

**IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

CP No. 244/Chd/Pb/2017

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

In the matter of:

Fine Switch Gears Private Limited
Having its registered office at 40 Industrial
Area, Phagwara, Kapurthala,
Punjab 144401.

...Petitioner

Versus

Registrar of Companies, Punjab at Chandigarh
Corporate Bhawan, 2nd Floor, Plot No. 4-B,
Madhya Marg, Sector 27-B, Chandigarh-160019.

....Respondent

Judgement delivered on : 09.01.2018.

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

For the petitioner : Mr. Yashpal Gupta, Advocate.

JUDGMENT

This petition has been filed by moving application in terms of sub-section (3) of Section 252 of the Companies Act, 2013 (for brevity, the 'Act') read with Rule 87 A of the National Company Law Tribunal Rules, 2016 (for short, the 'Rules') as inserted vide notification dated 5th July, 2017 by way of amendment in the Rules. The petition has been filed by the petitioner through its Promotor Director-cum-Shareholder Mr. Sat Pal Sethi. The registered office of the petitioner-company is situate at Phagwara in the State of Punjab and, therefore, the matter falls within the jurisdiction of this Tribunal.

2. The petitioner-company was incorporated on 30.11.1994 under the Companies Act, 1956 and allotted CIN U31200PB1994PTC015377 as a

private limited company. Annexure P-1 (Colly) is the Memorandum and Articles of Association of the company. The company was founded with the objects of carrying on business of: -

a) all kinds of switch gears, switches, relays, alarms, indicators, controllers, regulators, electrical and electromechanical accessories, gadgets and any other mechanical, electrical or electronic goods, components and parts thereof.

b) all kinds of tools, tool accessories, productivity gadgets, metal and plastics components, lamination and stamping, finished devices and spare parts etc.

3. The authorised share capital of this company is ₹ 25,00,000/- divided into 25,000 equity shares of ₹ 100/- each. The issued, subscribed and paid up capital of the company is ₹ 1,41,000/- divided into 1410 equity shares of ₹ 100/- each. The company remained operative for more than three years and has no assets and liabilities. The company thus applied to the Registrar of Companies, Punjab at Chandigarh for Fast Track Exit (FTE) by making on-line application for voluntary striking off its name. The e-FTE form was accepted and the name of the company was struck off from the register of companies. Copy of FTE e-form is at Annexure P-3. A perusal of FTE e-form (Annexure P-3) shows that it was filed with the Registrar of Companies, Punjab and Chandigarh on 17.02.2016 based on the resolution of the company dated 08.02.2016.

4. It is stated that the application was filed for FTE for striking off the name voluntarily due to lack of opportunities and inoperativeness but in the current scenario the petitioner-company seeing a lot of opportunities in the

changed environment, has received order for supply of material. Copy of the Quotation (Annexure P-4) dated 10.08.2017 received from United Electric Store, Phagwara Gate, Jalandhar mentions the value of goods to be supplied to the tune of ₹ 30,13,192.50. In order to explore the current opportunities and take advantage of the previous goodwill of the company, the shareholders and Directors of the company are willing to start business again under its previous name and hence filed this petition before the Tribunal. The petitioner-company has attached with this petition copy of Auditors Report, Directors Report and audited Balance Sheet for the year ending 31.03.2013 and the Annual Return for the year ending 2013 (Annexure P-2).

5. I have heard the learned counsel for the petitioner and perused the record quite carefully.

6. Learned counsel for the petitioner vehemently contended that the shareholders of the company have special attachment with the name of the company and they intend to begin afresh as has got the opportunity of exploring business prospects quite in a positive manner and, therefore, it is just and proper that the name of the company may be restored. This contention of the learned counsel cannot be sustained in the facts of the case.

7. The petitioner has to fulfil various requirements of sub-section (3) of Section 252 of the Act under which this application has been filed. Sub-section (3) of Section 252 of the Act 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.”

8. The first requirement of the provisions is that the petition can be filed by the company itself or any member or creditor or workmen thereof feeling **aggrieved** by striking off the name of the company from the register of companies. The instant petition has been filed by the company itself through its promotor Director. The company itself applied for Fast Track Exit and, therefore, there is no question of the petitioner-company or the promotor Director falling within the scope of ‘person aggrieved’ enabling the company to file this petition. On this ground alone , the petition is liable to fail.

9. The other ingredient which the petitioner has to fulfil is that the company was carrying on business or in operation at the time its name was struck off from the register of companies. Admittedly, the petitioner-company was not doing any business at the time its name was struck off from the register of companies. During the course of arguments, even the learned counsel admitted that the company has not filed any Income Tax Returns or Financial Statements for so many years. As per master data of the company

[Annexure P-1 (Colly)] last balance sheet was filed for the year ending 31.03.2012.

10. It was contended that the application for FTE was filed due to lack of opportunities and inoperativeness but in the current scenario there are bright chances. This cannot be a ground for restoration of name at all. Moreover, in Form FTE (Annexure P-3) in Column 8 at page 57 of the paper book relating to the brief description of the business last carried out by petitioner, it has been specifically stated that the company did not conduct any business since its incorporation i.e. the year 1994.

11. Learned counsel for the petitioner, however, contended that the application for restoration of name can be filed within a period of 20 years and in the facts and circumstances of the case, it should be considered as just to restore name of the company. I am of the clear view that the term 'just' should cover the circumstances which are *ejusdem generis* i.e. similar to the circumstances of the company carrying on business or in operation.

12. It would also be appropriate at this stage to refer to the view of the Hon'ble Principal Bench of the National Company Law Tribunal, New Delhi on the subject. In **Navbharat Gasflame Marketing Co. Pvt. Ltd. Vs. Registrar of Companies** (CP No. 09/2015) decided on 27.10.2017, it was observed in reference to the provision of Section 560 (6) of the Companies Act, 1956 which are in *pari materia* with the provisions of sub-section (3) of Section 252 of the 'Act', that the Tribunal needs to be satisfied that company was **at the time of striking off had been carrying on business or in operation or otherwise it is just that the company be restored to the Register of Companies.** In the said case, the petitioner-company had failed to satisfy the Tribunal that the

requirements of sub-section (6) of Section 560 of the Companies Act, 1956 have been fulfilled and it was held that such a company would not qualify to have its name restored on the register of companies. Some controversy was raised by the company in that case to show that it was carrying on the business and that proposition of the fact was not accepted on the basis of evidence. In the present case, it was rather admitted that the company had not been carrying on any business nor was in operation at the time of applying for FTE. Hon'ble Principal Bench further observed that the relevant time for proving the operation or business is to be the year when the name of the company was struck off which ingredient is not fulfilled in this case.

13. Even in the case of **Rastogi Enterprises Private Limited Vs. Registrar of Companies** (CP No. 411/2014) decided on 07.08.2017 by the Hon'ble Principal Bench, it was held that the company which was not carrying on business nor in operation, the benefit of ground available for restoration of name cannot be extended.

14. In view of the aforesaid discussion, the instant petition is dismissed *in limine*.

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

January 09, 2018
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