

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

**CP No.115/Chd/HP/2018**

**Under Section 252(3) of the  
Companies Act, 2013.**

**In the matter of:**

Nalka Fabrics Private Limited,  
Village Nalka, PO Nalagarh,  
District Solan,  
Himachal Pradesh-174101  
PAN: AAFCN9862K.

... Petitioner

Versus

Registrar of Companies,  
Himachal Pradesh  
Corporate Bhawan, Third Floor,  
Plot No.4B, Madhya Marg,  
Sector 27B, Chandigarh.

...Respondent.

**Judgement delivered on 14.09.2018.**

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

For the Petitioner : Mr. Anil Kumar Aggarwal, Advocate.

For the Respondent : Mr. M.S. Pachouri, Registrar of Companies,  
Himachal Pradesh.

For Income Tax Department: Mr. Yogesh Putney, Advocate.

**Per: Pradeep R. Sethi, Member(Technical)**

**JUDGEMENT**

The present petition under section 252 (3) of the Companies Act, 2013 (hereinafter referred to as Act) is filed in Form NCLT 9 for restoration of the

name of M/s Nalka Fabrics Pvt. Ltd. (hereinafter referred to as Company) in the register of companies maintained by the Registrar of Companies, Himachal Pradesh (ROC). The petition is signed by Shri Darshan Singh Saini and copy of Board resolution dated 02.04.2018 inter alia authorising Shri Darshan Singh Saini is at Annexure A-1 of the petition. The company is stated to be incorporated on 01.10.2003 under the Companies Act, 1956 under CIN U17110HP2003PTC 026417 and copy of certificate of incorporation together with the Memorandum and Articles of Association is stated to be enclosed as Annexure A-2. The registered office of the company is stated to be situated at Village Nalka, P.O. Nalagarh, District Solan, Himachal Pradesh-174101. Therefore, the territorial jurisdiction lies with this Bench of the Tribunal.

2. The authorised share capital of the company is stated to be ₹5,00,000 divided into 50,000 equity shares of ₹10/- each and the issued, subscribed and paid up capital of the company is ₹1,60,000 divided into 16,000 equity shares of ₹10/- each fully paid up. The main objects of the company as given in para 4 (d) of the petition are as follows:-

*“To carry on the business of importing, exporting of ginner, spinners, weavers, balers and pressers of all cotton, jute, knitted fabrics, knitted cloth, garments, hosiery goods, silk, hemp, wool, hair, rayon and other fibrous materials including man-made fibres and any other fibres or fibrous substances including man-made fibres weaving and otherwise manufacturing, buying selling and dealing in all kinds of cloth and other goods and fabrics, whether textiles, felted, netted or looped, and vitriol, bleaching, sizing, dyeing, printing and other processing materials.”*

3. It is stated that initially, Shri Narinder Singh and Shri Arvinder Singh were the members of the company holding 8000 shares each and were the only two Directors of the company and that Mr. Narinder Singh and Mr. Arvinder Singh transferred all their shares in the company to Shri Darshan Singh Saini and Mr. Hans Raj Chandel respectively on 20.07.2005 and the latter two persons also became Directors and thus Mr. Darshan Singh Saini and Mr. Hans Raj Chandel are the members and Directors of the company on the date when the name of the company was struck off from the register of companies. It is stated that after its incorporation, the company purchased land measuring one bigha five biswas at village Nalka, P.O. Nalagarh on 29.12.2003 for setting up industrial unit for manufacturing of readymade garments. It is submitted that the then Directors of the company approached different banks for financing of the project, but could not garner the financial assistance of the bank and that the company therefore, could not set up the proposed industrial unit and could not therefore, commence its business/operations. It is stated that inadvertently, the company could not file its balance sheets, annual returns and other requisite documents with the Registrar of Companies, Himachal Pradesh for any financial year till date though the same were prepared in time from time to time. It is stated there are no outside secured or unsecured creditors of the company. It is submitted that ROC purportedly issued notice to the company and its Directors pursuant to sub section (1) of Section 248 of the Act and it appears that the notice was sent to the previous Directors of the company namely Mr. Narinder Singh and Mr. Arvinder Singh and it is not within the knowledge of the present Directors whether or not the notice was received by the company and its previous Directors. It is stated that pursuant to sub section (4) of Section 248 of the Act, the ROC

