under Section 560 (6) of the Companies Act,**

**1956, read with rule 9 of the Companies Rules, 1956 and sought for**

**following reliefs;**



- i. The name of the petitioner company to be restored in the register of the Companies maintained by the Registrar of Companies.**
  - ii. To pass such other order/orders which this Court may deem fit and proper considering the facts and circumstances of the present case.**
  - iii. To Award the cost of the company petition to the petitioner.**
2. The facts and circumstances of the present case for filing the present petition are described well and is duly support by an affidavit. It is stated that the petitioner company M/s Red Diamond Granite Stone Private Limited (herein after to be referred as Company for the sake of brevity) was incorporated under the provisions of the Companies Act, 1956. In furtherance of its objects, the Company entered into an agreement with U.P. State Mineral Development Corporation Ltd., which is an undertaking of the state Govt. of U.P.
3. It is submitted that the land over which the prospecting and mining of Granite was agreed to under such agreement, belongs to a Government Degree College of Lalitpur which is named after Sh. Raghuveer Singh. As such, the mining operation therein could have commenced only upon receiving a permission from the department of higher education of the State Govt. Therefore, the company obtained an approval for prospecting license granted to the petitioner Company from the special secretary of the State Govt. of U.P.
4. Despite such being the fact of the case the District Magistrate, Lalitpur objected to the mining of Granite on the aforesaid site and submitted a






report to the State Govt. However, the Special Secretary of State Government of U.P. by keeping aside his report reiterated its decision and further approved the prospecting license, for a period of two years' in the land in question in terms and conditions stipulated in the lease agreement.

Accordingly, the Director Mining, wrote another letter to the District Magistrate, Lalitpur with such request for execution of a lease agreement with the petitioner Company in respect of the property in question.

The District Magistrate, Lalitpur however, communicated to the Special Secretary (Department of Industrial Development), Government of U.P. reiterating his objections to proposed mining.

5. Being compelled from the above stated circumstances, the petitioner company had to file a Civil Misc. Writ Petition No.40898/2000, before the Lucknow Bench of Hon'ble Allahabad High Court which pleased to issue such direction to the respondents either for showing cause or to execute a mining lease in favour of the petitioner company.

After hearing of both of parties the above stated Writ Petition came to be disposed of by the Lucknow Bench of Hon'ble Allahabad High Court by directing such to the State Government to pass an appropriate order by taking into consideration such no objection certificate issued by the Higher Education Department, within stipulated period.

6. However, as a further development took place in the matter the Hon'ble Lucknow Bench dismissed the Civil Revision No. 159/2008, preferred
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by the petitioner company by observing such that if the State Government had not taken any decision in pursuance of an order dated 24.10.2008, then it would pass such order in accordance with law expeditiously.

It is submitted that since, then the petitioner Company was constantly writing letters to the authorities concerned to act in terms of the order dated 27.05.2010 of the Hon'ble High Court, but this could not be fructified.


7. Despite this being the facts and circumstances, of the petitioner company its name got deregistered by the Registrar of Companies vide its order dated 11.05.2010. The deletion of the name of the company was further published in the Gazette on 27.05.2010 such impugned action is done in exercise of its power conferred to it under Section 560 of the Companies Act, 1956.

Hence, the present petition was originally filed before the Hon'ble High Court on 08.12.2015, for seeking restoration of the name of the company in the Register as maintained by the respondent.

8. The respondent/ Central Govt. opposed the present application by filing the affidavit of Shri S.P.Kumar, the then Registrar of Companies Kanpur and has substantiated the order impugned and action taken by contending as such stated below.


