

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

CP No.170/Chd/J&K/2018

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

In the matter of:

Miras Foods Private Limited, having its Registered Office at MIR Building, 4th
Floor Sadar Court Junction Lal Chowk, Srinagar, Jammu & Kashmir

And in the matter of:

Shri Adnan Rafiq Mir, Son of Rafiq Ahmad Mir, Member/Director, Miras
Foods Private Limited, R/o C590 Defence Colony New Delhi- 110024 PAN:
AAICM2517P

...Petitioner

Versus

Registrar of Companies, Jammu and Kashmir, Hall No.405-408, Bahu Plaza,
South Block, Rail Head Complex, Jammu- 180012

...Respondent

Judgment delivered on 20.09.2018.

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

Present:-

For the Petitioner : Mr. Vishav Bharti Gupta, Advocate

For the ROC J&K : 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 by Adnan Rafiq Mir, a Member/Director of
M/s Miras Foods Private Limited (for brevity the 'company'), for restoration of

its name in the Register of Companies, under Section 252(3) of the Companies Act, 2013 (for short to be referred hereinafter as the 'Act'). As per the list of shareholders (Annexure A-18), the petitioner is one of the shareholders of the company, having 500 shares out of 10,000 equity shares of the company. Under sub-section (3) of Section 252 of the Act, a shareholder is eligible to make an application to the Tribunal for seeking restoration of the name of the company.

2. The company was incorporated on 16.10.2012 with authorized and paid-up share capital of ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each. The company has its registered office at Lal Chowk, Srinagar, in the State of Jammu & Kashmir and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The master data of the company is at Annexure A-17.

3. The petitioner has attached Memorandum and Articles of Association of the company as at Annexure A-2. The main objects of the company is as under:-

“(i) To set up a chain of cafes, restaurants and eating houses to serve trade and industry in different cities to provide ready food to the customers which may include Indian Food, Continental Food, Chinese Food and food of different varieties including milk and milk products, ice creams, jelly and jelly products and to act as manufacturers, distributors and dealers of ready to serve food and to provide franchise to the people who are prepared to serve the customers in accordance with the tradition and system of service laid down by the company.

(ii) *To carry on the business of hotels, restaurants, café, caterers for public amusements, flient kitchens and other related activities whether in India or abroad.”*

4. The company did not file its Balance Sheet/Annual Returns with the Registrar of Companies, Jammu & Kashmir, since the date of its incorporation. The Registrar of Companies, Jammu and Kashmir, assuming that company was not carrying on its 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 30.06.2017 (Annexure A-16), published by the Government of India, Ministry of Corporate Affairs. The name of the company is at Serial No.332 of the list of companies, whose names had been struck off.

5. The application has been filed in Form NCLT 9, as prescribed in Rule 87A of the National Company Law Tribunal Rules, 2016, as inserted by way of amendment vide Notification dated 05.07.2017.

6. On merits, it is stated that Registrar of Companies, Jammu & Kashmir, has not followed the procedure prescribed under Section 248 of the Act and no notice was received by the company before its name was struck off. Otherwise, the company is active since the date of its incorporation and is maintaining the books of accounts regularly. The company is also convening Annual General Meetings regularly. The non-filing of Balance Sheets and Annual Returns with the Registrar of Companies was on account of repeated disturbances in the valley of Kashmir, where internet services were

suspended due to turmoil/disturbances which further, hampered the whole process of filing. The company however, had been filing the VAT Returns with the Sales Tax Management.

7. The notice of this petition was issued to the Registrar of Companies, J&K at Jammu as also the Income Tax Department, through Principal Commissioner of Income Tax, Nodal office, Aaykar Bhawan, Sector 17-E, Chandigarh. The petitioner has filed the affidavit of service, vide Diary No.3510 dated 17.09.2018. The Income Tax Department was served on 07.09.2018, but no representation has been filed by the Income Tax Department.

8. The Registrar of Companies, Jammu & Kashmir, has filed its report, vide Diary No.1324 dated 14.09.2018. It is stated that the company had not filed the statutory documents with the Registrar of Companies, since the date of its incorporation and the proceedings were initiated in terms of Section 248 of the Act. On merits, the Registrar of Companies has no objection in case the name of the company is ordered to be restored and the company is directed to file all the pending documents, including all the Annual Returns and Balance Sheets due along with requisite fee and additional fee, as prescribed in the Rules.

9. We have heard learned counsel for the petitioner, learned counsel for the Income Tax Department, the Registrar of Companies, Punjab, Chandigarh and Himachal Pradesh, representing Registrar of Companies, Jammu and Kashmir and have perused the record.

10. This petition is being 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”

The petitioner, who is a shareholder, therefore, has to establish that the company was carrying on business or was in operation at the time, its name was struck off from the Register of Companies.

11. The learned counsel for the petitioner mainly relied upon financial statements of the company from the financial year 2012-13 to 2017-18 (Annexure A-7 to Annexure A-12). These are the audited reports upto the year ending 2016-17, whereas the provisional balance sheet upto the year ending 31.03.2018, has also been filed. The company earned revenue from operation in the year 2017-18 to the tune of ₹ 2,40,310/- (Rupees Two Lacs Forty Thousand Three Hundred and Ten). Even in the year ending 31.03.2016, the company had earned revenue to the tune of ₹ 10,77,950/- (Rupees Ten Lac Seventy Seven Thousand Nine Hundred and Fifty) and ₹ 1,17,800/- (Rupees One Lac Seventeen Thousand Eight Hundred) for the

year ending 31.03.2017. Reference is also made to the returns of the financial years prior to the years 2015-16 to contend that the company had been earning the revenue for all these years. This is also reflected from the Profit and Loss Account for the year ending 2012-13. For the year ended 31.03.2013, the company earned revenue from operations to the tune of ₹ 8,69,800/- and for next year ending 31.03.2014 to the tune of ₹ 71,00,641/-.

12. Apart from that, petitioner has also placed on record the challans regarding copies of filing of the VAT Returns and also copies of the bank statement, maintained by the company in Jammu & Kashmir Bank in order to show the business transactions.

13. As regards to the filing of the Income Tax Returns, it is submitted by the learned counsel for the petitioner that the company has not filed the Income Tax Returns for any of the financial year. This fact also has been stated by the petitioner in his affidavit dated 10.07.2018 at page 43 of the paper book. For the defaults committed by the petitioner in complying with the provisions of the Income Tax Act, the Department of Income Tax would be at liberty to initiate appropriate action against the company or its Director/Officers for violation of the provisions of the Income Tax Act. This would, however, be not an impediment to the prayer made by the petitioner in the instant petition.

14. In view of the above, we find that there is sufficient evidence on record to show that the company was carrying on business and was in operation at the time when its name was struck off from the Register of Companies.

15. The petition is allowed and the name of the company is ordered to be restored in the Register of Companies, subject to deposit of ₹40,000/- (Rupees Forty Thousand only) as costs with the Pay and Accounts Officer, Ministry of Corporate Affairs within a period of three weeks from the 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 ₹40,000/- with the Pay and Accounts Officer of the Ministry of Corporate affairs 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 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 20, 2018
Mohit Kumar