

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI  
CA(CA)/46/CHE)/2023**

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

*In the matter of M/s. SAI SRI SARASWATHI CONSTRUCTIONS PRIVATE LIMITED,*

**Mr. BALAKUMAR R**

Shareholder of M/s. SAI SRI SARASWATHI CONSTRUCTIONS PRIVATE LIMITED,  
New No. 29, Old No. 15, 2<sup>nd</sup> Floor, North Usman Road,  
T.Nagar, Chennai, Tamil Nadu – 600 017

*... Appellant*

-Vs-

**REGISTRAR OF COMPANIES**

Block No.6, B Wing – 2<sup>nd</sup> Floor, Shastri Bhawan,  
26, Haddows Road, Chennai, Tamil Nadu – 600 034

*... Respondent*

*Order Pronounced on 10<sup>th</sup> May 2024*

**CORAM**

**Shri. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)**

**Shri. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)**

*For Appellant : Mr. R Padmanabhan, PCS*

*For Respondent : Mr. Avinash Krishnan Ravi, Advocate*

**ORDER**

1. This Appeal has been filed by **Mr. Balakumar R** in the capacity of the Shareholder of the subject matter Company namely, **M/s. SAI SRI SARASWATHI CONSTRUCTIONS PRIVATE LIMITED**, under Section 252 of the Companies Act, 2013 for restoring the name of the Company in the Register maintained by the Respondent / RoC aggrieved against the order of Strike Off carried out by the Registrar of Companies, Chennai under Section 248 of the Companies Act, 2013.
2. The brief facts of the matter are tabulated below: -

S. NO.	PARTICULARS	FACT
a)	Name of Company	M/S. Sai Sri Saraswathi Constructions Private Limited
b)	CIN No.	U45201TN2004PTC053038
c)	Date of Incorporation	15.04.2004
d)	Registered Office Address	New No. 29, Old No. 15, 2 <sup>nd</sup> Floor, North Usman Road, T.Nagar, Chennai, Tamil Nadu – 600 017
e)	STK-5 Date	02.08.2019
f)	STK-7 Date	29.10.2019
g)	Reasons for Strike Off	The company has not filed its statutory annual returns, financial statements and has not been carrying on any business or operation for a period of two immediate preceding financial years and did not make any application within such period for obtaining the status of dormant company under section 455 of the Companies Act to the RoC/ Respondent.

3. It is stated that the main object of the Company is construct, purchase or otherwise acquire lands, houses, buildings, sheds and other fixtures on land and buildings to let them out on lease, rent, contract or any other agreement as may be deemed fit or to buy and sell lands, houses, apartments to any person on terms and conditions as may be deemed fit buy and sell land, houses, apartments or to hold, maintain, sell flat houses, apartments sheds or buildings or to carry on business of builders, surveyors, brick and tile makers, lime burner, houses and estate agents and to promote real estate business in all its terms including buying and selling of lands and etc., The detailed objects are set out in the Memorandum of Association filed along with the Appeal.
4. It is stated that, the subject company has filed its last audited financial statements with RoC, Chennai for the FY 2015 – 2016. Failure to file the

statutory requirements from FY 2016 – 2017 onwards caused due to the frequent changes in the administration of the company and their staff which resulted in this inadvertent omission. After identifying these omissions, the company involved in process of rectifying the same and engaged the services of Practising Professionals.

5. Further it is submitted that, the company has Rs.32,94,730 /- of Short term borrowings which are outstanding and Rs.17,21,56,300 /- as amount payables to the third party. The above outstanding amount can be paid out of the Immovable properties which has the book value of Rs.2,26,70,790 /- and other Sundry receivables valued about Rs.3,05,96,760 /-. It is also averred that the company in order to settle its liabilities is likely to dispose of their immovable properties which requires the company to be in active state.
6. It is stated that management of the company looking to enter new business avenues after discharging its liabilities. Further it is submitted that the company is functioning and carrying its business activities actively till now. The company has audited its financials and therefore failure to file the statutory requirements are neither wanton nor wilful.
7. Upon notice, the Respondent/ RoC filed the Report on 13.02.2024, wherein it is stated as follows,

*“13. The present petition is filed by M/s. Sai Sri Saraswathi Constructions Private Limited, represented by Mr. R. Balakumar, in the capacity of Shareholder. The petitioner in this instant petition has stated the reason for non-filing of Annual Return with the Registrar of Companies within the stipulated time is due to lack of professional guidance and assistance as well*

*as due to sudden manpower turnover which resulted in non-compliance. Due to frequent change in staff and inadvertent omission, financials statements could not be filed. The Company held its annual general meeting for the relevant periods but due to oversight and change in employees the management failed to take notice of non-filing of the financial statements by the Company.*

*14. Since the Company is struck off, the board of directors cease to exist, the petitioner company cannot file this present application. Hence, the petitioners may be directed to change the cause title from M/s. Sai Sri Saraswathi Constructions Private Limited to Mr. R. Balakumar, in the capacity of shareholder.*

*15. It is the statutory duty of every company and its directors to file the financial statements for every financial year with the Registrar of Companies. In this case, the company has failed to do so.*

*16. Hence, it is respectfully prayed before this Hon'ble Tribunal to consider this petition based on merits."*

Other than the above observation there is no other substantive objection from the Respondent /RoC.

