

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

CP No. 222/Chd/Hry/2017

**Under Section 252 (3) of
the Companies Act, 2013
read with Rule 87A of NCLT
Rules, 2016.**

In the matter of:

LUI Infra Private Limited,
having its registered office at
Plot No. 114, Udyog Vihar,
Gurgaon-122001.

...Petitioner

Vs.

Registrar of Companies,
NCT of Delhi and Haryana,
4th Floor, IFCI Tower, Nehru Place,
New Delhi-110019.

...Respondent

Judgement delivered on: 05.09.2018

**Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

For the petitioner : Mr. Nahush Jain, Advocate.

For the respondent : Mr. M.S. Pachouri Registrar of
Companies, Punjab, Chandigarh and Himachal
Pradesh for Registrar of Companies, NCT of
Delhi and Haryana

Per: Pradeep R. Sethi, Member (Technical)

JUDGEMENT

The petition under Section 252 (3) of the Companies Act, 2013 (hereinafter referred to as the Act) read with Rule 87A of the National Company Law Tribunal Rules, 2016 is filed in Form No. NCLT 9 by M/s. LUI Infra Private Limited - Registration No. U70109HR2009PTC039285 (hereinafter referred to as the Company). The copy of the Board Resolution

dated 17.07.2017 authorising Shri Madhu Kumar Gokapai, Director of the company to file the petition is at Annexure A-5 of the petition. The registered office of the company as per Master Data at Annexure A-3 of the petition is at Plot No. 114, Udyog Vihar, Gurgaon-122001 Haryana. Therefore, the matter lies within the territorial jurisdiction of this Bench of the Tribunal.

2. The company was incorporated on 09.07.2009 as per master data at Annexure A-3 of the petition. The Memorandum and Articles of Association have been filed as Annexure A-1 of the petition. The main objects of the company are as follows:-

“(1) To carry on the business of exploration, earth improvement, construction, real estate and other related business and to carry on in India or else where either alone or jointly with one or more person, Government, local or other bodies, the business to act as civil engineer, contractor, sub-contractor, turn-key contractor of all types of constructions and development work in all its branches such as roadways culverts, dams, bridges, railways, tramways, water tanks, reservoirs, canal, warehouses, factories, buildings, structures, drainage and sewage works, water distribution and filtration systems, docks, harbours, piers, irrigation works, foundation work, flyovers, airports, runways, rock drilling, stadiums, hydraulic units, sanitary work, power supply works, power stations, hotels, hospitals, dharamshalas, multi storeys, colonies, complexes, housing projects and other similar works and for purpose to acquired, hand over, purchase, sell, own, cut to size, develop, distribute or otherwise to deal in all sorts of land and buildings.

(2) To promote develop, build, construct, establish, own, purchase, sell, take on lease or exchange or otherwise acquire, hold, maintain and manage industrial, commercial or residential

buildings, apartment houses, hotels, motels, hostels, restaurants, factory premises, godowns, cold storage, to run and operate, goals, warehouses, flats, theatres, cinemas or such other show houses, meeting or lecture halls, libraries, health resorts and sanatoriums, gardens, swimming pools and baths, huts, Bazaar and markets, meals and exhibition and to let, sub-let, give on lease or otherwise to permit use and occupation, occupiers thereof.

(3) To acquire by purchase, lease, exchange, hire or otherwise, land and immovable property of any tenure or any interest in the same and to sell, lease, let mortgage or otherwise dispose of the lands, houses, buildings and other such immovable property of the company or of others and to purchase and sell for any person free hold or such other house property, buildings or lands, or any shares or interest therein and to transact on commission or otherwise the business of land agent.

(4) To act as consultant, trainer and advisors to undertake or provide complete solution/package in respect of above said works/services.”

3. As per the master data (Annexure A-3), the authorised and paid up capital of the company is ₹ 1,00,000/-. The balance sheet of the company as on 31.03.2017 (Diary No. 2080 dated 08.06.2018) shows that the authorised, issued, subscribed and paid up capital of the company is 10,000 equity shares of ₹ 10/- each.

