

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

**CP NO. 230/Chd/Hry/2017
with
CA No. 10/2018**

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

In the matter of :

Cruxweld Industrial Equipments Private Limited,
having its registered office at 1378, H.I.G.-1,
Sector 29, Faridabad, Haryana.

....Petitioner

Versus.

Registrar of Companies, NCT of Delhi &
Haryana having registered office at IFCI
Tower, 4th Floor, 61, Nehru Place,
New Delhi-110019.

....Respondent

Judgement delivered on : 11.01.2018.

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

For the petitioner : Mr. Nishant Singla, Practising Chartered Accountant
For the respondent : Dr. Raj Singh, Registrar of Companies, Himachal
Pradesh on behalf of Registrar of Companies, NCT
of Delhi and Haryana.

JUDGMENT (Oral)

CA No. 10/2018

In compliance with the observations made in the order dated 23.11.2017, the petitioner-company has filed additional documents supported by the affidavit of authorised representative of the petitioner-company. The documents be taken on record. CA No. 10/2018 stands disposed of.

CP NO. 230/Chd/Hry/2017

This petition has been filed in terms of Section 252 of the

Companies Act, 2013 read with Rule 87 A of the National Company Law Tribunal Rules, 2016 as inserted by way of amendment vide notification dated 05.07.2017 issued by the Ministry of Corporate Affairs. This petition has been filed in Form NCLT 9 in terms of Rule 87 A aforesaid.

2. The petitioner-company was incorporated on 25.11.1997 under the Companies Act, 1956 and authorised and paid up capital of ₹ 1,00,000/- divided into 10,000 equity shares of ₹10/- each fully paid up. The Memorandum and Articles of Association of the company is placed at Annexure-VI. The main objects of the company are to carry on the business of manufacturing of all kind of welding machine, welding consumables, including calcium carbide, welding electrodes, welding wire for manual, automatic and semi-automatic welding designed to weld all type of metals welding cartridges and studs suitable for all types of welding processes along with qualitative range of cutting and welding machine based on the principles of advanced technologies, creating a new generation of zero defects welding machines along with automation of welding operations, use of high quality resources like PCBs, IGBTs, MOSFETs, Resistors, Capacitors, Transformers, MCBs, Fans and Connectors.

3. The petitioner-company is having its registered office at Faridabad in the State of Haryana and, therefore, the matter falls within the territorial jurisdiction of this Tribunal. This petition has been filed by the petitioner-company through Mr. Keshav Sharma, Director of the company who has been authorised vide resolution dated 25.07.2017 (at page 15 of the paper book) of the Board of Directors. List of Directors of the company is at Annexure-III.

4. The grievance of the petitioner is that its name was struck off from the register of companies, NCT of Delhi and Haryana vide Notification dated 30.06.2017 (Annexure-V). The name of petitioner-company figures at Serial No. 4377 of the list attached with the aforesaid notification. The Registrar of Companies, NCT of Delhi and Haryana had issued notice to the petitioner-company in March, 2017 (Annexure-IV) under sub-section (1) & (2) of Section 248 (4) of the Companies Act, 2013 stating therein that the company is not carrying on any business or in operation for more than two preceding years before the said notice. The company did not reply to the notice.

5. As per master data filed by the authorised representative of the petitioner-company, the company filed balance sheet with the Registrar of Companies only upto the year ending 31.03.2012 and it seems that this was the basis to hold that the company was not doing any business at the time its name was struck off from the register of companies.

6. Notice of this petition was issued to the Registrar of Companies, NCT of Delhi and Haryana who has filed reply to this application. It is stated that the Registrar of Companies complied with the requirement of sub-section (1) and (2) of Section 248 (4) before striking off the name of the company from the register of companies. Notice was served upon the petitioner-company and its Directors; published notice in Form STK 5 which was issued in respect of 27291 companies and uploaded the same on the website of the Ministry of Corporate Affairs; letters were sent to various authorities including Income Tax Department, Central Excise, Service Tax, RBI and SFIO in order to enable them to furnish any objections or no objection certificates in respect of the

process of striking off. Notice was also published in the newspapers on 28.04.2017 and further copy of the notice was published in the Official Gazette of Government of India on 06.05.2017. At the end, the Registrar of Companies has prayed that the matter may be decided on its merits and in case the name of the company is restored, the petitioner-company may be directed to file all the statutory documents since financial year ending on 31.03.2012 along with the applicable and additional fee.

7. I have heard the authorised representative of the petitioner-company, the Registrar of Companies, Himachal Pradesh representing the Registrar of Companies, NCT of Delhi and Haryana and perused the record.

8. The authorised representative of the petitioner-company has referred to sub-section (3) of Section 252 of the Companies Act, 2013 which reads as under:-

“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.”

9. So basic requirement to see is whether the company was carrying on business or was in operation at the time when its name was struck off from the Register of Companies. Voluminous record has been relied upon by the petitioner in support of the above contention. Annexure-II is Audit Report for the financial year ending 31.03.2016 with Financial Statements for the said year. It would show that the company had revenue from the operations to the tune of ₹ 81,70,283 for the year ending 31.03.2016 and during the year ending 31.3.2015 the revenue from the operations was ₹ 67,39,324. By adding the other income earned by the company, the total revenue received was to the tune of ₹82,69,288 for the year ending 31.03.2016 and ₹ 75,25,194 for the year ended 31.3.2015. There is also expenditure incurred by the company to the tune of ₹ 82,01,924/- for the year ending 31.03.2016.

10. With the additional documents, the petitioner-company has placed on record copies of Form 26 AS for the Assessment Year 2013-14 to 2017-18 and also the VAT/GST Returns for the year 2016-17. These documents are at Annexures P-1 and P-2 (Colly) of the additional paper book. The fact that the company has been carrying on the business is further fortified from various Purchase Orders received by the petitioner-company from Tata Projects Limited, Kerala State Road Transport Corporation, The National Small Industries Corporation Limited etc. which are the part of documents at Annexure P-3 (Colly). The petitioner-company has also relied upon various Income Tax Returns for the Assessment Years 2013-14 to 2017-18 [Annexure P-6 (Colly)] and the electricity bills in the name of the Director of the company [Anneuxre P-5 (Colly)]. Income Tax Return for the Assessment Year 2016-17

(page 252 of the additional paper book) filed on 5.10.2017 shows the revenue from operations at ₹ 82,69,288/- which amount tallies with the balance sheet for the year ending 31.03.2016 as referred above. Work Order dated 03.10.2016 which the petitioner-company received from Tata Projects Limited is part of Annexure P-3 (Colly) is for an amount of ₹ 31,700/- and one of the amount of contract dated 21.09.2017 as per document at page 69 is ₹2,41,500/-. There is no need for further discussing the rest of voluminous record but it is made out from the abundant evidence that the company was carrying on business at the time its name was struck off from the register of companies.

11. In view of the above, as the petitioner company fulfils the requirement of sub-section (3) of Section 252 of the Companies Act, 2013, the petition is allowed and the name of petitioner-company be restored in the register of companies subject to deposit of ₹ 60,000/- (Rupees sixty thousand only) as costs with the Pay and Accounts Office, Ministry of Corporate Affairs, New Delhi in respect of the Registrar of Companies, NCT of Delhi and Haryana. 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 ₹60,000/- with the Pay and Accounts Office of the Ministry of Corporate affairs; 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 shall be at liberty to proceed against the company and the officers for the delay in filing of the Balance Sheets and Annual Returns for so many years.

12. Copy of this order be communicated to both the parties.

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

January 11, 2018
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