8. We have heard the submissions of the Appellant and the Respondent/RoC as well. This Tribunal has made the following observations.

To substantiate the plea of revival, the Appellant has placed the following documents on records.

- Income Tax Returns Acknowledgment for the AY 2023 – 2024.
- Audited Balance sheet and financial statements for FY 2017 – 2018 to FY 2022 – 2023.
- Sale deed dated 09.04.2015 showing an immovable property located at No.8, Nnemeli Village, Thirukazhukundram Taluk, Kancheepuram District purchased in the name of the Struck off Company.

- Transaction details of the Bank Account owned by the company for the period 01.04.2023 to 31.10.2023

This Appeal is for restoration of the name of the subject company in the register maintained by the Respondent / RoC on the ground that the company has engaged in active operation of the business and further has prospective business venues for which it was incorporated.

9. From the Audited balance sheets, it is observed that the subject company has been in active operations. The Latest financial statement (FY 2022 – 2023) showing the outstanding liabilities & receivables of the company and the same is extracted below,

Sai Sri Saraswathi Constructions Private Limited		
Cash Flow Statement for the Year ended		
(Amount in Rs.'000s)		
Particulars	Year Ended 31 March 2023	Year Ended 31 March 2022
<b>A) CASH FLOW FROM OPERATING ACTIVITIES</b>		
NET PROFIT/ (LOSS) BEFORE TAX		
Adjustments for	(342.00)	(1,679.16)
Depreciation		
Interest Expenses	180.78	260.91
Profit on Sale of PPE	200.00	200.00
Operating Profit before working Capital Changes	(2,720.36)	(2,090.47)
(Increase) / Decrease in Inventories	(2,681.58)	(3,308.72)
(Increase) / Decrease in Loans and Advances	2,689.26	1,055.51
Increase/ (Decrease) in Trade Payables	1,396.90	93.10
Increase/ (Decrease) in Other liabilities	(652.00)	(1,991.90)
Cash flow from/ (used in) Operations	(8,398.37)	(2,944.07)
Direct Taxes paid	(7,645.79)	(7,096.08)
NET CASH USED IN OPERATING ACTIVITIES	(7,645.79)	(7,096.08)

<b>B) CASH FLOW FROM INVESTING ACTIVITIES</b>		
Purchase of PPE		
Sale proceeds of PPE	(1,628.44)	-
NET CASH USED IN INVESTING ACTIVITIES	6,744.93	5,667.47
	5,116.49	5,667.47
<b>C) CASH FLOW FROM FINANCING ACTIVITIES</b>		
Repayment of Long term Borrowings		
Finance Cost paid	-	-
NET CASH FLOW FROM FINANCING ACTIVITIES	-	-
Net Increase/(Decrease) in Cash & Cash equivalents	(2,529.30)	(1,428.61)
Add: Cash and Cash equivalent as at the beginning of the year	2,706.80	4,135.41
Cash & Cash equivalent as at the end of the year	177.50	2,706.80

NOTES FORMING PART OF FINANCIAL STATEMENTS 1 & 2

"As per our report attached"

For Jagadeesh & Keerthy  
Chartered Accountants  
Firm Registration No: 013761S

Sadasivam Deivanayagam  
Partner  
Membership No: 028791

Place: Chennai  
Date: September 29, 2023



For and on behalf of the Board of Directors of  
Sai Sri Saraswathi Constructions Private Limited  
CIN: U45201TN2004PTC053038

R. Balakumar  
Managing Director  
DIN: 00610145

M. Viswanathan  
Director  
DIN: 00610182

**Note 2.3: Short Term Borrowings**

Short Term Borrowings consist of the following

Particulars	As at 31 March 2023	As at 31 March 2022
	Rs. '000s	Rs. '000s
<b>Unsecured</b>		
Current Maturities of Long Term Debt*	2,594.73	2,394.73
Loans Repayable on Demand- Carrying Nil rate of Interest		
From Directors	700.00	700.00
<b>Total</b>	<b>3,294.73</b>	<b>3,094.73</b>

\* From Financial institutions, Secured by hypothecation of vehicle acquired and Repayable in Rs. 106,570 equated monthly instalments beginning June 2016. The Company has defaulted in repayment of both principal and interest.