published notice in the Official Gazette of Govt. of India dated 20.05.2017 and thereafter published notice pursuant to sub section (5) of Section 248 of the Act read with Rule 9 of the Companies (Removal from the Register of Companies) Rules, 2016 in the Official Gazette of Govt. of India dated 29.07.2017 and struck off the name of the company from the register of companies w.e.f. 30.06.2017. The copy of the relevant pages of the Gazette Notification dated 29.07.2017 is stated to be enclosed as Annexure-A 17 and the name of the company appears at serial no. 434 thereof. It is submitted that the company and its members are genuinely and bonafide interested in commencing the business and operation of the company by setting up a small scale industrial unit for manufacturing of readymade garments (jackets, trousers, shirts, t shirts, kurta pajamas) at the site of the company at Village Nalka, P.O. Nalagarh, Solan and the total cost of the project is estimated to be ₹49.30 lacs to be wholly financed by the present promoters of the company through their own sources. It is stated that a detailed project report has been submitted with the office of Joint Director of Industries, Department of Industries, Baddi, Solan under acknowledgement dated 21.03.2018. It has been stated that the present Directors/Members of the company are financially sound and capable of investing the required funds from their own sources and a credit balance of ₹16,06,993/- is in their saving accounts as on 27.02.2018. It is stated that the company will not be able to set up the industrial unit and commence business operations unless and until the name of the company is restored to the register of companies and therefore, it is just and fair that the name of the company be restored to the register of companies pursuant to Section 252(3) of the Act.

4. Vide order dated 01.06.2018, nortice of the petition was directed to be issued to the respondent ROC and to the Income Tax Department though the Nodal Officer-Principal Chief Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh. The respondent ROC furnished report by diary No.2679 dated 25.07.2018 stating that as per record of MCA 21, the company was incorporated on 01.10.2003 and the Directors of the company are Mr. Narinder Singh and Mr. Arvinder Singh. It is stated that as per available record, there is no record regarding change in management as cited in para No.4 (h) of the petition; the company has not filed any Form 32 (now DIR-12) for change in directorship; it is difficult to ascertain who are the Directors of the company presently, the Directors have not taken DIN which was mandatory w.e.f. 01.11.2006 as per Company (Director Identification Number) Rules, 2006 and hence the Directors have violated Section 266A/153 of the Companies Act, 1956/2013. It is submitted that the respondent has no objection if the name of the company is restored to the register of companies under the provisions of Section 252(3) of the Act and the petitioner company and Directors may be directed to file all the pending documents including all the due annual returns and balance sheets alongwith requisite fee and additional fee as prescribed in the Rules.

5. The report on behalf of the Principal Commissioner of Income Tax, Shimla has been filed by diary No.2596 dated 23.07.2018. It is submitted that the company has not filed its Income Tax Returns for any assessment year and as per Section 139(1), the company is liable for levy of penalty under Section 271F and prosecution under Section 276CC of the Income Tax Act, 1961 and that the company has not filed any financial statements i.e. profit and loss

account, balance sheets etc. to ascertain its taxable income for any financial year.

6. During the course of hearing, the learned counsel for the petitioner relied on the petition and the reports of the respondent-ROC and Income Tax Department and stated that it is just and fair that the name of the company be restored to the register of companies pursuant to Section 252(3) of the Act. The respondent ROC and the learned counsel for Income Tax Department relied on the reports submitted by them.

7. We have carefully considered the submissions of the learned counsel for the company, the Registrar of Companies, Himachal Pradesh and the learned counsel for the Income Tax Department and have also perused the records. The present petition is filed under Section 252(3) of the Act which reads as follows:-

*“(3) 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. Therefore, the issues arising for consideration are:
- (i) Whether the petition is made by the company, member, creditor or workman
  - (ii) Whether the petition is made before the expiry of 20 years from the publication in the Official Gazette of notice under Section 248(5) of the Act
  - (iii) 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.

9. As regards the first issue, the petition is filed by the company and the affidavit verifying the application(pages 15 to 16 of the petition) is signed by Shri Darshan Singh Saini, Director of the company. The petition states that the present members are Mr. Darshan Singh Saini and Mr. Hans Raj Chandel holding 8000 shares each and these two persons are also the Directors of the company. The resolution of the meeting of the Board of Directors of the company held on 02.04.2018 (Annexure A-1 of the petition) independently and severally authorises the two Directors of the company i.e. Shri Darshan Singh Saini and Shri Hans Raj Chandel for filing of the petition under Section 252(3) of the Act. In his report filed by diary No.2679 dated 25.07.2018, the respondent-ROC has pointed out that as per record of MCA 21, the Directors of the company are Shri Narinder Singh and Shri Arvinder Singh and that there is no record regarding change in management as cited in para No.4 (h) of the petition; the company has not filed any Form 32 (now DIR-12) for change in Directorship; the Directors have not taken DIN which was mandatory w.e.f. 1.11.2006 as per Company (Director Identification Number) Rules, 2006 and hence the Directors have violated Section 266A/153 of the Companies Act 1956/2013. We find that with the petition, Board resolution dated 20.07.2005 for transfer of 8000 shares each from

