

**In the National Company Law Tribunal,
Chandigarh Bench, Chandigarh.**

CP No.281/Chd/CHD/2017

**Under Section 252 (3) of the
Companies Act, 2013.**

In the matter of:

DEEPAK RADIOS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT
SCO 78-79, SECTOR 17 D,
CHANDIGARH – 160017.

....Petitioner.

Versus.

REGISTRAR OF COMPANIES,
PUNJAB & CHANDIGARH,
PLOT NO.4-B, 1st FLOOR,
CORPORATE BHAWAN,
SECTOR 27, MADHYA MARG,
CHANDIGARH UT.

....Respondent 1.

AXIS BANK LTD,
BRANCH OFFICE AT SCO 1006-1007,
GROUND FLOOR, SECTOR 22B,
CHANDIGARH (UT) – 160022.

....Respondent 2.

Order delivered on 18.01.2018.

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

For the Petitioner:

- 1) Mr.Mast Ram
- 2) Mr Nitin Kumar, Practising
Company Secretaries.

For Registrar of Companies,
Punjab & Chandigarh:

Mr.Satya Pal Singh, Dy. Registrar of
Companies, Punjab & Chandigarh.

JUDGMENT (Oral)

This petition is filed under sub-section (3) of Section 252 of the Companies Act, 2013 (for short to be referred here-in-after as the 'Act') read with Rule 87A of National Company Law Tribunal Rules, 2016 (for brevity the 'Rules') as inserted by way of amendment vide notification dated 05.07.2017 issued by the Government of India, Ministry of Corporate Affairs, New Delhi. This application has been filed in Form NCLT 9 in terms of Rule 87A of the aforesaid Rules.

2. The petitioner company was incorporated on 17.02.1988 under the Companies Act, 1956 with the Registrar of Companies, Punjab and Chandigarh, having been allotted CIN: U32205CH1988PTC007983 as a private company. The petitioner company has its registered office at Chandigarh and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The authorised share capital of the company is ₹10,00,000/- divided into 10,000 equity shares of ₹100/- each. The issued, subscribed and paid up share capital of the company is ₹9,94,100/- divided into 9941 equity shares of ₹100/- each.

3. The main objects of the company are to carry on the business of manufacturers, repairers, assemblers, fabricators, dealers, buyers, sellers, importers and exporters of all types of electrical and electronic gadgets, accessories and components; to carry on the business of manufacturers, repairers, assemblers, dealers, buyers, sellers, importers and exporters of all types of domestic electrical and electronic appliances and to carry on the business of manufacturers, repairers, assemblers,

dealers, buyers, sellers, importers and exporters of all types of Radios, Televisions, Videos, Tape-recorders, Stereos, Public address systems, Wireless systems, Cassettes and Decks.

4. This petition has been filed by the petitioner company through Jagan Nath Gupta, the Director of the company, who has filed his affidavit in support of the contents of the application. As per sub-section (3) of Section 252 of the Act, the application can be filed by a company or any member or creditor or workman thereof aggrieved with the striking off the name of the company from the Register of Companies. Mr. Jagan Nath Gupta aforesaid through whom the instant petition has been filed is also a shareholder as per the list at Annexure A-4. The company has passed the resolution dated 15.11.2017 at Annexure A-1 resolving to file this petition authorising Mr.Jagan Nath Gupta, the Director of the company to file the petition and Mr.Mast Ram, FCS and Mr.Nitin Kumar, ACS to represent the company before the Tribunal. The list of the Directors of the Company is at Annexure A-3.

5. The grievance of the petitioner company is that the name of the company was struck off from the Register of Companies maintained in the office of Registrar of Companies, Punjab vide notification dated 22.07.2017 Annexure A-5 and the name of the petitioner company appears at serial No.739 of the list.

