

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

CP No.69/Chd/Pb/2018

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

In the matter of:

Punjab Accumulators Private Limited through Mr.Ranjit Singh, Director,
Registered Office at IOC Petrol Pump Complex, Sirhind, Punjab, PAN:
AABCP7961K

...Petitioner

Versus

The Registrar of Companies, Punjab and Chandigarh, 1st Floor, Plot No.4B,
Corporate Bhawan, Sector 27-B, Madhya Marg, Chandigarh

...Respondent

Judgment delivered on 27.09.2018.

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

Present:-

For the Petitioner : Mr. Karanveer Jindal, Advocate
Mr. Mahesh Kumar, Practising Company Secretary

For the ROC

Punjab and Chandigarh :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

This petition has been filed by Punjab Accumulators Private
Limited, a Company incorporated under the Companies Act, 1956 (for short

to be referred hereinafter as the 'Act') for restoration of the name of the Company in the Register of Companies. The list of the shareholders of the Company as on the date of last AGM held on 30.09.2002, is part of the Annual Return for the year ending 31.03.2002 (Annexure A-3) and the said list is at Page No. 33 of the paper book and Mr.Ranjit Singh through whom the petition is filed is one of the shareholders. Annexure A-2 is the Certificate of Incorporation of the Company with which the Memorandum and Articles of Association have been annexed.

2. The authorized share capital of the Company is ₹10,00,000/- divided into 10,000 equity shares of ₹ 100/- each and the issued and paid up share capital is ₹ 5,50,000/- divided into 5,500 equity shares of ₹ 100/- each. Master data of the company is at Page 87 of the paper book.

3. The main objects of the Company are as under:-

- “(a) To purchase, import, acquire, make, manufacture, sell, exchange, export, dispose of and deal in, storage Batteries, Accessories, Containers, Covers, Plates, Separators, Terminals, Dynamos.*
- (b) Tyres, Tubes, Flaps, all other kinds of Rubber Goods, Rubber parts, Automobile spares of all types etc.*
- (c) To deal in heavy chemicals, fine chemicals, laboratory chemicals, other chemical products, acids, gases oils, fuels, plastic material, synthetic plastic, moulding, toys, sports and all kinds of other plastic goods.*
- (d) To carry on any other business which may seem to the company capable of being conveniently carried on in connection with the above, otherwise calculated directly or indirectly, to enhance the value or any of the company's property and rights for the time being.”*

4. The application has been filed in terms of Form NCLT-9, as prescribed in Rule 87A of the National Company Law Tribunal Rules, 2016, as amended, vide notification dated 05.07.2017. The petition has been filed by the company through Ranjit Singh, the Authorized Representative, who is also a Director of the company on the basis of resolution dated 01.03.2018, passed by the Board of Directors of the Company. A copy of the resolution is Annexure A-1.

5. It is stated that the company is a closely held private limited company. Due to unmatchable and sudden change in technology of hard rubber, the company could not keep pace with the market and lagged behind and consequently, started running into losses. Eventually, the company committed a default in making statutory compliances and ultimately, the name of the company was struck off from the Register of Companies, vide notification dated 18.10.2011, published in terms of sub-section (5) of Section 560 of the Act. The copy of the said notification is at Annexure A-7. This provision is analogous to Section 248 of the Companies Act, 2013.

6. Sub-Section (1) of Section 560 says that where the Registrar of Companies has reasonable cause to believe that the company is not carrying on the business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on the business or in operation. So after compliance with various requirements of sub-section (2) to sub-section (4) of Section 560 and at the expiry of the time mentioned in the notice, the Registrar of Companies may, unless cause to the contrary is shown, strike off the name of the company from the Register and publish

notice thereof, in the Official Gazette. By this notification (Annexure A-7), it seems that the names of more than 500 companies were struck off from the Register of Companies.

7. It is stated in the petition that the Company has the assets including land and liabilities, when its name was struck off, whereas no provision was made for the same by the Registrar while striking off the name of the Company.

8. To highlight the case of the petitioner-company, it is stated that the State of Punjab framed a new policy for conversion of Industrial Plots for running of the hotel and/or hospital purposes to boost the industrial areas, by issuing a notification dated 08.09.2016 (Annexure A-8). The petitioner-company which was holding land in the industrial area, finding that the said policy was applicable to it, decided to revive the company and carry on the business of running a hotel. A proposal for constructing and running of the hotel with banquet hall, was submitted to the Government of Punjab by the petitioner-company. The petitioner-company received a communication from Government of Punjab asking it to pay the requisite fee for conversion of land use so that the proposal of the company can be considered. The project details which the company submitted are at Annexure A-9. The letter dated 20.03.2017 received from the Government of Punjab is at Annexure A-10, whereby the company has been asked to deposit 25% of the CLU charges to the tune of ₹ 60,03,150/- in the name of Chief Town Planner, payable at Chandigarh. In addition to this, out of total charges, 5% of the amount which comes to ₹ 12,00,650/- is also to be deposited towards the SIF charges by a

Demand Draft in the name of Chief Administrator, PUDA, along with some other amount. The balance 50% of the CLU charges is to be paid at the time of approval of the building plan or within one year of issuance of conversion letter, whichever is earlier. In case the amount of aforesaid charges is not paid within one year, the interest will be charged on the balance as per the Policy.

