

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

CP No.114/Chd/Hry/2018

**Amended Petition under Section
252 (3) of the Companies Act, 2013**

In the matter of:

Haryana Metal Works Private Limited, Plot No.206, Sector 24, Faridabad,
Haryana- 121005, CIN: U74999HR1986PTC025184, PAN: AAACH3427R

...Petitioner

Versus

1. The Registrar of Companies, NCT of Delhi and Haryana, IFCI Tower,
Nehru Place, New Delhi- 110019
2. The Income Tax Office, Ward 1 (3) New CGO Complex, NH-IV,
Faridabad, Haryana- 121001

...Respondent

Judgment delivered on 26.09.2018.

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

Present:-

For the Petitioner	Mr. G.S. Sarin, Practising Company Secretary, for Mr. Sunil Kumar Aggarwal, Practising Company Secretary
For ROC NCT of Delhi & Haryana	Mr. M.S. Pachouri, Registrar of Companies, Punjab, Chandigarh and Himachal Pradesh
For Income Tax Dept.	Mr. Yogesh Putney, Advocate

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

JUDGMENT (Oral)

This petition has been filed in terms of Form NCLT 9, as prescribed in Rule 87 A of the National Company Law Tribunal Rules, 2016 (for short to be referred hereinafter as the 'Rules') inserted by way of amendment vide

notification dated 05.07.2017, seeking to restore the name of the company in the Register of Companies, maintained by the Registrar of Companies, NCT of Delhi and Haryana under Section 252(3) of the Companies Act, 2013 (for short to be referred hereinafter as the 'Act').

2. When the matter was listed on 01.06.2018, the authorized representative of the petitioner-company sought time to file application for amendment of the petition as well as memo of parties by making corrections in different paragraphs and by impleading proper persons as petitioners. The petitioner filed CA No.312 of 2018 by Diary No. 3010 dated 17.08.2018. The petitioner filed amended application in Form No.9 along with the bank statement (Annexure A-5) for the financial year 2017-18. The same was allowed on 20.08.2018. Otherwise, the petitioner had also filed the amendment application under Section 252 of the Act along with fresh index and documents by Diary No. 2129 dated 12.06.2018.

3. The company M/s Haryana Metal Works Pvt. Ltd. passed the resolution dated 24.04.2018 (Annexure G) attached with the amended petition, taking note of the striking off the name of the company and for filing a petition for its revival. The resolution authorized Mr. Sunil Kumar Agrawal, Company Secretary and/or Mr. Ravi Kumar, Advocate and/or Ms. Shubhra Agrawal, Advocate, to represent the company before the Tribunal. Mr. Ishwar Dass Mahajan, Director of the Company was authorized to sign/verify the petition and make applications and to do all the acts necessary for the progress of the case.

4. The petitioner-company was incorporated on 21.08.1986 with the Registrar of Companies, NCT of Delhi and Haryana. The authorized share capital of the company as reflected in the master data is ₹20,00,000/- of the value of ₹ 10/- per share and paid up share capital is ₹ 2000/- The authorized representative of the company however, submits that as per Memorandum of Association of the company (Annexure-H), the authorized share capital, was ₹ 5,00,000/-. The issued subscribed and paid up share capital is ₹ 4,91,000/- divided into 49100 shares of the value of ₹ 10/- each. It is submitted that the master data was not updated as the company had not filed the financial statements and other compliances with the Registrar of Companies for any of the financial year. Therefore, the company would have to file necessary documents with the Registrar of Companies, NCT of Delhi and Haryana, for updating the master data.

5. The registered office of the company is in Faridabad, in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

6. The certificate of incorporation of the petitioner-company is a part of the document (Annexure -H) with which the Memorandum and Articles of Association of the company have been annexed. The main objects of the company are as under:-

“1. To produce, process, extract, manufacture, purchase, prepare, import, export, buy, sell and generally refining of zinc and general non ferrous metals from scrap and waste.

2. *To manufacture and trading of zinc chloride, zinc oxide and other zinc chemicals and alloys.”*

7. The company did not file the Balance Sheets/Annual Returns since the date of its incorporation with the Registrar of Companies and the Registrar of Companies, assuming that company was not carrying on business or in operation, initiated the proceedings under Section 248 of the Act. Having received no response from the company, its name was struck off from the Register of Companies, vide notification dated 01.09.2017 (Annexure I), published by the Government of India, Ministry of Corporate Affairs. The name of the company is at Serial No.8349 of the list of companies, whose names were struck off from the Register of Companies.

8. On merits, it is stated that the petitioner-company had been carrying on business and in operation at the time when its name was struck off from the Register of Companies. The company is also maintaining and preparing all the mandatory documents as per the provisions of the Companies Act, 1956 and the 2013 Act, along with other applicable laws, but due to fault of the employee of the petitioner-company and some misunderstanding of the Chartered Accountant Firm, Annual Returns, Balance Sheets and other necessary documents could not be filed. The petitioner-company came to know about the striking off of its name by the Registrar of Companies from the notification (Annexure I). In fact, the company had not received any show cause notice from the Registrar of Companies, NCT of Delhi and Haryana, as required by Section 248 (1) (c) of the Act. Thus, the company was unable to take any appropriate steps to avoid striking off the name of the company.

