

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

CP No.238/Chd/HP/2017

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

In the matter of:

PEER VEER CONSTRUCTION COMPANY PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT 2ND FLOOR,
VILLAGE LUGO, MAUJA SANWARA, KASALI ROAD,
NEAR PINE GROVE SCHOOL, P.O.MANDODHAR SOLAN,
HIMACHAL PRADESH – 173209.

....Petitioner.

Versus.

REGISTRAR OF COMPANIES, HIMACHAL PRADESH,
CORPORATE BHAWAN, PLOT NO.4-B, SECTOR 27-B,
MADHYA MARG, CHANDIGARH – 160019.

....Respondent.

Order delivered on 11.01.2018.

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

For the Petitioner:

Mr.Mast Ram & Nitin Kumar,
Practising Company Secretaries.

For Registrar of Companies,
Himachal Pradesh:

Dr.Raj Singh,Registrar of Companies,
Punjab, Chandigarh and Himachal
Pradesh.

JUDGMENT (Oral)

This petition is filed under Section 252 (3) of the
Companies Act, 2013 (for short to be referred here-in-after as the 'Act') for
restoration of the Company's name in the Register of Companies. The

application has been filed under Rule 87A of National Company Law Tribunal Rules, 2016 as inserted by way of amendment vide notification dated 05.07.2017 issued by the Government of India, Ministry of Corporate Affairs, New Delhi. This petition has been filed in Form NCLT 9 in terms of Rule 87A aforesaid.

2. The petitioner company was incorporated on 10.01.2012 with the Registrar of Companies, Himachal Pradesh. The authorised issued, subscribed and paid-up share capital of the company is ₹1,00,000/- divided into 10,000 equity shares of ₹10/- each.

3. As per the Memorandum of Association of the company, the main objects of the company are to lay out, develop, construct, build, erect, demolish re-erect, alter, re-model or do any other work in connection with any building scheme roads highways, docks, ships sewers, bridges, canals, wells, springs, multi-storeyed buildings, power plants, wharves, ports, reservoirs' embankments, tramways, irrigation improvements, sanitary, water, gas electric light, telephonic and power supply works or any other structural or architectural work of any kind whatsoever and for such purpose to prepare estimates designs, plants, specifications, or models and do such other or any act that may be requisite thereof & to purchase, acquire, take on lease, or in exchange or in any other lawful manner any other land, building multi-storied structures and to turn to the same into real estate, account develop the same and dispose of or maintain the same or to maintain the same and to build townships, markets, or other building or convenience thereon and to equip the same or any part thereof with all any

amenities or conveniences, drainage facility electric telegraphic, telephonic, televisions and to deal with same in any manner whatsoever etc.

4. It is stated that the name of the company was struck off under the provisions of Section 248 of the Act and thereafter the orders of striking of the name of the company was published in the official gazette on 29.07.2017 pursuant to the provisions of Section 248 (5) of the Act. As per the Master Data of the Company attached at page 43 of Annexure A-5 (Colly), the company has filed the balance sheet with the Registrar of Companies, Himachal Pradesh upto 31.03.2013.

5. It is stated that the petitioner company had been carrying on business and was in operation at the time, its name was struck off from the Register of Companies. The petitioner company is engaged in the construction activities and has employed semi-skilled workers and they were paid the salaries/wages amounting to ₹9,21,184/- during the financial year 2014-15 and an amount of ₹7,76,000/- in the financial year 2015-16.

6. Along with the petition, the applicant has also attached the Audited Balance Sheets for the financial years 2013-14 to 2015-16 as well as the Income Tax Returns relating to the aforesaid financial years, Annexure A-8 and Annexure A-6 respectively.

7. Notice of the petition was issued to the Registrar of Companies, Himachal Pradesh and report in this regard has been filed. It is admitted that the company has three Directors, one of whom Madan Lal is the Managing Director. The ROC has also alleged that the name of the company was struck off from the Register of Companies after complying

with various requirements of Section 248 of the Act because the company failed to file the Balance Sheets and Profit and Loss Account for the past three years. Otherwise, the ROC has no objection, if the name of the company is restored in the register of the companies, in terms of Section 252 (3) of the Act.

8. I have heard the authorised representatives of the petitioner company and the learned Registrar of Companies and perused the record with their assistance.

9. Sub-section (3) of Section 252 of the Act 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. So, the basic requirement for the petitioner company to fulfil is that it was carrying on business or in operation at the time, when the

name of the company was struck off from the Register of Companies. The notification dated 30.06.2017 with regard to striking off the name of the petitioner company issued by the Ministry of Corporate Affairs is at Annexure A-5 and its name appears at serial No.479 of the list.

11. The most relevant part of the evidence comprises of the latest Audited Balance Sheets of the company for some of the years. The petitioner company earned revenue from operation to the tune of ₹53,54,916/- during the financial year ending 31.03.2013 and the expenditure incurred during the said financial year was more than ₹50 lacs. The said Balance Sheet is at page 52 of the paper book.

12. In the next financial year ending on 31.03.2014, the revenue from operation came down to ₹16,57,741/-, but again it went upto ₹34,80,295/- in the financial year ending on 31.03.2015, as per the figures shown at page 82 of the Audited Balance Sheet. Now in the latest financial year ending on 31.03.2016, the revenue from operation has come down to ₹30,50,000/-.

13. With the additional affidavit dated 13.11.2017, the petitioner company also filed the Audited Balance Sheet for the year ending 31.03.2017 showing the revenue from operations to be ₹25,00,000/-. It is submitted that this is a small company with the paid-up capital of ₹1,00,000/-.

14. The authorised representative of the petitioner company would also rely upon the Income Tax Returns filed for various years. For the assessment year 2014-15, the acknowledgement of filing of the income

tax return is at Annexure A-6 (Colly). Page 44 of the paper book shows that the same was filed with the Income Tax Department on 31.03.2016 and the gross total income is shown to be ₹1,29,835/-. For the assessment year 2015-16, the gross income is ₹1,54,360/- and that return was filed on 31.03.2017 i.e. before the date on which the name of the petitioner company was struck off. The authorised representative of the petitioner company also refers to the registration certificate granted to the petitioner company under the Goods and Service Tax Act and the said document is at Annexure A-3 attached with the additional affidavit.

15. In view of the above, the petitioner company has been able to prima-facie show 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. In view of the above, the instant petition is allowed subject to payment of ₹60,000/- as costs to be paid by the petitioner company in the Pay and Account Office, Ministry of Corporate Affairs, New Delhi, in respect of the office of Registrar of Companies, Himachal Pradesh and the name of the petitioner company is ordered to be registered in the Register of Companies. It is further directed as under:

- a) the petitioner company shall deliver a certified copy of this order to the Registrar of Companies within thirty days from the date of order; and
- b) On such delivery, the Registrar of Companies, Himachal Pradesh do in his official name and seal, publish the order in the Official Gazette; and

- c) the petitioner company shall deposit the costs of ₹60,000 in the manner stated in the judgment; and
- d) the petitioner company shall file pending financial statements and annual returns with the Registrar of Companies in accordance with the requirements of Companies Act, 2013 and the Rules framed thereunder within a period of one month from the date of restoration of the name of the petitioner company in the Register of Companies, by depositing the application fee and the additional fee for the delay.

The copy of this order be communicated to both the parties.

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

January 11, 2018.
Ashwani