4. It is stated that the company was established to undertake real estate and infrastructure business and that the company planned to buy lands and obtain approval from Government and dispose the land with approvals for a profit; undertake construction of residential apartments in NCR; buy/sell land, plots (residential, industrial, commercial) and flats on commission basis etc. It is further stated that given the bleak market for real estate and infrastructure,

the company decided to wait for an opportune time and also did not receive expected funding from the investors because of market conditions. It is stated that, however, the company managed to buy and sell one property for a profit. It is submitted that the company maintains an account with Nainital Bank Limited, Gurgaon. Copy of the bank account for the period 01.04.2011 to 26.02.2018 was filed vide Diary No. 1480 dated 08.05.2018. It is further stated that the company was filing Income Tax Returns (ITRs) regularly, but did not file Registrar of Companies compliance in full. It is stated that the promoters of the company entrusted the job of doing statutory compliance to the statutory auditors and were under the impression that the compliances are being done in time but on enquiry from the auditor, the promoters came to know that they had been making compliance of Income Tax Department only. It is submitted that the company did not appoint any Company Secretary. It is stated that all of a sudden from the speech of Hon'ble Prime Minister and through newspapers, the promoters came to know that around one lac companies' names have been struck off from the record of the Registrar of Companies on account of non-filing of documents and that on enquiry, the promoters of the company came to know that the petitioner's name has also been struck off because of non-filing of documents vide Govt. Notification No. ROC-DEL/248(5)/STK-7/2879 dated 30.06.2017 and a copy of the master data which shows the strike off is enclosed as Annexure A-3 of the petition. It is submitted that the petitioner and its Directors did not receive any notice or communication from the office of the Registrar of Companies and no opportunity of being heard was given. It is stated that the company is ready and willing to file up to date financials and Annual Returns within 15 days from

the date of order and is also willing to pay any cost or charges for restoration of the company. It is prayed that the name of the company be restored on the register of members being maintained by the respondent- ROC.

5. Vide order dated 15.09.2017 and 25.10.2017, notice of the petition was directed to be issued to the respondent – Registrar of Companies (ROC) and to the Principal Commissioner of Income Tax, Gurgaon. The respondent- ROC filed reply-cum-affidavit vide Diary No. 262 dated 23.01.2018. It is submitted therein that the company has not filed its Annual Returns and Balance Sheets since the Financial Year ended on 31.03.2012 due to which the respondent-ROC had reasonable cause to believe that the company was inactive and further, the respondent-ROC did not receive any communication in response to the notices issued in pursuance of sub-section(1) and sub-section (4) of Section 248 of the Act and Rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 from the company/Directors/shareholders regarding remedial measures taken, if any, and consequently, in pursuance of sub-section (5) of Section 248 of the Act and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, the name of the company was struck off. The respondent-ROC has enclosed the copy of Form NO. STK-7 dated 30.06.2017 (ROC-DEL/248(5)/STK-7/2879) in which the name of the company appears at Sr. No. 11328. The respondent-ROC has stated in the reply-cum-affidavit that the Tribunal may decide the matter on merits of the present case and if the company is restored to the register of companies, the company may be directed to file all the statutory documents since financial year ended on 31.03.2012 along with the applicable

and additional fee as payable on the date of filing. As regards the Income Tax Department (IT Deptt.), it is noted in the order dated 10.04.2018 that the learned counsel appearing from IT Deptt. submitted that the IT Deptt. is not to file any response/objection.

6. During the course of hearing, the learned counsel for the petitioner submitted that the requirements of Section 252(3) of the Act are complied with and that the company was not having any revenue from operations only because of a lull in the real estate market and that the company was intending to engage in operations as soon as the real estate market makes a recovery. The ROC, Punjab, Chandigarh and Himachal Pradesh represented the Respondent-ROC and relied upon the report submitted by the respondent-ROC vide Diary No. 262 dated 23.01.2018.