9. Notice of this petition was issued to the Registrar of Companies, NCT of Delhi and Haryana, as well as the Income Tax Department through Principal Commissioner of Income Tax, Nodal office, Aaykar Bhawan, Sector 17-E, Chandigarh.

10. The Deputy Registrar of Companies, NCT of Delhi and Haryana, in the reply stated that the company has not filed the Annual Returns and Balance Sheets, since the date of its incorporation and the proceedings were initiated in terms of Section 248 (1) of the Act read with Rules 7 and 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, for which Annexure-II and Annexure-III are attached.

11. On merits, it is stated that the company must be directed to prove that it was carrying on business and in operation at the time when its name was struck off. It is further stated that in case the company is restored, the company may be directed to file all the Annual Returns, Balance Sheets, the compliance documents with requisite fee and/or additional fee, as prescribed.

12. The Income Tax Department in the report on behalf of the Principle Commissioner of Income Tax, Faridabad, which is supported by an affidavit of Mr. Sunil Sachdeva, Income Tax Officer, Ward 1 (3), Faridabad, has stated that the record of filing of Income Tax Returns from the assessment years 2011-12 to 2017-2018, is available. However, there is also the record of outstanding demand of ₹ 1,25,066/- for the assessment year 2006-07 and an amount of ₹ 30,614/- for the assessment year 2007-08.

13. We have heard the Authorized Representative of the petitioner-company, learned counsel for the Income Tax Department and the Registrar of Companies, Punjab, Chandigarh and Himachal Pradesh, representing Registrar of Companies, NCT of Delhi and Haryana, and have perused the records.

14. This petition has been filed in terms of sub-section (3) of Section 252 of the Act, which reads as under:-

“(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”

Therefore, the petitioner-company has to show that it was carrying on business or in operation at the time when its name was struck off from the Register of Companies.

15. Though the company is not earning revenue from operations from the past many years, but it is submitted that company owns property and has rental income. To support this contention, the authorized representative of the company has referred to the Title Deed of the property (Annexure-K) and the Rent Agreement dated 30.04.2004 (Annexure-J).

16. The petitioner has also filed the statement of bank account (Annexure-L) maintained with Central Bank of India, where the entries relating to the deposits of rental income are reflected. Further, bank statement for the period from 01.04.2017 to 23.04.2018 has been filed at Annexure A-5 vide Diary No.2635 dated 23.07.2018. The rental income being earned by the company is also reflected in the various Balance Sheets. As per Balance Sheet for the year ending 30.03.2016, the company earned the rental income to the tune of ₹4,20,000/- and for the year ending 30.03.2017 ₹4,21,200/-. The rental income is also reflected in the similar way in the profit and loss accounts for the year ending 31.03.2015 to the tune of ₹ 4,20,000/-. It is submitted that the rental income was also reflected in the previous years.

17. It is further contended that the company has land and building in its name, which the company acquired on 04.10.1996, which has been rented out to tenant as per the Rent Agreement, already referred above.

18. Mr. G.S. Sarin, Authorized Representative, appearing for the petitioner-company, states that the company undertakes to pay all the outstanding dues of the Income Tax Department within two months from the date when the name of the company is restored in the Register of

Companies. This undertaking is taken on record. For the defaults, if any, committed by the petitioner-company and for not complying with the provisions of the Income Tax Act, the Department of Income Tax would be at liberty to initiate the appropriate action against the company or its Director/Officers for violation of the provisions of the Income Tax Act.

19. From the above discussion, we find that the petitioner has brought sufficient evidence to show that the company was carrying on business and in operation at the time when its name was struck off from the Register of Companies.

20. The petition is allowed and the name of the company is ordered to be restored in the Register of Companies, subject to deposit of ₹ 2,00,000/- (Rupees Two Lacs only) as costs with the Pay and Accounts Officer, Registrar of Companies, NCT of Delhi and Haryana, within a period of three weeks from the date of receipt of certified copy of this order. 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 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 company shall deposit the costs of ₹ 2,00,000/- with the Pay and Accounts Officer, Registrar of Companies, NCT of Delhi and Haryana, within three 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 its officers for the delay in filing of the Balance Sheets and Annual Returns for the years in default; and
- g) The income tax authorities shall be at liberty to proceed against the company and its Director/Officers for non-compliance of the provisions of the Income Tax Act with regard to the late filing and non-filing of the Income Tax Returns.

Copy of this order be communicated to both the parties as well as the Income Tax Department through Nodal Officer, Principal Chief Commissioner of Income Tax, NWR, Aaykar Bhawan, Sector 17-E, Chandigarh 160017.

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

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

September 26, 2018
Mohit Kumar