- i. That the Petitioner Company was not carrying on its business was in operation for the last about 9 years, as it did not file its statutory returns on MCA Portal since, 2006.
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- ii. Since, the company failed to file its statutory return. Hence, a notice U/s 560 (1) of the Companies Act, 1956 was issued to the petitioner on 20.11.2009 through speed post. As the company remain failed to make reply to such notice hence, it is evident that the company was not in operation or carrying on its business. In support of its stand the ROC further annexed with its reply a copy of such notice dated 20.11.2009 issued under Section 560 (1) of the Companies Act is as **Annexure CA-1.**
- iii. Thereafter, the ROC issued another notice dated 09.12.2009, U/s 560 (2) of the Companies Act, 1956, to the petitioner Company through Speed Post, wherein, it was specifically mentioned that if no answer is received thereto within the stipulated period from the petitioner company then such notice would be published in Official Gazette in order to strike off the company's name from its register. However, the Company reportedly has again failed to give any reply to such notice which is annexed as CA-2 of the reply.
- iv. Consequently, the respondent, ROC again issued a statutory Notice dated 16.02.2010 U/s 560 (3) of the Companies Act 1956 informing to the company that after elapse of three months' period from the date of the statutory notice, the name of the company would, unless a cause is shown to the contrary, be struck off from the register of the ROC, and thus the company would stand as dissolved. It is reported that the company again did not respond to such notice dated
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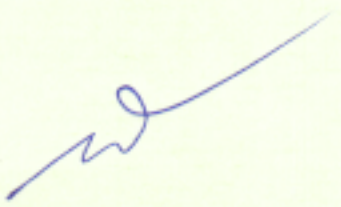
16.02.2010, from the Office of the ROC a copy of such notice 16.02.2010, is also annexed with the counter affidavit of the ROC Kanpur.

- v. It is further contended that as no reply was received by the answering respondent to this notice dated 16.02.2010. The respondent ROC issued another notice dated 11.05.2010 to the company U/s 560 (5) of the Companies Act, 1956 through speed post, informing such that the petitioner company's name has been struck off and the company stand dissolved. This notice was also forwarded to the Manager, Govt. of India Press, Faridabad, for making necessary publication in Part-III Section-1 of the Gazette of India, with endorsements made to the Income Tax Authority and to the petitioner company, but the company reportedly again failed to answer to such (notice dated 11.05.2010) which is annexed with the counter affidavit.
- vi. Thus as per the respondent ROC it is clearly established that the petitioner company was not carrying on its business, nor was in the operation when its name got struck off and a publication to this effect was made in Gazette Notification on 11.05.2010 during the week of May 22-28 May 2010. The respondent ROC further reiterated its stand that all the prescribed procedure, were followed, to strike off the name of the company, since it failed to file its statutory Returns for the last eight years and due to this it can be reasonably believed that the company was dysfunctional therefore, its name was rightly struck off from its Register.
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9. The petitioner company by controverting the affidavit of the ROC further filed a reply affidavit of its Director Mr. Shamshad Ahmad, and denied the allegation made in the ROC's affidavit and contended such that none of the notice were served upon the petitioner company. He went on further to explain that in as much as the director and employees of the company were busy in a contesting litigation in Lucknow, there may be that the notices would have reached to but, not received by its employees as being out of station, in connection with the aforesaid litigation.

Therefore, no such presumption of service can be inferred against the company on the fact and circumstances of the present cases. He being a Director of the Company further alleged that such notices including the last statutory notice issued under Section 560(5) of the Companies Act 1956 were issued in gross violation of mandatory time scheduled by not granting prescribed period to answer such notices which is also contrary to the principle of natural justice. He further points out in para 6 and 7 of the affidavit stating such that no such period of clear 30 days was given to the company for making its reply as the second notice was issued on 09.12.2009, while the first notice was issued on 20.11.2009. The provision of the Section 560 (2) prescribes for a period of 1 month and 14 days. However, such second notice dated, 19.12.2009 was issued within 30 days of the issue of the first notice. Which is contrary to the Rules. The petitioner company further explained and contended such although there is some provision, that the office of the Registrar of Companies can issue second notice under Section 560 (2) of the Act within 14 days, after expiry of 30 days from the sending of such notice under Section 560(1) yet this cannot be






construe such to empower the respondent under these provisions to issue such second notice approximately within two weeks even prior to 30 days. Hence, such action is bad in law.

10. The petitioner further alleged that a third notice was issued under Section 560 (3) read with section 560 (5) of the Companies Act 1956, for which the period prescribed is three months. However, such notice (dated 16.02.2010, Annexure CA-3 of the counter affidavit) states such that after elapse of the period of three months the name of the company would be struck off.

11. It is alleged that again a notice dated, 11.05.2010, (as annexure CA-4) was issued, which is prior to the expiry of three months' time for the purpose of publication in the gazette by striking of the name of the petitioner company, which is in gross violation of time scheduled. Hence, the impugned action/ order of the ROC is bad in law and is liable to be set aside.

