

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

CP No.05/Chd/J&K/2018

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

In the matter of:

Mr. Nazir Aftab Haleem
S/o. Mohd Sidiq Haleem
Kashi Mohalla Batamaloo,
Srinagar.
Director and shareholder of
M/s. Batamaloo Tours & Travels Pvt. Ltd.
PAN No.AAFCB9921K

....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 & Kashir.

For Income Tax Department:

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

JUDGMENT (Oral)

This petition has been filed by Mr. Nazir Aftab Haleem the shareholder of M/s Batamaloo Tours & Travels Pvt. Ltd. This company was incorporated on 19.10.2012 with the Registrar of

Companies, Jammu & Kashmir with authorised and paid up share capital of ₹10,00,000/- divided into 10,000 equity shares of ₹100/- each. Annexure-1(colly) is the copy of Memorandum and Articles of Association of the company with which the Certificate of Incorporation has been annexed.

2. The main objects of the company are to carry on the business as tourist agents and to facilitate travelling and to provide for tourist and travellers, the provision of convenience of all kinds in the way of through tickets, slipper 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 act as Money Changers, to provide services that may be necessary for the achievement of the and to encourage and to provide the business as package tour operators, daily passenger service operators, tour operators, travel agents, ship booking agents, railway ticket booking agents, airlines ticket booking agents, carrier service agents, courier service agents and all incidental acts and things necessary for the attainment of the foregoing objects.

3. The registered office of the company is in Srinagar and, therefore, the matter falls within the territorial jurisdiction of this Tribunal. The petitioner-company has two shareholders and presently the Board of Directors comprises of two directors namely, Mr. Nazim Aftab Haleem and Mr. Mukhtar Ahmad Butt.

4. The name of petitioner-company has been struck off from the register of Companies seemingly for non-filing of the Annual Returns for so many years. The Master Data of the company shows that the Balance Sheets were not filed for any of the Financial Year since incorporation of the company. The Registrar of companies, Jammu & Kashmir issued notice under Section 248(1) of the Companies Act, 2013 but the petitioner could not file the Annual Return within the stipulated period. It is stated that due to unavoidable conditions in the State of Jammu & Kashmir the company faced unfavourable marketing force and thus the company could not grow its business.

5. This petition has been filed by the company for restoration of its name under 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 Board of Directors of the petitioner-company has passed resolution for filing of this petition on 02.08.2017. This petition has been filed by Mr. Nazir Aftab Haleem one of the shareholder of the company in Form NCLT 9 as per Rule 87A of the NCLT Rules, 2016 inserted by way of amendment vide notification dated 05.07.2017. It was otherwise stated that the petitioner-company was carrying on business and in operation at the time, when its name was struck off from the register of Companies.

6. 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 representing Income Tax Department has filed letter dated 13.02.2018

issued by I.T.O. Ward-3(1), Srinagar where the company is being assessed stating that the company has filed the Income Tax Returns for the assessment year 2016-17 and there is no demand outstanding against the company. The Registrar of Companies, Jammu & Kashmir has also filed his report stating that the company did not file the Annual Returns from the years 2012-13 to 2015-16 and believing that the company was not in operation sent notice under Section 248(1) of the Companies Act, 2013 and the name of the company was struck off. Otherwise the Registrar of Companies has no objection if the name of the company is restored in the register of Companies with further prayer to direct the company to file all the Annual Returns and Balance Sheets with the requisite fee and additional fee.

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 produced evidence in support of this contention. The Authorized Representative of the petitioner-company submits that the petitioner-company could not grow its business because of some litigation which was pending before the Hon'ble Jammu & Kashmir High Court and that matter has since been resolved. It is stated by the Authorized Representative that the said dispute was resolved in the year 2016.

10. Perusal of the Balance Sheet for the year ending 31.03.2015 shows that the revenue from operation earned by the company was to the tune of ₹105,640/- and for the year ending 31.03.2016 the revenue earned was ₹148,020/-. Revenue from operation during the year ending 31.03.2014 was ₹76,452/-. Otherwise the petitioner-company had also been filing the Income Tax Returns and acknowledgements of filing of Income Tax Returns for the assessment years 2016-17 and 2017-18 are at Annexure -5 (colly) from which it is apparent that these were filed after the name of the company was struck off from the register of Companies and

even there is negligible gross income for the assessment year 2016-17 and Nil during the year 2017-18.

11. However, it is satisfactorily explained in the circumstances of the case as represented during the course of arguments that due to heavy floods in the Valley in the year 2014 there was damage to record of the company. It is, however, apparent from the evidence adduced that the petitioner-company was not defunct company and that it was carrying on business when its name was struck off from the register of Companies.

12. 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, 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 ₹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.
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