IN THE NATIONAL COMPANY LAW TRIBUNAL, SPECIAL BENCH – II, CHENNAI

CP /80 (CHE) / 2023

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

In the matter of **M/S. JIWON ENGINEERING & CONSTRUCTIONS PRIVATE LIMITED**

SHRI. KANGJI HYUNG
Shareholder of **M/S. JIWON ENGINEERING & CONSTRUCTIONS PRIVATE LIMITED,**
Plot 22, ICL Home Township, Phase III,
Noombal, Chennai, Tamil Nadu – 600 077

… Petitioner

-Vs-

REGISTRAR OF COMPANIES, CHENNAI, TAMIL NADU
Block No.6, B Wing – 2nd Floor, Shastri Bhawan,
26, Haddows Road, Chennai, Tamil Nadu – 600 034

… Respondent

Order Pronounced on ***22nd March 2024***

CORAM

Shri. SANJIV JAIN, MEMBER (JUDICIAL)

Shri. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

For Petitioner: Mr. Murugesh Kasivel, Advocate

For Respondent: Mr. Avinash Krishnan Ravi, Advocate

This Petition has been filed by **SHRI. KANGJI HYUNG** in the capacity of the Shareholder of the subject matter Company namely, **M/S. JIWON ENGINEERING & CONSTRUCTIONS PRIVATE LIMITED**, under Section 252 (3) of the Companies Act, 2013 for restoration of 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, Concerned 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. Jiwon Engineering & Constructions Private Limited
b)	CIN No.	U29248TN2014PTC095936
c)	Date of Incorporation	26.05.2014
d)	Registered Office Address	Plot 22, ICL Home Township, Phase III, Noombal, Chennai, Tamil Nadu – 600 077
e)	STK-5 Date	04.06.2018
f)	STK-7 Date (Publication Date)	09.08.2018 (18.08.2018)
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 to carry on in India or elsewhere the business as designers, researchers, developers, manufactures, buyers, assemblers, sellers, hirers, exporters, importers, distributors and to act as an agent, broker, consignor, indenting agent, C&F agent, franchisers, stockist, supplier, vendor, collaborator, Export House or otherwise etc., The detailed objects are set out in the Memorandum of Association annexed with the petition.

4. It is stated that, the company involves in business of machineries and construction. Further it is submitted that the Board and the Management had no understanding of the statutory requirements and compliances under the

Companies Act, 2013. Because of failure to file Annual returns and other requirements, the company has been struck off.

5. Upon notice, the Respondent/ RoC filed the Report on 6.09.2023, wherein it is objected as follows,

> *"16. The Applicant in this instant petition has stated that the company has not been able to file its Annual Return and Balance Sheet with the Registrar of Companies due to lack of understanding on compliance under the Companies Act. The reasons attributed by the company is totally untenable. The company also stated that it was running its business without professional support & could not make the necessary compliances of filing its financial statements and annual returns with the Registrar of Companies. The said reason cannot be considered as a cogent one because, filing of annual return and balance sheet is the statutory duty of every company incorporated under the companies Act, 2013. In this case, the Company has failed to do so. Hence, the petition may be dismissed.*
>
> *17. Hence, it is respectfully prayed before this Hon'ble Tribunal not to consider this petition."*

A reply to the above report has been filed on 30.10.2023 by the petitioner countering the objections and substantiating the pleas averred in the Petition.

6. We have heard the submissions of the Petitioner Company and the Respondent/RoC as well.

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

- Income Tax Returns for the AY 2022 - 2023
- Audited Balance sheet and Financial statements for the FY 2014 – 2015 to FY 2021 – 2022
- Bank Account statement for the Period 1.04.2021 to 20.01.2023

- GSTR -3B for the Months of September, December and March of FY 2022 – 2023

This Petition is for restoration of the name of the subject company in the register maintained by the Respondent / RoC in order to engage in active business for which it was incorporated.

The Financial statements and balance sheets for the Financial Years ending March 2019 and afterwards show that the struck company had active business and operations. There is flow of cash in and out of the company and we could see profits coming out of it. The bank statements also show the account of the subject company active and functioning. So it is clear that, the company has been in operation as on the date of strike off and afterwards.

JIWON ENGINEERING & CONSTRUCTION PRIVATE LIMITED
Statement of Profit and Loss for the Year ended 31st March, 2020

(in Rupees)

	Note No	Year ended 31st Mar.,2020	Year ended 31st Mar.,2019
1 INCOME			
Revenue from Operation	14	2,39,26,199	92,69,781
Other Income	15	65,050	3,331
Total Revenue		2,39,91,249	92,73,112
2 EXPENDITURE			
Consumption Cost	16	1,47,48,750	33,43,676
Employee Benefits Expense	17	41,89,253	43,65,714
Finance Cost	18	8,417	20,401
Depreciation	8	2,35,304	3,33,452
Other Expenses	19	39,39,357	9,50,498
Total Expenses		2,31,21,080	90,13,740
3 Profit before Tax (1-2)		8,70,169	2,59,371
4 Tax Expenses			
Current Tax		(2,30,000)	-
Deferred tax		4,411	9,678
		(2,25,589)	9,678
5 Profit/ (Loss) for the year (3-4)		6,44,580	2,69,049
6 Earnings per equity share of face value of Rs.10 each (Nominal value of Share) Basic and diluted(in Rs.)		644.58	269.05
Significant Accounting Policies Notes on Financial Statements	1 to 23		

For JIWON ENGINEERING & CONSTRUCTION PRIVATE LIMITED

Director **Director**

Chennai
Dated : 07th December, 2020

"As per our report of even date"
for M/S.VELMURUGAN & ASSOCIATES
Chartered Accountants

