

**In the National Company Law Tribunal,
Chandigarh Bench, Chandigarh.**

CP No.260/Chd/HP/2017

**Under Section 252 of the
Companies Act, 2013.**

In the matter of:

Vikas Kapoor S/o Mr.Vidya Rattan Kapoor,
Shareholder/Member of Shimla Broadband
Private Limited, A 2, Friends Apartment,
Thakur Baghannadale, Shimla, Himachal
Pradesh – 171003.

....Petitioner.

Versus.

REGISTRAR OF COMPANIES,
Himachal Pradesh, Corporate Bhawan
PLOT NO.4-B, Sector 27-B,
MADHYA MARG,
CHANDIGARH - 160019.

....Respondent.

Order delivered on 28.02.2018.

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R.SETHI, MEMBER TECHNICAL.**

For the Petitioner:

Mr.Prince Tiwari, Practising Company,
Secretary.

For Registrar of Companies,
Himachal Pradesh:

Dr.Raj Singh, Registrar of Companies,
Chandigarh, Punjab & Himachal
Pradesh.

JUDGMENT (Oral)

Per: R.P.Nagrath, Member (Judicial):

This petition has been filed by Vikas Kapoor, shareholder
of Shimla Broadband Private Limited for restoration of the name of the

company in terms of Section 252 (3) of the Companies Act, 2013 (for short to be referred here-in-after as the 'Act').

2. As per the documents relied upon by the petitioner and Master Data Annexure A-12 filed with the additional affidavit dated 20.12.2017, the company was incorporated on 26.12.2012 under the Companies Act, 1956, having allotted CIN: U93000HP2012PTC000303 with its registered office at Thakur Bagh Annadale, District Shimla (Himachal Pradesh) and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

3. The authorised and paid-up share capital of the company is ₹1,00,000/- divided into 10,000 equity shares of ₹10/- each. There are two Directors and two shareholders of the company and one of them is Vikas Kapoor. The petitioner company did not file its Annual Returns after the financial year ending 31.03.2014 and therefore, the Registrar of Companies considering that the company was not carrying on business and in operation, issued a notice to the company and its Directors in terms of Section 248 of the Act. The company failed to respond and the name of the company was thus struck off from the Register of Companies vide notification dated 17.07.2017 issued by the Government of India, Ministry of Corporate Affairs. The name of the company exists at serial No.609 of the notification.

4. The main objects of the company are:

- (1) to carry on the business as Internet service providers including provision of broadband communication services, satellite communication services, internet access

solutions, to provide services in connection with the design, selection, purchase, servicing, maintenance, replacement, installation, testing and commissioning of all types of communications and telecommunications equipment and systems, media transmission and receiving equipment including satellite communication systems and all types of computers and computer systems and to carry on business as consultations and advisers in respect of these and other services, and

- (2) to carry on the business of a telephonic and cable company, telephonic, telegraphic and cable contractors and factors, electrical and mechanical engineers, electric light, heating and power suppliers and in particular to establish, work, manage, control and regulate telephonic and telegraphic exchanges and transmitting and receiving stations and units and works for the supply of electric light, heat, motive power or otherwise for public or private purposes and to transmit and facilitate the transmission of telephonic, telegraphic, and cable communications and messages. The petitioner has attached the Memorandum and Articles of Association at Annexure A-2 with which the Certificate of Incorporation of the Company is annexed as Annexure A-1.

5. It is stated that the company was unable to file the financial statements for the financial year ending 31.03.2015 onwards. It is otherwise

stated that the company had been doing its business and in operation at the time, the name of the company was struck off from the Register of Companies.

6. In order to fulfil the requirements of sub-section (3) of Section 252 of the Act, the petitioner has filed the Audited Balance Sheets of the Company for the financial year 2014-15, 2015-16 and 2016-17 as additional documents on 20.02.2018. As per the Balance Sheet for the financial year ending 31.03.2015, which is part of Annexure A-3 attached with the additional affidavit, the company earned the revenue from operation to the tune of ₹1,436,239.00 and more than ₹1,265,380.08 are the expenses. The Balance Sheet for the financial year ending 31.03.2016 shows that the company had earned revenue from operation to the tune of ₹1,285,788.00 and ₹1,115,814.50 shown as the expenditure. In the latest Balance Sheet for the financial year ending 31.03.2017, the revenue earned from operation is shown as ₹1,723,852.00.

7. The petitioner has also filed the acknowledgments of filing of the Income Tax Returns. For the Assessment year 2015-16, the company had shown the gross income of ₹2,50,382/-; for the Assessment year 2016-17, the gross income had been shown as ₹1,50,092/- and for the Assessment year 2017-18, the gross income is mentioned as 1,47,589/-.

8. In the report filed by the Registrar of Companies, it is stated that the company did not file the financial statements for the financial years 2014-15 to 2016-17. Otherwise on merits, it is stated that the Registrar of Companies has no objection, if the name of the company is restored, but the company may be directed to file all the pending documents including all

the Annual Returns and Balance sheets along with the requisite fee and additional fee as prescribed under the Rules.

9. We have heard the learned counsel for the petitioner, Dr.Raj Singh, Registrar of Companies, Himachal Pradesh and carefully perused the record.

10. Sub-section (3) of Section 252 of the Companies Act, 2013 reads as under:-

“If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed 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 from the register of companies.”

11. So the basic requirement for the petitioner company to establish the case is that the company was carrying on business and was in operation at the time, its name was struck off from the Register of Companies. There is sufficient evidence relied upon by the petitioner in proof of the aforesaid ingredients as discussed earlier.

12. In view of the above, it is a fit case, where the name of the company should be restored in the Register of Companies subject to deposit of ₹40,000/- (Rupees forty thousand only) as costs with the Pay and Accounts Office, Ministry of Corporate Affairs, New Delhi in respect of the Registrar of Companies, Himachal Pradesh. Further directions are issued as under:-

- a) The petitioner shall deliver a certified copy of the order to the Registrar of Companies within 30 days from date of receipt of certified copy of this order;
- b) On such delivery, the Registrar of Companies do, in his official name and seal, publish the order in the Official Gazette;
- c) The petitioner company is directed to pay the requisite fee for filing the Balance Sheets and Annual Returns up to date with the applicable fee and the additional fee as prescribed under the Rules;
- d) The applicant-company shall deposit the costs of ₹40,000/- with the Pay and Accounts Office of the Ministry of Corporate affairs within two weeks from receipt of certified copy of this order;
- e) The company shall file pending financial statements and annual returns with the Registrar of Companies and comply with the requirements of the Companies Act, 2013 and rules made thereunder within one month of the

notification of restoration of the company's name in the Register of Companies; and

- f) The Registrar of Companies shall be at liberty to proceed against the company and its Directors for the delay in filing of the Balance Sheets and Annual Returns for so many years.

Copy of this order be communicated to both the parties.

Sd/-
(Pradeep R.Sethi)
Member (Technical)

Sd/-
(Justice R.P.Nagrath)
Member (Judicial)

February 28, 2018.
Ashwani