

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

CP No.08/Chd/J&K/2018

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

In the matter of:

Mr.FIDA AHMED KHAN,
S/o ALI MOHAMMAD KHAN,
HOUSE NO.3, NIDA MANZIL B,
HAMDANIA COLONY BEMINA,
SRINAGAR KASHMIR.
DIRECTOR & SHAREHOLDER OF
M/s PEACE HOLIDAYS PRIVATE LIMITED.

....Petitioner.

Versus.

REGISTRAR OF COMPANIES,
JAMMU & KASHMIR,
4TH FLOOR, SOUTH BLOCK,
BAHU PLAZA JAMMU – 180004.

....Respondent.

Order delivered on 15.02.2018.

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

For the Petitioner:

Mr.Najamul Hussain Mir, Advocate.

For Registrar of Companies,
Jammu & Kashmir:

Mr.Ruvit Kumar, Registrar of
Companies, Jammu & Kashir.

For Income Tax Department:

Mr.Ajay Kumar Gupta, Inspector,
Income Tax, Ward-1, Srinagar.

JUDGMENT (Oral)

Fida Ahmed Khan, the Director and Shareholder of M/s
Peace Holidays Private Limited has filed this petition in terms of Section

252 (3) of the Companies Act, 2013 (for short to be referred here-in-after as the 'Act') for restoration of the name of the company in the Register of Companies. The application has been filed in Form No.NCLT - 9 as prescribed in Rule 87A of the National Company Law Tribunal Rules, 2016 (for brevity the 'Rules'), as inserted vide notification dated 05.07.2017.

2. The petitioner company was incorporated on 30.08.2013 with the Registrar of Companies, Jammu and Kashmir, having been allotted CIN: U63000JK2013PTC003977. The company has its registered office in Srinagar and, therefore, the matter falls within the territorial jurisdiction of this Tribunal. The authorised and paid-up share of the company is ₹1,00,000/- comprising of 1,000 equity shares of ₹100/- each. The petitioner company presently has two Directors and two shareholders.

3. The main objects of the petitioner company are to carry on the business as Tourism developers, developers of tourist destination, discovery of new tourist destinations, develop resorts, hotels provide hospitality services tourist and tourism facilities promotion, development expedition of tourism facilities and to manage events and work as event managers, work as tourist agents and to facilitate travelling and to provide for tourists and travellers, the provision of convenience of all kinds in the way of through tickets, sleepers cars, or berths, reserved places, hotel, motel and lodging, accommodation guidance, safe deposits, enquiry bureaus, libraries, reading rooms, baggage transport and other allied services to provide services that may be necessary for the achievement of the and to encourage and provide the business as package tour operators, daily passenger service operators, tour operators, travel agents, ship

booking agents, railway booking agents, airlines ticket booking agents, carrier service agents, courier service agents and to do all incidental acts and things necessary for the attainment of the foregoing objects. Copy of the Memorandum and Articles of Association of the defaulter company is Annexure-I (Colly) with which certificate of incorporation is annexed.

4. As per the master data of the company, it did not file the Balance Sheets for any of the financial year since its incorporation on 30.08.2013. The Registrar of Companies, Jammu and Kashmir issued a notice to the defaulting companies in terms of Section 248 (1) of the Act forming the opinion that the company was not in operation or carrying on the business for the past more than three years. The company failed to comply with the requirement of filing Annual Returns, financial statements and therefore, the name of the company was struck off from the Register of Companies, vide Government Notification Annexure-2, dated 26.04.2017 issued in the official gazette of Government of India, Ministry of Corporate Affairs.

5. It is stated that the petitioner company had been carrying on its business and was in operation at the time, when its name was struck off from the Register of Companies, but due to unavoidable circumstances could not file the documents within the stipulated time. Otherwise, the petitioner company has the assets and has never become defunct. The company did not file the Annual Returns and Balance Sheets due to the unfavourable situation in the State of Jammu and Kashmir and lack of funds availability and unfavourable market forces, the company could not grow its business.

6. Notice of this petition was issued to the Registrar of Companies, Jammu and Kashmir as well as to the Assistant Commissioner of Income Tax, Srinagar. The Registrar of Companies has filed his report and Mr. Ajay Kumar Gupta, Inspector of Income Tax Office, Srinagar is present in person. He has handed over a copy of letter dated 13.02.2018 issued by the Income Tax Officer, Ward – 3 (1), Srinagar under whose jurisdiction, the company is being assessed. As per this letter, the company has filed the Income Tax Returns for the assessment years 2014-15, 2015-16 and 2016-17 and there is no outstanding demand of tax by the Department against the company.

7. The Registrar of Companies in his report has stated that the company did not file the statutory documents with the Registrar of Companies for the last three years i.e. 2013-14, 2014-15 and 2015-16 and believing that the company was not in operation for the past about three years, a show cause notice was issued to the company. Otherwise, the Registrar of Companies has no objection, if the name of the company is restored in the Register of Companies with a further prayer that the company may be directed to file all the pending documents including the Annual Returns, Balance Sheets and requisite fee and additional fee prescribed under the Rules.

8. I have heard the authorised representative of the petitioner, the Registrar of Companies and the official representing the Income Tax Department.

9. 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.”

10. Therefore, the petitioner is required to show that the company was carrying on the business or was in operation at the time, when the name of the company was struck off from the Register of Companies. The petitioner has led sufficient evidence to show that the company was carrying on its business and in operation at the time its name was struck off from the Register of Companies. Annexure-4 (Colly) are the copies of the acknowledgements of filing of the Income Tax Returns for the years 2014-15 to 2016-17. The company had earned gross income of ₹14,079/- in the assessment year 2014-15, but the gross income became ₹2,25,086/- in the

assessment year 2016-17. All these Income Tax Returns were filed much before the name of the company was struck off from the Register of Companies.

11. The petitioner has also filed the Audited Balance Sheets for various financial years. In the financial year ending 31.03.2015, the company had earned the revenue from operations to the tune of ₹62,25,632/- and in the financial year ending 31.03.2016, the revenue from operation was ₹63,56,099/-. The company had also earned the revenue from operation to the tune of ₹4,380,134 in the financial year ending 31.03.2014. Therefore, it is made out from the above evidence that the company had been carrying on business and was in operation at the time, when the name of the company was struck off from the Register of Companies.

12. In view of the above, as the petitioner company fulfils the requirements of sub-section (3) of Section 252 of the Companies Act, 2013. The petition is allowed and the name of petitioner-company is ordered to be restored in the Register of Companies subject to deposit of ₹25,000/- (Rupees twenty five thousand only) as costs with the Pay and Accounts Office, Ministry of Corporate Affairs, New Delhi in respect of the Registrar of Companies, J & K. 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 ₹25,000/- with the Pay and Accounts Office of the Ministry of Corporate affairs;
- 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 the officers for the delay in filing of the Balance Sheets and Annual Returns for so many years.

Copy of this order be communicated to both the parties.

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

February 15, 2018.
Ashwani