7. We have carefully considered the submissions of the learned counsel for the petitioner and the Income Tax Department as well as the submissions of the ROC, Punjab, Chandigarh and Himachal Pradesh appearing on behalf of respondent-ROC and have also perused the record. The provisions of Section 252(3) of the Act are as follows:-

“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.”

8. The present petition is filed by the company within the time period specified in Section 252(3) of the Act. Therefore, the issue remaining for consideration is whether 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. We have noted that the audited financial statements for the financial years ending 31.03.2013 to 31.03.2017 have been filed (Diary No. 2433 dated 24.10.2017, Diary No. 2080 dated 08.06.2018 and Annexure A-2 of the petition). These financial statements do not show any revenue from operations. The learned counsel for the petitioner has drawn our attention to the balance sheets from 31.03.2013 onwards showing fixed assets – land. The value of the land as on 31.03.2013 was ₹ 26,33,450/-. The learned counsel for the petitioner has stated that part of the land holding was sold in financial year 2013-14 resulting in profit of ₹ 2,78,500 on sale of land. The remaining land having value of ₹16,61,950 is being shown as such in the balance sheets from 31.03.2014 to 31.03.2017. It has been argued by the learned counsel for the petitioner that it was only because of the bleak market for real estate and infrastructure that the company had to decide to wait for an opportune time and it was also because of the market conditions that expected funding from the investors was not received. The learned counsel for the petitioner has stated that the Profit

and Loss accounts shows income generation in respect of interest on Fixed Deposits. It is submitted that the company is conducting its Annual General Meetings regularly and that the company is filing its Income Tax Returns (ITRs). The copies of acknowledgements of the ITRs in respect of Assessment Years 2012-13 to 2016-17 (except AY 2014-15) have been filed vide Diary No. 2599 dated 13.11.2017. The Return for Assessment Year (AY) 2012-13 is shown to have been filed on 30.09.2012 showing loss of ₹ 22360/-; AY 2013-14 on 26.03.2014 showing total income as zero; AY 2015-16 on 24.02.2017 showing total income of ₹6922; AY 2016-17 on 24.02.2017 showing total income of ₹ 6770/-. It is argued by the learned counsel for the petitioner that the ITRs were filed before the name of the company was struck off from the register of companies. It is submitted by the learned counsel for the petitioner that the Directors of the company are striving hard to bring the company on path of progress inspite of recession phase in real estate business and that the promoters of the company wants to continue the company in future as they have put in time and efforts in the company and had not only contributed share capital but also provided loan to the company worth ₹21,67,200/- and are waiting to get their return on their investment. It is argued by the learned counsel for the company that the company is in possession of fixed assets i.e. land valued ₹16,61,950 as on 31.03.2017 and that the company is deprived by the order of striking off the name of the company since the company is neither able to initiate any project nor able to realise the value of the land.

9. From the above submissions and consideration, we are of the view that the Directors of the company intend to have regular business

operations. The respondent-ROC has also not raised any objections to the restoration of the name of the company on the register of the company. The Income Tax Department has stated that they are not to file any response/objections. We, therefore, consider it reasonable to conclude that in the present case, the company was, at the time of its name being struck off, carrying on business or in operation. The conditions provided for in Section 252 (3) of the Act are held to be satisfied in the present case. We, therefore, direct the Registrar of Companies, NCT of Delhi and Haryana to restore the name of the company M/s. LUI Infra Private Limited on the register of companies subject to payment of costs of ₹1,00,000/- (Rupees one lac only) with the Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi in respect of the Registrar of Companies, NCT of Delhi and Haryana. 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 in the Rules;
- d. The applicant-company shall deposit the costs of ₹1,00,000/- with the Pay and Accounts Officer of the Ministry of Corporate affairs within two weeks from the date of 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;

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

g. The Income Tax authorities may take necessary action as per law for not filing the ITR for AY 2014-15 and/or for any other Assessment Year(s).

Copy of this order be communicated to the petitioner and respondent and also the Income Tax Department through the Nodal Officer – Principal Chief Commissioner of Income Tax, NWR, Aaykar Bhawan, Sector 17-E, Chandigarh.

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

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

September 05, 2018
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