**Note 2.4: Other Current Liabilities**

Other Current liabilities consist of the following

Particulars	As at 31 March 2023	As at 31 March 2022
	Rs. '000s	Rs. '000s
Advance from Customers	23,133.31	33,621.86
Employee Related Liabilities	9,299.46	7,209.28
<b>Total</b>	<b>32,432.77</b>	<b>40,831.14</b>

**Note 2.6 Inventories**

Inventories consist of the following

Particulars	As at 31 March 2023	As at 31 March 2022
	Rs. '000s	Rs. '000s
Stock in Hand - Traded Goods -(Valued at Lower of cost and Net Realisable Value)	24,199.59	26,888.85
<b>Total</b>	<b>24,199.59</b>	<b>26,888.85</b>

**Note 2.7 Cash and Cash Equivalents**

Cash and Cash Equivalents consist of the following

Particulars	As at 31 March 2023	As at 31 March 2022
	Rs. '000s	Rs. '000s
a) Balances with banks	1.76	0.67
b) Cash on hand	175.74	2,706.13
<b>Total</b>	<b>177.50</b>	<b>2,706.80</b>

**Note 2.8 Short Term Loans and Advances**

Short Term Loans and Advances consist of the following

Particulars	As at 31 March 2023	As at 31 March 2022
	Rs. '000s	Rs. '000s
<b>Others</b>		
Unsecured, considered good		
Advance to Land Owners	30,356.26	31,753.16
Other Advances	240.50	240.50
<b>Total</b>	<b>30,596.76</b>	<b>31,993.66</b>

**Note 2.14 Other Expenses**

Other Expenses consist of the following

Particulars	For the Year Ended 31 March 2023	For the Year Ended 31 March 2022
	Amount in Rs'000s	
Brokerage and Commission	124.00	440.00
Travelling and Conveyance	950.26	505.05
Communication Expenses	49.28	12.54
Electricity Expenses	23.39	-
Legal & Professional Charges	8.00	-
Audit Fees	50.00	50.00
Repairs and Maintenance	151.53	25.43
Rent - Office	240.00	240.00
Sales Promotion	688.43	-
Other Expenses	57.54	51.61
<b>Total</b>	<b>2,342.43</b>	<b>1,324.63</b>



Account Name : SAI SRI SARASWATHY CONST P LTD  
 Address : OLD NO.15, NEW NO.29, 2ND FLOOR NORTH USMAN ROAD, T. NAGAR CHENNAI Chennai  
 CHENNAI  
 TAMILNADU-600017  
 India

Date : 14 Nov 2023  
 Account Number : 00000054028062421  
 Account Description : CA-GEN-PUB OTH-NONRURAL-INR  
 Branch : T NAGAR  
 Drawing Power : 0.00  
 Interest Rate(% p.a.) : 0.0  
 MOD Balance : 0.00  
 CIF No. : 78425214525  
 IFS Code : SBIN0040169  
 MICR Code : 600002335  
 Balance as on 1 Apr 2023 : 1,931.58

**Account Statement from 1 Apr 2023 to 31 Oct 2023**

Txn Date	Value Date	Description	Ref No./Cheque No.	Branch Code	Debit	Credit	Balance
12/04/2023	12/04/2023	CASH DEPOSIT- CASH DEPOSIT SELF-	/	40169		59,000.00	60,931.58
12/04/2023	12/04/2023	TO TRANSFER- INB NEFT UTR NO: SBIN23102502287- S AMIRTHA KUMARI	NEFT INB: CNACKRUIM3 TRANSFER TO 3199302044302 / S AMIRTHA KUMARI	99922	60,000.00		931.58
12/04/2023	12/04/2023	BY TRANSFER- UPI:R/3468662426 71/P MOHANAJIOBA/su mathimoh/UPI-	TRANSFER FROM 4897734162099 /	40169		1.00	932.58
12/04/2023	12/04/2023	BY TRANSFER- UPI:R/3468736482 59/P MOHANAJIOBA/su mathimoh/UPI-	TRANSFER FROM 4897734162099 /	40169		19,999.00	20,931.58
12/04/2023	12/04/2023	TO TRANSFER- INB NEFT UTR NO: SBIN323102280639- TNRERA	NEFT INB: CNACKLLH6 TRANSFER TO 3199302044302 / TNRERA	99922	18,700.00		2,231.58
13/04/2023	13/04/2023	CSH DEP (CDM)- 9841735292-	/	4292		10,000.00	12,231.58
13/04/2023	13/04/2023	BY TRANSFER- INB IMP310318160037/ 9444339053/XX4782 /SS-	MAA001295425881 MAA001295425881 TRANSFER FROM 4897992162093 /	99922		10,000.00	22,231.58
13/04/2023	13/04/2023	TO TRANSFER- INB NEFT UTR NO: SBIN423103563806- PMOHANAKRISHN AN	NEFT INB: CNACKTLXQ4 TRANSFER TO 3199302044302 / PMOHANAKRISHN AN	99922	20,000.00		2,231.58

It is clear from the debit and credit transactions figured in the bank account of the Struck off company even after the date of struck off, which enables us to the presumption of active business.