(S.VELMURUGAN)
Partner
M.No 230929

CHENNAI 600056

JIWON ENGINEERING & CONSTRUCTION PRIVATE LIMITED
Notes on Financial Statements for the Year ended 31st March, 2020

(in Rupees)

	As at 31st Mar.,2020	As at 31st Mar.,2019
11 TRADE RECEIVABLES		
11.1 Outstanding for more than six months - Considered good	-	-
11.2 Sundry Debtors - Considered good	5,68,115	-
	5,68,115	-
12 CASH AND BANK BALANCES		
12.1 Balance with Banks	14,93,097	20,723
12.2 Cash on hand	37,102	1,02,422
	15,30,199	1,23,145
13 SHORT TERM LOANS & ADVANCES		
(Unsecured and considered good)		
13.1 Advance to Suppliers	41,34,991	25,59,898
13.2 Advance Tax including Tds	11,69,979	6,51,452
13.3 Deposits	29,410	20,000
13.4 Rental Advance	3,10,000	3,20,000
13.5 Balance with Statutory Authorities	5,96,465	-
13.6 Other Advance	12,101	-
	62,52,946	35,51,350
14 REVENUE FROM OPERATIONS		
14.1 Sale of Products	2,39,26,199	92,69,781
15 OTHER INCOME		
15.1 Miscellaneous Income	65,050	3,331
Total	65,050	3,331
16 DIRECT EXPENSES		
16.1 Opening Stock	79,92,316	38,23,000
16.2 Add: Purchase cost/ Direct Expenses	1,31,68,513	70,05,704
Material Cost	47,86,061	5,07,288
Subcontract Charges/ Site Expenses	2,59,46,890	1,13,35,992
16.3 Less: Closing Stock	1,11,98,140	79,92,316
	1,47,48,750	33,43,676
17 EMPLOYEE BENEFIT EXPENSES		
17.1 Salaries, wages and Bonus	13,56,807	22,74,429
17.2 Director Remuneration	23,90,000	19,64,580
17.3 Staff Welfare Expenses	4,42,446	1,26,705
Total	41,89,253	43,65,714
18 FINANCE COSTS		
18.1 Interest on Loan	8,417	20,401
	8,417	20,401

JIWON ENGINEERING & CONSTRUCTION PRIVATE LIMITED
BALANCE SHEET AS AT 31ST MARCH 2022

(Rs. in Thousands)

A EQUITY AND LIABILITIES	Note No	As at 31st Mar.,2022	As at 31st Mar.,2021
1 Shareholders' Funds			
(a) Share Capital	3	100.00	100.00
(b) Reseves and Surplus	4	3,145.07	2,433.46
		3,245.07	2,533.46
2 Non-Current Liabilities			
(a) Long Term Borrowings	5	2,771.22	1,962.84
3 Current Liabilities			
(a) Trade Payable	6	9,825.48	1,170.92
(b) Other Current Liabilities	7	8,801.81	7,098.94
(c)Short Term Provisions	8	1,553.80	2,076.81
		20,181.09	10,346.67
TOTAL		26,197.38	14,842.97
B ASSETS			
1 Non-Current Assets			
(a) Property Plant and Equipment and Intangible assets			
Property, Plant and Equipment	9	81.55	110.11
(b) Deferred Tax Assets (net)	10	131.63	152.09
		213.18	262.20
2 Current Assets			
(a) Work in Progress	11	19,963.61	10,048.16
(b) Trade Receivables	12	32.73	567.79
(c) Cash and Bank Balances	13	1,958.03	357.71
(d) Short Term Loans and Advances	14	4,029.83	3,607.11
		25,984.20	14,580.77
TOTAL		26,197.38	14,842.97

The accompanying notes form integral part of financial statements (Note No 1-26)

For JIWON ENGINEERING & CONSTRUCTION PRIVATE LIMITED

Director **Director**

Chennai
Dated : 05th September, 2022

"As per our report of even date"
for M/S.VELMURUGAN & ASSOCIATES
Chartered Accountants

(S.VELMURUGAN)
Partner
M.No 230929

The petitioner has admitted its non-compliance in respect of filing annual returns towards statutory authorities and submitted that it was due of lack of understanding and non-availability of professional support. Further the petitioner has requested an opportunity to rectify the same as the company is doing well for which it was incorporated.

7. Section 252 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 this Tribunal, with a 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.

8. 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."*

9. **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'.*

10. In this case, the Petitioner who is a shareholder cum Ex-Director of the Strike Off Company, has submitted that the subject Company is ready and willing to comply with the directions and rectify the non-compliances. 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.

11. In the view of above said facts and circumstances, this tribunal considers the records placed before and in line with the Provisions and judgements discussed above. It is therefore ordered as under;

(i) The Registrar of Companies, Chennai is directed to restore the original status of the Company i.e. **M/S. JIWON ENGINEERING & 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 petitioner 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.2,00,000/- (Rupees Two Lakh only)** through online payment in www.mca.gov.in under miscellaneous fees by mentioning the particulars as "payment of cost for the revival of Company", volunteered by the petitioner 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 Petitioner 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 Petition 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.

12. Thus the Company Petition **CP /80 (CHE) / 2023** stands ***allowed*** on the aforementioned terms and ***disposed off***.

-Sd/-	**-Sd/-**
RAVICHANDRAN RAMASAMY	**SANJIV JAIN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Order Pronounced under Rule 151 of NCLT Rules 2016, by ***Hon'ble Technical Member, Ravichandran Ramasamy*** *on behalf of the Special Bench Comprising of* ***Sanjiv Jain, Member (Judicial)*** *and* ***Ravichandran Ramasamy, Member (Technical).***

-Sd/-
Court Officer