

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT - II

COMPANY APPEAL /6/(MB)/2024

Under section 252 (3) of The Companies Act,
2013

In the matter of

VIMI SILK MILLS PRIVATE LIMITED

CIN: U17120MH2005PTC155863

Sneh Milan Bunglow, Nayan Sagar Complex,
Kalher, Bhiwandi

Thane MH 421203LN

Through its Director,

Shri Mahendra Keshavii Kothari

...Appellant

V/s

**THE REGISTRAR OF COMPANIES,
MUMBAI**

Everest, 100 Marine Drive,

Mumbai-400002, MAHARASHTRA, INDIA.

.... Respondent

Order delivered: - 11.07.2024

Coram:

Anil Raj Chellan

Hon'ble Member (Technical)

Kuldip Kumar Kareer

Hon'ble Member (Judicial)

Appearances:

For the Appellant : CS, Hemant S. Shetye

For the Respondent : Mr. Shivraj C Ranjeri

ORDER

Per: Coram

1. The Present Petition has been filed under Section 252 (3) of the Companies Act, 2013 (“Act”) by **VIMI SILK MILLS PRIVATE LIMITED** (“the Company”), through its director **Shri Mahendra Keshavii Kothari** praying for the restoration of the name of the Company in the Register maintained by the Registrar of Companies, Mumbai (**ROC**).
2. The Petitioner submits that the Company was incorporated on 02.09.2005 under the Companies Act, 1956 for carrying out the manufacturing of textiles. The Authorized share Capital of the Company is Rs. Rs. 10,00,000/- (Rupees Ten Lakh Only) divided into 1,00,000 (One Lakh) equity shares of Rs.10/- (Rupees Ten) each and the Issued, Subscribed & Paid Up Capital of the Company is Rs. 1,00,000/- (Rupees One lakh Only) divided into 10,000 number of equity shares of Rs. 10/- (Rupees Ten) each.

3. The Petitioner herein is the Director of the above mentioned struck-off Company. The RoC issued Form-STK7 dated 18.08.2017 for not carrying on any business or operation for a period of two immediately preceding Financial Years and had not made any application within such period for obtaining the status of Dormant Company under Section 455 of the Companies Act, 2013.
4. The Petitioner submits that the Company was incorporated for carrying on the business of manufacturing of textile. Due to a dispute on title of land, the project was delayed which resulted in cost escalation making it practically not viable to carry out business activities in due course of time. The writ petition filed by the Company and others before the Hon'ble Bombay High Court (Civil Writ Petition No. 5256 of 2015) was disposed on the basis of a consent terms. Thus, the Company was under inadvertent and unavoidable circumstances and hence failed to commence the business. However, the company has all justifiable reasons to revive the operations of the Company. The Company owns and is in possession of Plot No. 5/3 part admeasuring 3000 S.q. in additional Kalyan Bhiwandi Industrial Area, Village Kon, Taluka Bhiwandi, District Thane. The Company was preparing its Financial Statements regularly and as per the latest Financial Statement 2022-23, the book value of the property, plant and equipment is Rs. 29,48,670/-

. Apart from the value which the Company holds, the Company also holds Bank Account in Indian Bank (current Account No. 709220206), Thus, the Company has value. It is further submitted that the Company has short term borrowings and long-term borrowings in addition to investment in land and building. The Company has debt equity ratio of 7:28. As a result of the borrowings, it is possible that the Creditors of the Company could also be aggrieved by the action of striking off.

5. The Financial Statements and Annual Returns for the past financial years were not filed due to sheer inadvertence of the Company and lack of experience on the subject of compliance and unawareness. Thus, the Company duly assures that it shall comply with all the pending filing and will also ensure all the filings shall be completed within due course of time in future, to avoid any such penal action.
6. The Petitioner herein places reliance on the following other judgments in support of the present application:
 - Insys Instrument System (India) P. Ltd. v Registrar of Companies, Karnataka, (2019) 214 Comp Cas 110 (NCLAT-Del).
 - Basant Kumar Berlia v Registrar of Companies, (2019) 215 Comp Cas 337 (NCLAT-Del).