6. It is admitted that the petitioner company filed the last Balance Sheets and Annual Returns with the Registrar of Companies for the financial year ending 31.03.2014, but the financial statements thereafter

were not filed. It is stated that due to some technical reasons, the petitioner company could not file the latest returns in the office of Registrar of Companies. Before the financial year 2013-14 ending on 31.03.2014, however, the petitioner company took the decision to raise the paid-up share capital of the company from ₹8,24,100/- in the year 2014-15 to ₹9,94,100/- divided into 9941 equity shares, but the return for the increased allotment could not be filed with the Registrar of Companies in respect of their additional shares. Still the paid up capital thereof shown on the MCA portal at ₹8,24,100/-, is not the original figure. The company admittedly did not file the Annual Return after the financial year 2013-14. It is, however, stated that the petitioner company has been functioning since the date of its incorporation and pursuant its objectives. The petitioner company has filed the income tax returns and it is also registered under the Goods and Service Tax vide registration No.04AABCD3322L1Z0. Copy of the certificate issued by the GST authorities on 21.09.2017 is at Annexure A-7. Before that the petitioner company was registered with the Central Excise and Taxation Department, Chandigarh and the document in support of the above contention are at Annexure A-8 (Colly). The service tax returns filed with the Central Excise and Custom authorities for the financial year 2015-16 and 2016-17 and first quarter of 2017-18 are at Annexure A-9 (Colly).

7. The reasons for not filing the returns for the past three years was that the affairs of the company were being looked after by Jagan Nath, who fell ill and is a senior citizen. Copy of the medical record attached in support of the above contention is at Annexure A13.

8. Notice of this petition was issued to the Registrar of Companies and report of the Registrar of Company has been filed.

9. It is stated in the report that the name of the company was struck off mainly on the ground of non-filing of the statutory returns for the last three financial years i.e. 2014-15, 2015-16 and 2016-17. However, the basic default is for the two financial years i.e. 2014-15 and 2015-16 because the return for the financial year 2016-17 was supposed to be filed after holding of the Annual General Meeting (AGM) in the month of September, 2017, whereas the name of the company was struck off in July, 2017. The Registrar of Companies has otherwise no objection to the restoration of the name of the petitioner company in the Register of Companies, subject to the company filing all the pending documents including due Annual Returns and Balance Sheets along with the required documents under rules.

10. I have heard the learned counsel for the petitioner, Deputy Registrar of Companies, Chandigarh and carefully perused the record.

11. 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.”

12. So the basic requirement to be fulfilled by the petitioner company is whether it was carrying on business and was in operation at the time, when its name was struck off from the Register of Companies. The petitioner company has produced abundant evidence in support of this contention. Reference is made to the financial statement Annexure A-12. As per the Annual Return for the financial year ending 31.03.2015, the total revenue earned by the company was ₹8,67,655.87. The bifurcation of this revenue is ₹19,560/- as revenue from operations and other income is ₹8,48,095.87. Almost similar is the amount of the revenue for the financial year ending 31.03.2014 as is evident from page 128 of the paper book, which is part of document Annexure A-12 (Colly).

13. Reference further is made to page 132 of the paper book relating to the details of the revenue, which shows that the petitioner earned revenue from repairs and maintenance to the tune of ₹8,46,500/-.

14. The authorised representative of the company also referred to the Balance Sheet for the financial year ending 31.03.2017 which shows the revenue from operations as ₹3,18,248/- and the other income of ₹60,17,946/- and the total revenue is shown as 63,36,194/- and

this document at page 165 of the paper book shows the total revenue received from the previous financial year ending 31.03.2016 to be ₹55,00,450/-.

15. The authorised representative of the petitioner contends that the petitioner company is engaged in the business of repairs and maintenance of electronic gadgets and also in the business of sale of the electronic equipment on commission basis from which the petitioner company earns the commission. The commission earned during the financial year ending 31.03.2017 is described as ₹65 lacs and the previous financial year ending 31.03.2015 is ₹6,55,000/-. These all are stated to be entered in the books of accounts of the company.

16. The Income Tax Returns for the year 2015-16 as per the acknowledgement Annexure A-6 shows that the same was filed on 31.03.2017 and for the assessment year 2016-17, it was filed on the said date i.e. 31.03.2017, which was much before, when the name of the company was struck off. The income tax return for the year 2016-17 shows the gross income of the company to be ₹1,88,998/- and in the next assessment year 2017-18, the gross income is ₹1,69,890/- as evident from page 57 of the paper book. There is no need to make reference to the other documents relied upon by the petitioner company. From the above record, the petitioner company has been able to show that it was carrying on business and it was in operation at the time, when the name of the company was struck off from the Register of Companies.

17. 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 ₹40,000/- (Rupees forty 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 ₹40,000/- 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.

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

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

January 18, 2018.
Ashwani