

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

**CP No. 12/Chd/J&K/2018**

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

**In the matter of:**

Mr. Mirza Mukasid S/o Abdul Majeed Beigh,  
Dugjan Road, Near Kashmir Mobile Zone,  
Main Bazar, Dalgate, Srinagar, Kashmir  
Director and Shareholder of :  
M/s. Fixcare Technologies Private Limited,  
having its registered office at Dugjan Road,  
Near Kashmir Mobile Zone,  
Main Bazar, Dalgate, Srinagar

...Petitioner

Vs.

Registrar of Companies, Jammu & Kashmir,  
4<sup>th</sup> Floor, South Block, Bahu Plaza,  
Jammu-180004.

....Respondent

**Judgement delivered on: 15.02.2018**

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

For the petitioner : Mr.Najamul Hussain Mir, Practising Company Secretary

For the respondent : Mr. Ruvit Kumar, Registrar of Companies, Jammu &  
Kashmir.

For Income Tax : Mr. Ajay Kumar Gupta, Inspector, O/O Income Tax  
Department. Officer, Ward-3 (1), Srinagar.

**JUDGEMENT (Oral)**

Mr. Mirza Mukasid, a shareholder of M/s. Fixcare Technologies Private Limited has filed this petition in Form No. NCLT 9 under Section 252 (3) of the Companies Act, 2013 (for brevity, the 'Act') read with Rule 87A of the National Company Law Tribunal Rules, 2016 (for short, the 'Rules') inserted vide notification dated 5<sup>th</sup> of July, 2017 issued by the Ministry of Corporate Affairs, Government of India for restoration of the name of the

company in the register of companies, maintained by the Registrar of Companies, Jammu & Kashmir.

2. The petitioner-company was incorporated on 04.12.2012 under the Companies Act, 1956. The registered office of the company is situated in Srinagar in the State of Jammu and Kashmir and, therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of Memorandum and Articles of Association of the company is part of Annexure A-1 with which the certificate of incorporation has also been annexed.

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

4. The Board of Directors of the petitioner-company vide resolution dated 02.08.2017 resolved to file the application before this Tribunal under Section 252 (3) of the Act and authorised Mr. Mirza Mukasid, shareholder/Director of the company to file the instant petition before this Tribunal.

5. The main objects of the company is to carry on the business of software development and to undertake IT enabled services like call centre management, Medical and legal transcription, Data processing, warehousing and database management and designing and dealing Computer Software, and to import, export, sell, purchase or otherwise deal in Computer Software packages and to carry on the business of dealing in computer hardware, consultancy services, management services, computer systems and assemble data processors, programmed designs and to buy, sell or otherwise deal in such hardware and software packages and all types of tabulating machines, accounting machines, calculators, computerized telecommunication systems and network, their components, spare parts,

equipments and devices and to do all incidental acts and things necessary for the attainment of the foregoing objects.

6. The authorised representative of the petitioner contended that the Registrar of Companies, Jammu & Kashmir identified 912 companies and the petitioner-company, being one of them, was issued notice dated 12.06.2017 (Annexure A-2) to show cause as to why the name of the company be not struck off from the register of the companies as the company has not filed balance sheets for any of the financial years since its incorporation.

7. It is stated that the petitioner-company could not file annual returns and balance sheets with the Registrar of Companies, J&K within the stipulated period owing to strikes and disturbed conditions in the valley. It is further stated that the assets of the company are in-tact and it never became defunct nor a situation arose for winding up of its business.

8. Notice of this petition was issued for 15.02.2018 to the Income Tax Department through the Assistant Commissioner of Income Tax, Srinagar and the Registrar of Companies, Jammu & Kashmir for filing objections/reply, if any, to the prayer made in the petition. Mr. Ajay Kumar Gupta, Inspector, Office of Income Tax Officer, Ward-3 (1), Srinagar representing the Income Tax Department has handed over letter dated 13.02.2018 of the ITO concerned wherein it is stated that the company has filed Income Tax Returns for the Assessment Years 2015-16 & 2016-17 and there is a demand outstanding for the Assessment Year 2015-16 to the tune of ₹2760/-. The authorised representative of the petitioner-company submits that the petitioner shall deposit above said amount of demand with the Income Tax Department within a short period. This undertaking is taken on record.

9. The Registrar of Companies, J&K has also filed his report. It is stated that action against the company was initiated in accordance with the law having regard to the provisions of Section 248 of the Act as the company failed to file statutory documents from the years 2012-13 to 2015-16. However, on merits, the Registrar of Company has no objection if the name of the company is restored subject to filing of the pending documents including Annual Reports and Balance Sheets along with requisite fee and additional fee as prescribed in the rules.

10. I have heard the authorised representative of the petitioner-company and Registrar of Companies, Jammu & Kashmir and perused the record carefully. It will be relevant to refer to sub-section (3) of Section 252 of the Act which reads as under:-

*“(3) 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.”*

11. So the basic requirement to be fulfilled by the petitioner-company is whether it was carrying on business and in operation at the time when its name was struck off from the register of companies. The petitioner-company has produced sufficient evidence in support of this contention. At Annexure A-3 (colly) are the copies of audited balance sheets of the petitioner-company for the years ending on 31.03.2013 to 31.03.2016. It is contended on behalf of the petitioner that the company has the revenue from the operations for the past about two years but the business conditions were affected because of the disturbed conditions, strikes etc. in the valley in the prior periods. As per profit and loss statement for the financial year ending 31.03.2016, the company earned a revenue from operations to the tune of ₹ 1,57,88,361/- and it was ₹ 1,28,17,528/- for the year ending 31.03.2015. The petitioner has also placed on record the acknowledgement of filing of Income Tax Returns (Annexure A-4) for the Assessment Years 2015-16 to 2017-18. The petitioner-company earned a gross income of ₹ 25,310/- during the assessment year 2017-18; ₹ 54927/- during the Assessment Year 2016-17 and ₹34175/- for the Assessment Year 2015-16.

12. The petitioner-company thus has been able to prove that it was carrying on business and in operation at the time when the name of the company was struck off from the register of companies.

13. From the above evidence produced by the petitioner-company and there being no objection by the Registrar of Companies, Jammu & Kashmir and the company fulfilling the requirement of sub-section (3) of Section 252 of the Act, the petition is allowed and the name of the 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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