12. In addition to above, the petitioner company further raised an objection in respect of authority and competency of the Assistant Registrar of the companies for issue of such kind of notice for the purpose of de-registering the name of the company from its register. According to the petitioner such power is not conferred to nor vested in the Assistant Registrar for taking such action. Therefore, such notices issued are bad in law. Hence, cannot have a legal effect of publication of impugned order dated (11.05.2010) in the Gazette by striking off the name of the petitioner company because such order is passed by the Assistant Registrar of the Companies, who is not competent enough.






13. Thus, as per the petitioner, the respondent failed to follow the prescribed procedure for striking off, the name of the company. Hence, their order/action impugned in the present petition is illegal and in contravention of law. Hence, needs to be said aside.

We duly considered the rival contention made by learned counsel for both parties and perused the pleadings made in the petition, in the reply/counter affidavit filed by the Registrar of Companies and documents annexed therewith.

14. We heard the rival submission, put forth by Sh. R.N. Singh for the counsel for the petitioner and Sh. M.K. Bagri the learned OL representing the Central Govt. We find that the company could not remain active and functional and was not operating as going concern, as it could not succeed in getting the lease date executed from the State Govt. of the U.P. for prospecting and mining work on the land in question. The office of the District Magistrate Lalitpur, objected to such lease agreement. Therefore, the petitioner company could not be able to start its actively to carry on prospecting, cutting and polishing of Granite, this led to a litigation between the petitioner company with the District Administration Authority of Lalitpur district and also with U.P. State Govt. by filing a Civil Misc. Writ Petition No.40898 of 2000. In such writ petition certain interim order were passed on such litigation further followed by another Civil Suit No.129 of 2008 filed against the State of U.P. for seeking declaration on entitlement of petitioner/plaintiff company to get the mining lease deed executed its favour. However, this suit is reported to be still pending before a competent Civil Court. Hence, we are of the view that due to this litigation the petitioner company could





not able to start its function and still agitating its claim and contractual right before a court of law. Hence, in the strict legal sense such cannot be presumed that there was no activity at all in the company or the company was not in operation because of the company could not start its activity or function for want of execution of lease deed of mining land in its favour. There might be occasion and some possibility that the petitioner company could not be able to pay due attention to make reply to the notices is issued by the respondent Registrar of the Companies.

15. However, such explanation as given by the petitioner company that it did not received at all even a single notice from the Registrar of Companies, although the same are found to have been dispatch through a speed post, is neither convincing nor acceptable to that no director or even simple employee of the company was not available at all in the premises in the Registered office of the company to receive such statutory notices. Notwithstanding the above we also examined the legal objection raised by the company, for not following the prescribed procedure to grant a minimum time of one month. It may be seen the first notice was issued on 20.11.2009 to the company by granting initially one months' time to reports its actively and confirm such that company was carrying business or in-operation. Further statutory notices were issued by the Registrar of Company and by granting three-month time to report on its actively company's whether it is a going concern or otherwise failing which the name of the company would stand dissolved under Section 560 (5) of the Companies Act 1956, which was not even replied to by the company.






16. Thus the action taken by the Registrar of Company seems to be prudent and reasonable only there appear some procedural irregularity. Therefore, in our view such irregularity does not necessarily vitiate the entire process for striking off the name of the company specifically when the petitioner company by itself and in its pleadings has duly admitted that it could not be able to start its function and carry on its mining activity for want of execution of lease deed because of a litigation in this respect is still going on. Further, the company failed to file its statutory return for the relevant period thus, there is considerable delay on its part to inform or sent a proper reply to the Registrar of the Companies by showing some reason or by expressing its hardship and procedure difficulty in making compliance of the statutory provision of the Act therefore, in our view the statutory action for de-registration of the name of the company as taken by the office of the Registrar of Companies cannot be found fault with on the ground of some procedural irregularity which appears to be curable.

17. Notwithstanding, above since the petitioner company is still pursuing its litigation before a Court of law and did not receive a license for carrying on its mining work from the State Govt. Hence, it could not able to perform such work due to non-execution of the lease deed and not non allotment of site/land for such purposes.

Therefore, by considering of the statutory provision of Section 560 (6) of the Companies Act and in the light of settled legal position as per the decision of the Hon'ble Delhi High Court with other Judicial Precedents. This courts are expected to take a liberal approach for allowing such restoration of company's name in the ROC's Register and refusal for the same to be an exception.





18. It is also matter of record and is undisputed position that the petitioner company is still agitating its legal right and pursuing its claim with the State Govt. and pursuing a suit which is still pending before a Court of law. Hence, if its name is not allowed to be restored and remains as deleted from the Register of the ROC, then the status of the company remains as a dissolved company and there would be serious prejudice to its legal right to pursue its litigation before a competent court of law and to get justice there from.