10. The company has undertaken to comply with the necessary provisions of the Companies Act, 2013 and the respective Rules, thereto.

11. Section 252 (3) of the Companies Act, 2013 provides as follows: -

*"Section 252 (3): Appeal to Tribunal,*

*(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."*

The above provisions, vests with this Tribunal, the discretion to restore the Subject Company whose name has been Struck Off, in case the Company is able to demonstrate that there is an active business as on the date of its Struck Off or otherwise it is just to do so.

12. In *Purushottamdass and another (Bulakidas Mohta Company Private Limited V. Registrar of Companies, Maharashtra & Others.)*, Hon'ble *Bombay High Court* the observed as follows:

20. *"The objects of Section 560(6) of the Companies Act, is to give a chance to the company, its members and creditors to revive the company which*



*has been struck off by the Registrar of Companies, within a period of 20 years, and to give them an opportunity of carrying on the business only after the company judge is satisfied that such restoration is necessary in the interests of justice."*

13. **In M.A. Rahim & another V. Sayri Bai, reported in MANU/TN/O218/1973, the**

*Division Bench of Hon'ble Madras High Court, held that the word 'just' connotes reasonableness and something confirming to 'Rectitude' and 'Justice', something 'Equitable and Fair'.*

14. In this case, the Appellant who is a shareholder cum Director of the Strike Off Company, has submitted the Audited financial statements, Bank transaction statement, Sale deed in respect of the immovable property owned by the company. The books of the company shows both the liabilities and assets are in the company. We are of the opinion that this Company needs to be given an opportunity to carry out its business. In the Interest of Equity, Fairness and Justice, the Company needs to be restored for carrying out its business and other purposes for which it has been incorporated.

15. In the view of above said facts and circumstances, this tribunal considers the records placed before and in line with the Provisions, judgements discussed above. The present Appeal is allowed subject to the following directions namely:

- I. The Registrar of Companies, concerned is ordered to restore the original status of the Company i.e. **M/s. SAI SRI SARASWATHI CONSTRUCTIONS PRIVATE LIMITED** as if the name of the Company has not been Struck Off from the Register of the Companies with

resultant and consequential actions like changing the status of the Company from “Strike Off” to “Active”.

- II. The Company shall within a period of 30 days from the restoration of the name of the company in the register being maintained by the RoC, the appellant will file *inter alia* all its compliances statutorily required to be made 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. That the Restoration of the name of the company is also subject to the payment of the cost of **Rs.50,000/- (Rupees Fifty Thousand only)** through online payment in [www.mca.gov.in](http://www.mca.gov.in) under miscellaneous fees by mentioning the particulars as “payment of cost for the revival of Company”, as volunteered by the appellant during the hearing.
- IV. Until all the compliances are made by the Company, the Company shall not alienate or dispose of any of its valuable assets.
- V. It is made clear that by virtue of this order of restoration of the name of the Company in the register, it will not entitle the Directors of the Company whose names in the case have been disqualified by virtue of provisions of Section 164 of the Companies Act, 2013 by the Respondent/RoC automatically to be restored to directorship except in accordance with the law.
- VI. An affidavit of compliance of the aforesaid directions shall be filed by the Appellant within a period of 2 months from the date of this order.
- VII. The shareholders of the Company shall jointly submit an Undertaking to the Registrar of Companies stating therein that the accounts of the Company were not used as means to transact tainted money during the period of demonetization.

VIII. Further, this order allowing the Appeal shall also not circumscribe the power of the respondent to proceed against the Company and its Directors as mandated for alleged late filing of any forms, documents, returns and such other compliance under the provisions of Companies Act, 2013.

16. This Appeal CA(CA)/46(CHE)/2023 stands *allowed* on the aforementioned terms and *disposed off*.

**-Sd/-**

**RAVICHANDRAN RAMASAMY  
MEMBER (TECHNICAL)**

**-Sd/-**

**JYOTI KUMAR TRIPATHI  
MEMBER (JUDICIAL)**