

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

CP No.279/Chd/HP/2017

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

In the matter of:

DS Protection Group Private Limited
having its registered office at
Ward No.11, House No.198/2,
Devi Nagal Paonta Sahib,
Sirmaur, Himachal Pradesh-173025
PAN: AAECD6566B

...Petitioner.

Versus.

Registrar of Companies,
Himachal Pradesh situated at
Plot No.4-B, 2nd Floor,
Sector 27 B, Madhya Marg,
Corporate Bhawan,
Chandigarh (UT)-160019.

...Respondent

Order delivered on 25.01.2018.

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

Mr. Yash Pal Gupta, Advocate

For Registrar of Companies,
Himachal Pradesh:

Dr. Raj Singh, Registrar of Companies
Himachal Pradesh.

For Income Tax Department:

Mr. Rajesh Patwal, Income Tax Officer,
Nahan(Himachal Pradesh).

JUDGMENT (Oral)

This petition is filed by DS Protection Group Private Limited a company incorporated under the Companies Act, 1956 through Mr. Sagar Rathi a shareholder in the company, for restoration of the name of the company in the register of Companies being maintained by the Registrar of Companies, Himachal Pradesh. Annexure P-3 (colly) is the Certificate of Incorporation alongwith the Memorandum and Articles of Association with which Master Data of the company has been annexed. The company was incorporated on 10.05.2013. The authorised and paid up share capital of the company is ₹1,00,000/- divided into 10,000 equity shares of ₹10/- each.

2. The main objects of the company are to provide security services to banks, financial institutions, commercial and industrial organizations, schools, Central Government Organizations and other entities and to act as detective agency. The Memorandum and Articles of Association also contain ancillary objects.

3. The company did not file the Balance Sheets and the Annual Returns with the Registrar of Companies in respect of any of the Financial Year as per the Master Data. The petitioner is closely held company. The Directors of the company are Mr. Sagar Rathi and his wife Ms. Vibha and they are stated to be the shareholders of the company. It is stated that due to inadvertence the Balance Sheets of the company were not filed with the Registrar of Companies which was the only reason that the name of the company has been struck off.

4. The Registrar of Companies has filed his report and the Income Tax Department represented through Mr. Rajesh Patwal, Income Tax Officer,

Nahan where the assessment of the company is being done stated that the company is filing Income Tax Returns regularly. The first Income Tax Return was filed for the assessment year 2014-15 and the last Return for the assessment year 2017-18. It is also stated that there is nothing adverse against the company in the record of Income Tax Department.

5. The Registrar of Companies in his report has stated that name of the company was struck off in accordance with the provision of Section 248 of the Companies Act, 2013 (in short hereinafter to be referred as the 'Act') for non-filing of the statutory statements for the last three years. Believing that the company was not in operation, the name of the company was struck off from the register of Companies, otherwise it is stated that the Registrar of Companies has no objection if the name of the company is restored.

6. I have heard the learned counsel for the petitioner, the Registrar of Companies, Himachal Pradesh and also the representative from the Income Tax Department and carefully perused the record.

7. Learned counsel for the petitioner submits that this petition has been filed in terms of Section 252 (3) of the Companies Act 2013 read with Rule 87A as inserted by way of amendment in the Companies Act vide notification dated 05.07.2017. This application has been filed in Form NCLT 9 in compliance with the provisions of Rule 87A.

8. Sub-section (3) of Section 252 of the Act 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 the basic requirement to be fulfilled by the petitioner company is whether it was carrying on business and was in operations at the time when its name was struck off from the register of Companies justifying the restoration of its name.

10. The application under Section 252 (3) can be filed by either the company, or any member or creditor or workman thereof who feels aggrieved by the order of striking off the name of the company from the register of Companies.

11. Reference to acknowledgements of Income Tax Returns Annexure P-7 (colly) has also been made by the learned counsel for the petitioner for the assessment year 2014-15 at page 120 of the Paper Book showing that the Return was filed on 30.11.2014 with gross income of ₹1,27,466/-. The balance sheet has also been filed alongwith the acknowledgement of Income Tax Return. For the year ending 31.03.2017 revenue from operations is ₹2,12,65,488/-

12. For the assessment year 2015-16 relevant to the Financial Year ending 2014-15 the gross income of the company is ₹153166/- and the Balance Sheet shows that the revenue has increased in the said Financial Year. This Return was filed on 26.09.2015. The Income Tax Return for the assessment year 2016-17 was filed on 13.10.2016 showing gross income of ₹273149/- and revenue from operations to be ₹14,401,901/- . The record of tax deducted at source by various suppliers is also annexed by the petitioner for certain number of years.

13. It is stated that the petitioner company is providing employment to more than 360 employees and copy of the list of employees is at Annexure P-9 (colly) and the copy of the challan comprising list of employees showing deduction of provident fund is at Annexure P-10 (colly).

14. It has, therefore, been shown by the petitioner company that at the time when the name of the company was struck off from the register of Companies it was carrying on business.

15. 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 ₹50,000/- (Rupees fifty thousand only) as costs with the Pay and Accounts Office, Ministry of Corporate Affairs, New Delhi in respect of the Registrar of Companies, Himachal Pradesh. 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 ₹50,000/- 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 violation of the statutory compliances with regard to late filing of the statements.

Copy of this order be supplied to both the parties.

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

January 25, 2018.
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