

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

CP No.06/Chd/J&K/2018

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

In the matter of:

Mr. Titus Leon Maria Gall,
S/o. Johannes.
Near Water Filtration Plan Brain Nishat
Srinagar Kashmir.
Director and shareholder of
M/s. Pai Engineering services Pvt. Ltd.
PAN No.AAIFP9366J

....Petitioner.

Versus.

The 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,
Practising Company Secretary.

For the respondent:

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

For Income Tax Department:

Mr. Ajay Kumar Gupta, Inspector,
Ward No.3(1), Srinagar.

JUDGMENT (Oral)

This petition has been filed by Mr. Titus Leon Maria Gall one of the shareholders of the company, namely, M/s Pai Engineering Services Private Limited in terms of Section 252 (3) of the Companies Act, 2013 (for short to be referred hereinafter as the 'Act') for restoration

of the company in the register of Companies. The application has been filed in Form NCLT 9 as required under Rule 87A of the NCLT Rules, 2016 inserted by way of amendment vide notification dated 05.07.2017.

2. The petitioner-company was incorporated as a Private Limited company on 19.06.2006 with the Registrar of Companies, Jammu & Kashmir with its registered office in Srinagar and, therefore, the matter falls within the territorial jurisdiction of this Tribunal. The petitioner-company failed to file Balance Sheets from the years ending 31.03.2013 onwards. The Registrar of Companies, Jammu & Kashmir issued notice under Section 248(1) of the Companies Act, 2013 seemingly on the ground that the company was not carrying on business and not in operation when its name was struck off from the register of Companies. The petitioner-company failed to file Balance Sheets despite issuance of notice and, therefore, name of the petitioner-company was struck off from the register of Companies. Annexure-1 is the copy of the Memorandum and Articles of Association of the company with which the Certificate of Incorporation has been annexed. It is stated that the petitioner-company was carrying on business and was in operation when its name was struck off from the register of Companies.

3. The authorized and the issued, subscribed and paid up share capital of the company is ₹1,00,000/- divided into 1000 equity shares of ₹100/- each.

4. The main objects of the company are to carry on the business of civil, mechanical, electrical and consulting engineers,

agricultural engineers, aeronautical engineers, aviation engineers, construction engineers and engineers in all branches of work whatsoever known to engineering, erectors, mechanicals, electrical, computers, computers hardware and software and information technology related engineering services. Further to carry on the business of providing engineering services and consultancy for the construction of buildings, residential houses, flats, apartments, blocks, quarters, basements, commercial complex, shopping centres, showrooms, factories, farms, offices, warehouses, godowns, stores, open warehouses, warehousing complex, cold storage, safe deposit, vaults, garages and also provide engineering services and consultancy for the works of installation of industrial plant & machinery equipments, mills factories, electrical installations, electronics computer hardware & software and information technology enabled services, water supply, sewerage, chemical, mechanical installations, HT/EHT/LT overhead lines, cabling switch gears, auxiliaries, equipment, accessories and installations with all the new and latest technologies and techniques.

5. Notice of this petition was issued to the Registrar of Companies, Jammu & Kashmir as well as Assistant Commissioner of Income Tax, Srinagar. Mr. Ajay Kumar Gupta, Income Tax Inspector, Ward No.3(1), Srinagar representing Income Tax Department has filed letter dated 13.02.2018 from I.T.O Ward-3(1), Srinagar stating that the company has filed the Income Tax Returns from the assessment year 2013-14 to 2015-16 and there is no demand outstanding against the company.

6. The Registrar of Companies, Jammu & Kashmir has also filed his report stating that the company did not file the Annual Returns from the years 2013-14 to 2015-16. Otherwise the Registrar of Companies has no objection if the name of the company is restored with a further prayer that the company may be directed to file all the pending documents including all the due Annual Returns and Balance Sheets alongwith the requisite fee and additional fee as prescribed in the Rules.

7. I have heard the Authorized Representative of the petitioner-company, Registrar of Companies, Jammu & Kashmir and also the official representing Income Tax Department 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 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 adduced evidence in support of this contention.

10. The Authorized Representative of the petitioner-company has referred to the Income Tax Returns at Annexure-4 (colly) of the company for the assessment years 2013-14 and 2015-16. The gross income of the company for the assessment year 2013-14 was ₹12907/- and for the assessment year 2015-16 it was ₹11,34,500/-. All these returns were filed much before the name of the company was struck off from the register of Companies.

11. Apart from that the petitioner-company has also filed audited Balance Sheets Annexure-3 (colly) for so many years. Balance Sheet for the financial year ending 31.03.2014 shows that the revenue from operations was to the tune of ₹5,82,061/-. The petitioner-company also earned revenue from operations to the tune of ₹2,39,98,923/- for the financial year ending 31.03.2015 and ₹8,539,636/- for the next financial year. Revenue from operation during the latest financial year ending 31.03.2017, however, has been reduced to ₹17,29,492/-.

12. From the evidence lead it is made out that the petitioner-company M/s Pai Engineering Services Pvt. Ltd. was carrying on business and in operation, 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 ₹30,000/- (Rupees thirty thousand only) as costs with the Pay and Accounts Office, Ministry of Corporate Affairs, New Delhi in respect of the Registrar of Companies, Jammu & Kashmir. 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 ₹30,000/- 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.
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