- Kuldeep Singh Negi v Registrar of Companies, C Appeal No. 13/252/ND/2022).
- Gajanan Dairy Pvt. Ltd. V. Roc, Mumbai in the National Company Law Tribunal Mumbai bench iv cp no. 3 3 38/252(3)/mb/c. Iv/2019
- M/s. Golden Leaf Plantation and Resorts Limited & ors. V. Roc, Nct Delhi, Appeal no, 96/252/nd/2022,
- Rajee Farms and Properties Private Limited v ROC, National Company Law Tribunal Mumbai bench iv cp no. 99/(Mah)/2017

7. The Petitioner submits that restoration of the name of the Company in the Registrar of the Companies, Mumbai, Maharashtra would make it possible for the company to restart its business smoothly and, in turn, this would provide a contribution to growth of the industry at the micro level which will be in Larger public interest. Thus, the revival of the Company is also in the public interest.

8. As per the Respondent, the Company has not filed its financial statement and annual returns as per the provision of the Companies Act, 2013, and hence, the Company had been considered for being

struck off by the Registrar of Companies, Mumbai, in *suo moto* action under the provision of Section 248 of the Companies Act, 2013 and also in pursuance of the circulars issued by the Ministry of Corporate Affairs, Government of India, New Delhi. The Respondent states that the Company has failed to comply with statutory compliances under the Companies Act, by not filing its statutory returns for a continuous period of more than five years. It is submitted that the RoC/Respondent had issued a public notice in form STK-5 dated 20.06.2017 with it being published on the website on 08.07.2017 and in a leading newspaper (Times of India) and newspaper in vernacular language (Maharashtra Times-Marathi) seeking objections against the proposed striking off the name of the Company from the records of RoC.

9. In the absence of any representation against the proposed striking-off action, the Registrar (Respondent) struck off the name of the Company on 11.08.2017. The dissolution order was published on the website of the Ministry vide STK-7 on 18.08.2017.
10. We have considered the plea of the Petitioner and the Respondent /RoC. The Petitioner is seeking restoration of its name in the Register as maintained by Respondent /RoC relying on the ground that failure

to file the annual returns and financial statements since Financial Year 2006-07 to 2016-17 was unintentional and it was not deliberate.

11. Upon perusal of the records placed, it is seen that the name of the Company was struck off on 11.08.2017 by the Respondent/RoC for not carrying on any business or operations for a period of two preceding financial years. However, the documents annexed with the petition show that the Company owns immovable property and there is value in the Company. The Company has creditors and the Company was prevented by sufficient reasons for continuing its operations. Further, the petitioner had demonstrated that the Company has been pursuing to revive the operations of the Company and is ready to comply with the filing of statutory returns, if it is allowed to do so. The Company is stated to be regularly preparing its Financial Statements and has been operating Bank Account as well. Taking into consideration the documents provided and the submissions made, and the provisions of Section 252(3) of the Companies Act, 2013, we are of the opinion that there are just and proper reasons to restore the name of the Company in the Register of Companies from the struck off date. Accordingly, the order passed by the Respondent/RoC in striking off the name of the Company is hereby set aside, subject to the following directions:

- I. The Registrar of Companies, Mumbai is ordered to restore the original status of the Petitioner Company (**VIMI SILK MILLS PRIVATE LIMITED**) as if the name of the Company had not been struck off from the Register of Companies with resultant and consequential action like changing the status of Company from ‘strike off’ to ‘active’.

- II. The Company shall, within a period of 30 days from the restoration of the Petitioner Company’s name in the Register being maintained by the RoC, file form of annual returns and balance sheets and all other statutory documents as are required to be made/filed under the Companies Act, 2013 for the period from which there has been default with requisite charges/fees as well as additional fee/late charges.

- III. The restoration of the Company’s name is also subject to payment of the cost of Rs. 2,75,000/- @ Rs. 25,000 for each year of Non-filing of Compliance. The imposed cost shall be paid by way of a Demand Draft drawn in favor of **“Pay and Accounts Office, Ministry of Corporate Affairs, Mumbai”** within 30 days from the date of the receipt of this order.

- IV.** This order of restoration of the name of the Company in the Register shall not automatically entitle the directors of the Company to hold directorship if disqualified under Section 164 of the Companies Act, 2013 except in accordance with law.
- V.** This order allowing the petition shall not circumscribe the power of the Respondent to proceed against the petitioner Company and its directors as mandated for alleged late filing of any returns, forms, documents, and such other compliance under the provisions of the Companies Act, 2013.
- 12.** The Petition stands allowed on the aforementioned terms

Sd/-

**ANIL RAJ CHELLAN
MEMBER (TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
MEMBER (JUDICIAL)**