Shri Narinder Singh and Shri Arvinder Singh to Shri Darshan Singh Saini and Shri Hans Raj Chandel respectively has been filed as Annexure A-7. The copies of share transfer deeds have also been submitted at serial no.3 of diary No.3208 dated 29.08.2018. The Board resolution dated 16.08.2005 for appointment of Shri Darshan Singh Saini and Shri Hans Raj Chandel as Additional Directors (Annexure A-3 colly); Board resolution dated 16.08.2005 accepting resignation of Directors Shri Arvinder Singh and Shri Narinder Singh (Annexure A-4 colly); and AGM resolutions dated 30.09.2006 for regularisation of the Additional Directors (Annexure A-5 colly) have been filed. The two Directors Shri Darshan Singh and Shri Hans Raj Chandel have also filed affidavits dated 24.08.2018 (serial no. 1 & 2 of diary No.3208 dated 29.08.2018) stating that the company duly complied with rest of the provisions of the Companies Act except that after incorporation of the company no documents have been filed with the Registrar of Companies including the balance sheets and annual returns of the company; the company has been regularly holding its Board meetings and the meeting of shareholders; the balance sheets of the company have been regularly prepared, approved and adopted by the respective meetings of the Board of Directors and the shareholders of the company. In view of the above discussion, we accept the contention of the company that the present shareholders and Directors are Shri Darshan Singh Saini and Shri Hans Raj Chandel and therefore, the affidavit of Shri Darshan Singh Saini verifying the application is proper. The respondent-ROC is at liberty to initiate action of violation Section 266A/153 of the Companies Act, 1956/2013 and for contravention of any other provisions by the company/Directors-past and present.

10. As regards the second issue, the name of the company was struck off by notice under Section 248(5) of the Act published in Official Gazette dated 29.07.2017. Therefore, the petition is within time.

11. With reference to the third issue, we note that the financial statements of financial years 2003-04 to 2017-18 have been filed (Annexure A-13 to A-15 of the petition and Annexure-4 to 15 of diary No.2444 dated 12.07.2018). There is no revenue from operations shown in any of the financial statements. It has been argued by the learned counsel for the company that after incorporation, the company purchased land measuring one bigha five Biswas at Village Nalka, P.O. Nalagarh on 29.12.2003 for setting up industrial unit for manufacturing of readymade garments and that the then Directors of the company approached different banks for financing of the project but could not garner the financial assistance of the bank and therefore, could not set up the proposed industrial unit. It is further argued that a detailed project report for setting up a small scale industrial unit for manufacturing of readymade garments (jackets, trousers, shirts, t shirts, kurta pajamas) at the site of the company at Village Nalka, P.O. Nalagarh, Solan with estimated total cost of ₹49.30 lacs has been submitted to the Joint Director of Industries, Department of Industries, Baddi, Solan and the same has been taken on record by the Joint Director of Industries by letter dated 21.03.2018 (Annexure A-18 of the petition) subject to the condition that the company will have to get all necessary statutory approvals/permissions/registrations from different Departments/ Boards/ Agencies of the State/Central Governments as applicable to the project. It is argued by the learned counsel for the company that the present Directors/Members of the company are financially sound and capable of investing

the required funds from their own sources and that as on 27.02.2018, they have credit balance of ₹16,06,993.46 in their saving accounts. The copies of statement of saving accounts of both the Directors are stated to be enclosed as Annexure A-19 colly of the petition. It is argued that the company will not be able to set up the industrial unit and commence its business operations unless and until the name of the company is restored to the register of companies and it will therefore, be just and fair that the name of the company be restored to the register of companies pursuant of Section 252 (3) of the Act.

12. We find that the land is being shown in the balance sheets of the company for the financial years 2003-04 onwards at the value of ₹7,30,000. As already discussed above, affidavits dated 24.08.2018 have been filed by both the Directors stating that the company duly complied with rest of the provisions of the Companies Act; company has been regularly holding its Board meetings and the meetings of the shareholders; the balance sheets of the company have been regularly prepared, approved and adopted by the respective meetings of the Board of Directors and the shareholders of the company. Therefore, the default was only with respect of non-filing of documents with the respondent-ROC including the balance sheets and annual returns of the company and non-filing of the Income Tax Returns. The pleadings in the petition and the submissions of the learned counsel for the company are that despite efforts, the industrial unit could not be set up on the land purchased and that even now, action is being taken for setting up a small scale industrial unit on the land. The respondent-ROC has conveyed no objection to the restoration of the name of the company to the register of companies. The Income Tax Department has also not raised any objection. We therefore, conclude that the present case is fit for giving a

finding 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.

13. In view of the above, as the company fulfils the requirements of sub-section (3) of Section 252 of the Companies Act, 2013, the petition is allowed and the name of petitioner-company is ordered to be restored in the register of companies subject to deposit of ₹50,000/- (Rupees fifty thousand only) as costs with the Pay and Accounts Officer, 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 in the Rules;
- d. The applicant-company shall deposit the costs of ₹50,000/- 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; and
- 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, Himachal Pradesh will be at liberty to initiate necessary action as per law in respect of change in Membership/Directorship not being intimated and Directors not taking DIN.

g. The Income Tax Department will be at liberty to initiate necessary action for non-filing of the Income Tax Returns.

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

Sd/-

(Justice R.P. Nagrath)  
Member(Judicial)

Sd/-

(Pradeep R. Sethi)  
Member(Technical)

September 14, 2018  
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