

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

CP No.07/Chd/J&K/2018

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

In the matter of:

Mr.RAQUIB UL RASHID,
S/o ABDUL RASHID BUDHA,
HOUSE NO.10, SONA MANZIL,
POST OFFICE LANE RAJBAGH,
SRINAGAR KASHMIR.
DIRECTOR & SHAREHOLDER OF
M/s OASIS SECURITY AND PLACEMENT
SERVICES 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)

Raquib Ul Rashid, the Director and Shareholder of M/s
Oasis Security and Placement Services 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 07.05.2013 with the Registrar of Companies, Jammu and Kashmir, having been allotted CIN: U74999JK2013PTC003857. 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 has two shareholders and two Directors.

3. The main objects of the petitioner company are to carry on the business of selection, recruitment, training and placement of all kinds of personnel including ex-servicemen as security guards, chowkidars & other employees and to provide security consultancy, security services and security personnel in India and abroad to various organisations, agencies, industrial houses, local authorities, autonomous bodies, Govt. Departments, social and religious organisations, bodies corporate, hotels, restaurants and other business houses of any type and to carry on the business of consultants, suppliers and providers of all types of manpower such as contractual, skilled, unskilled, trained labour, staff, executives, managerial personnel, technical's & professionals including medical, para – medical and engineering personnel and to act as placement agents,

employment agents for the unemployed and to carry out all other activities relating to security, manpower and placement services as the company may deem fit and proper from time to time etc. Copy of the Memorandum and Articles of Association of the defaulter company is Annexure-I (Colly) with which certificate of incorporation is annexed.

4. The company did not file the Balance Sheets for any of the financial years since its incorporation on 07.05.2013. 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 having not filed the Annual Returns for a period of more than three previous financial years, it was not carrying on business or in operation at the relevant time. The name of the company was struck off from the Register of Companies, vide Government Notification Annexure-II, dated 26.04.2017 issued by the Government of India, Ministry of Corporate Affairs.

5. It is stated by the petitioner that the company is carrying on business and is in operation and the Audited Statements of Accounts are being prepared for each of the financial year. The company could not file the Annual Returns and Balance Sheets with the Registrar of Companies because of unavoidable situation in the State of Jammu and Kashmir and due to lack of fund availability and unfavourable market forces the company could not grow its business.

6. Notice of this petition was issued to the Registrar of Companies, J & K as well as to the Assistant Commissioner of Income Tax, Srinagar. The Registrar of Company 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 -2, 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 2015-16 and 2016-17 and there is no outstanding demand of tax by the Department.

7. The Registrar of Companies in his report has stated that the company did not file the financial statements from the financial years 2013-14 to 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 petitioner has adduced evidence for showing that the company was carrying on business and in operation at the time its name was struck off from the Register of Companies. As per acknowledgements of filing of the Income Tax Returns for the year 2015-16 Annexure-4 (Colly), the petitioner company earned the gross income of ₹1240/-. However, for the assessment year 2016-17, it had a gross income of ₹18,310/-. Both

these returns were filed much prior to the striking off the name of the petitioner company from the Register of Companies.

10. The petitioner company has also filed the Audited Balance Sheets for many years. As per the Balance Sheet for the year ending 31.03.2016, the petitioner company had earned the revenue from operation to the tune of ₹4,658,000 and the revenue from the operation for the financial year ending 31.03.2015 was ₹1,760,000.

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. 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. From the evidence as discussed above, it is made out that the petitioner company was carrying on business and was in operation at the time, when its name was struck off from the Register of Companies.

13. 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 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