19. The Hon'ble Delhi High Court in its decision in the matter of TE Corporation V/s Siddhant Garg and other by placing reliance on another decision of Hon'ble Bombay High Court, in the matter of Pursottam Das, and others Bulaki Das Mehta, Vs. Registrar of Companies has held that the object of the Section 560 (6) of the Companies Act and such provisions are made to give a chance to revive the company which has been struck off by the Registrar of the Company within a period of 20 years and to give it an opportunity of carrying on its business only after the company judges satisfy itself that such restoration is necessary in the interest of the justice.

20. The relevant portion of the judgement of the Division Bench of the Delhi High Court in TE Corporation matter may be reproduced hereunder; -

*The right of the appellant to file objections as and when execution is filed has not been lost. This remedy is still available to him. Section 560(6) of the Act reads as under:*

*"560. Power of Registrar of strike defunct company off 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."*

*9. Before exercising discretion under this section, the court must be*

*(i) satisfied that the company was, at the time of striking of the company, carrying on business or was in operation;*

*(ii) it is otherwise just that the company be restored.*

*The first of this proposition can be answered by a report of the ROC which in this case was positive and this report of the ROC had in fact been considered while passing an order for the restoration of the company. The second is a prima facie finding by the Court persuading it to believe that it was "just" to restore the company.*

*10. The judicial precedents on this subject clearly are in favour of the restoration of the company and it is only by way of an exception that the restoration should be disallowed. Normally the rule is to allow the restoration. Exercising discretion against restoration would thus be an exception and not the rule. The court would also be varying of refusing restoration so as to possibly safeguard the interest of one particular class of affected persons. This is a discretionary power and is evident from the use of the word "may" in Section 560(6). A statutory period of 20 years' limitation has also been provided in the section for a party to seek restoration. If such a party succeeds the company would be deemed to have been continued in its existence. These observations were quoted with approval by LADDIE J Re Price Land Ltd. [1997] 1 BCLC 468.*

*"These considerations lead me to the view that the court should be very wary of refusing restoration so as to penalise a particular applicant or in a possibly futile attempt to safeguard the special interests of a single or limited class of affected persons. It would need a strong case to justify a refusal on these grounds. For the reasons set out below, I do not think there are such strong grounds here."*

21. Further when a litigation is pending by or against the company it would be proper to restore the name of the companies with the Register of the ROC to enable the matter to be carried to its conclusion as have been held by Hon'ble Delhi High Court/Bombay High Court in the matter of M/s Indian Explosive vs. Registrar of Company CP No. 185/2008 decided 21<sup>st</sup> April, 2010.

22. In the light of the above stated the Judicial President we feel the present petition deserves to be allowed with certain condition and mainly on such reasons that a litigation on behalf of the company is still pending before a competent court of law, hence, its name deserves to be restored




in the Register maintained by the office of the Registrar of the Companies Kanpur, till the pending litigation reaches to its final conclusion.

Therefore, a liberty is granted to the petitioner company to pursue its litigation before court of law by restoration of its name in the Register of Companies as maintained by the ROC. Since, the petitioner company has not been sincere enough in filing its return for relevant period shall make payment of cost of Rs.25,000/- to the Central Govt. through the office of the Registrar of Company within four weeks, from the receipt of the copy of the order. It is further directed the ROC Kanpur on receipt of such payment of such cost by its office shall restore the name of the Company in the registered as maintained by its office.

23. In the light of the above stated judicial precedents and by considering the facts and circumstances of the present case. The present petition deserves to be allowed, hence the same is allowed the petitioner company is further directed make compliance with all statutory requirement and legal obligation within three months from its restoration of its name and to prove of that by giving necessary evidences that the company is in operation as a going concern. The petitioner company shall file its returns as well as to update the same on the portal of the MCA such task to be completed within three months from the date of restoration/Re-registration of its name.

24. It is further declared that the effect of the Gazette Notification dated 11.05.2010 published on 22.05.2010, by deleting the name of the company shall stand nullified and to be inoperative to the extent its relates to the name of the petitioner company with such observation






the present company petition is conditionally allowed and accordingly stands finally disposed.

Dated:11.08.2017

Typed by:  
Mohd. Zaid

  
**Shri H.P. Chaturvedi, Member (Judicial)**