9. It is further stated that in case name of the company is not restored, the company will suffer irreparable loss and it is therefore, just and equitable that the name of the company may be restored. It is contended that huge amount towards conversion charges can be paid only from the account of the company in case of restoration of name of the company. It is averred that carrying on the hotel business falls within the other projects of the company as per the memorandum of association.

10. Notice of this petition was issued to Registrar of Companies, Punjab and Chandigarh as well as the Income Tax Department, Nodal Officer, Aayakar Bhawan, Sector 17-E, Chandigarh.

11. The affidavit of service was filed by the petitioner, vide Diary No.2303 dated 04.07.2018 and the Income Tax Department was served on 03.07.2018 as per the tracking report attached with the affidavit of compliance.

12. The Registrar of Companies, Punjab and Chandigarh has filed the written statement, stating therein that the Directors of the Company have not applied for Director Identification Number (DIN) in compliance of Section 266A of the Companies Act, 1956. As per the Return filed on 30.09.2003,

there were three Directors, appointed in the company namely Ranjit Singh, appointed in the year 1973; Pabble and Ajay Singh, appointed in the year 1993.

13. It is stated that the company did not file the statutory documents i.e. Annual Returns/Balance Sheets, since the year 2004 and therefore, proceedings were started in terms of Section 560 of the Companies Act, 1956 and name of the company was struck off from the Register of Companies in terms of sub-section (1) of Section 560 published in the Government of India Weekly Gazette Notification dated 05.11.2011 (Annexure R-2) and name of the petitioner-company is at Serial No.495 of the list. It is therefore, stated that communication with the State of Punjab regarding the Change in Land Use will not help the petitioner-company. In any case, if the name of the petitioner-company is ordered to be restored, the petitioner-company may be directed to file the DIN numbers of the directors of company and thereafter, to file all the statutory documents i.e. Annual Returns and Balance Sheets under the provisions of Companies Act, 1956 and Companies Act, 2013. The Income Tax Department has, not filed the report or any objections.

14. We have heard learned counsel for the petitioner, learned counsel for the Income Tax Department and the Registrar of Companies, Punjab and have perused the record.

15. 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 has to show that the company was carrying on business or was in operation or it is just and proper to restore the name of the Company.

16. The learned counsel for the petitioner submits that as per the record of the company, it has land, plant and machinery and building as per balance sheet for the year 2001-02, which is placed on record as Annexure A-4.

17. The basic reliance is placed upon the change in circumstances because of the policy introduced by the State of Punjab in September, 2016 i.e. much after the removal of name of the company in the year 2011. The process was initiated for seeking approval of the Chief Town Planner and the petitioner-company has been asked to deposit huge amount towards CLU. We are of the considered view that the benefits of the policy

introduced by the State Government in the year 2016, should not be denied to the petitioner-company which owns the land in the industrial area.

18. The authorized representative of the petitioner-company filed the additional affidavit vide Diary No.1411 dated 04.05.2018 and brought additional facts on record. It was submitted that as per the proposal, Annexure A-9, the initial cost of the project is about ₹ 5.10 Crores. In addition to that, an amount of ₹ 2.40 Crores has to be deposited for Change of Land Use and other formalities. The petitioner-company proposes to get the amount financed from the banks and other financial institutions against the collateral security of the land which is at the prime location. Shortfall would be met by the shareholders/promoters, who are financially sound people. To further substantiate the bona fides of the company, it has also been undertaken that the Directors/Shareholders of the company would not sell the land of the company for a period of five years from the date of revival of the company. However, in case the third party/financial investors, are required by the company for effective implementation of the project within the next five years from the date of revival of the name of the company, it is undertaken that the control of the company i.e. majority in the shareholding and majority in the management/board of directors would remain with the present shareholders/directors and/or their family members only which will not be diluted below 50% till the next five years. The total area of the land is stated to be 1.89 acres.

19. The above undertaking is taken on record. It shows the bona fides in the prayer made on behalf of the petitioner.

20. When the matter was listed on 28.08.2018, the learned counsel for the petitioner sought time to have the liberty to apply for DIN of the Directors of the company as this was one of the objections raised by the Registrar of Companies. The learned counsel for the petitioner has handed over the emails dated 21.09.2018 received by all the three Directors of the company from Government of India, Ministry of Corporate Affairs, allotting them the DIN numbers. These emails are taken on record. The copies of these emails have also been handed over to the Registrar of Companies, Punjab.

21. From the above discussion, we find the case of the petitioner-company to be falling within the requirement of sub-section (3) of Section 252 of the Companies Act, 2013. The petition is allowed and the name of the company be restored in the Register of Companies, subject to deposit of ₹ 1,00,000/- as costs with the Pay and Accounts Officer of the Registrar of Companies, Punjab and Chandigarh. 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 ₹1,00,000/- with the Pay and Accounts Officer of the Registrar of Companies, Punjab and Chandigarh 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; and
- 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;

Copy of this order be communicated to all the parties.

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

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

September 27, 2018
Mohit Kumar