

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

Com.Appeal/47/CHE/2023

(Filed under Section 252(3) of the Companies Act, 2013)

In the matter of Siva Cotton Mills (India) Private Limited

Mr.PERIASAMYTHEVAR NAGARAJAN,
DIRECTOR AND SHAREHOLDER OF SIVA COTTON MILLS (INDIA) PRIVATE LIMITED
No.14, Nadar Pudhu Street,
Usilampatti,
Madurai - 625 532

... Appellant

-Vs-

REGISTRAR OF COMPANIES, CHENNAI
Block No.6, "B" Wing,
2nd Floor, Shastri Bhavan,
26, Haddows Road,
Chennai – 600 034

... Respondent

Order Pronounced on 19th February 2024

Present:

For Applicant :A.G.Sathyannarayana, Advocate

For Respondent:Avinash Krishnan Ravi, Advocate

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

ORDER

(Hearing Conducted through VC)

This Application has been filed by **Mr.Periyasamythevar Nagarajan** in the capacity as a Director and Shareholder of the Company namely, **SIVA COTTON MILLS (INDIA) PRIVATE LIMITED**

under Section 252(3) of the Companies Act, 2013 aggrieved against the order of strike off carried out by the Respondent namely, the Registrar of Companies, **Chennai** under Section 248 of the Companies Act, 2013, seeking thereof to restore the name of the Company in the Register maintained by the Respondent/RoC.

2. The brief facts of the matter are tabulated below:-

S. No.	PARTICULARS	FACT
a)	Name of Company	Siva Cotton Mills (India) Private Limited
b)	CIN No.	U17111TN1994PTC028066
c)	Date of Incorporation	13.07.1994
d)	Registered Office Address	No.9/11, Nadar New Street, Usilampatti , Madurai-626 532
e)	Date of STK-5	07.04.2017
f)	Date of STK-7	05.07.2017
g)	Reason of Strike Off	Non filing of Financial Statements for the Financial Years 2008-2009 to 2016-2017

3. The main object of the Company is *To carry on the business of manufacturing, mercerising, bleaching, dyeing, printing, selling yarn cotton and/or staple fibre cloth and other fabrics made from raw cotton, jute, wool, synthetic and other suitable materials and generally to carry on the business of spinning and weaving mill proprietors in all their branches etc.,*. The details of the main object are set out in the Memorandum of Association which has been filed along with the typed set of documents.

4. It is stated that the Appellant is one of the Director and Shareholder of a company holding 16,70,000 shares out of the total 22,50,000 subscribed shares.

5. It is stated that the Authorized capital of the Company is Rs. 3,70,00,000/- (Rupees Three Crore Seventy Lakhs only) consisting of 37,00,000 (Thirty Seven Lakhs) Equity shares of Rs. 10/- each. The paid-up capital of the Company is Rs. 2,25,00,000/- (Rupees Two Crore Twenty-Five Lakhs only) consisting of 22,25,000 (Twenty-Two Lakhs Twenty-Five Thousand) Equity shares of Rs. 10/- each.

6. The reason for non-filing of returns is that The Company was unable to file its Annual returns and accounts for the remaining time period as per the provisions of Section 137 and 92 of the Companies Act, 2013, even though the same have been kept updated till 2022, as the Directors of the Company are not aware of the statutory compliances under the companies act thereby being completely out of touch with their auditors and unable to coordinate with the auditors.

7. It is stated that that the company is regular in filing tax returns for the year 2022-2023 and it is relevant to point out that the Company

has filed its Nil Income Tax returns for the FY 2021-2022 and the evidence of the same is enclosed as "Annexure-4" of the application typeset.

8. It is stated that that the Company owns immovable property i.e vacant land at Madurai District and the same will be used for revival of the Company once the company is revived. Copy of the Patta, Encumbrance Certificate are enclosed as "Annexure-5" of the application typeset.

9. Upon notice, the Respondent/RoC has filed the Report. It is stated that since the company is struck off, the board of directors cease to exist, the petitioner company cannot file this present application. Hence, the petitioner may be directed to change the cause title from Siva Cotton Mills (India) Private Limited and Periyasamy Thevar Nagarajan (Director and Shareholder) to Periyasamy Thevar Nagarajan, in the capacity of shareholder.

10. It is stated that it is the statutory duty of every company and its directors to file the financial statements for every financial year with the RoC. In this case, the company has failed to do so.

11. We have considered the plea of the Applicant Company and the Respondent/RoC as well. The Applicant is seeking restoration of its name in the register as maintained by RoC. In order to sustain the said plea, the Applicant has placed the followings as Annexures in the Application typeset:

- (i) Copy of the Indian Income Tax Return Acknowledgement dated 28.07.2022
- (ii) Copy of the Patta and Encumbrance Certificate
- (iii) List of Shareholders & Consent Affidavits of Shareholders

12. It is seen from the Application that the Applicant has arrayed Mr. Periyasamy Thevar Nagarajan, who is the Director and shareholder of Siva Cotton Mills (India) Private Limited, as Applicant. Further, it is also seen from the List of Shareholders at Page 65, Annexure 6 of the application typeset that Mr. Periyasamy Thevar Nagarajan has been holding 16,70,000 shares in Siva Cotton Mills (India) Private Limited. Thus, the objection raised by the Respondent / RoC in this regard is not sustainable.

13. From the documents annexed along with the Application it is seen that the Company was active and carrying on its business activities two years preceding the date of strike off.

14. Taking into consideration the provisions of Section 252 of the Companies Act, 2013 which vests this Tribunal with a discretion to restore the Company whose name has been struck off, keeping in consideration that it is just to do so, we restore the name of the Company in the register. The Application is allowed subject to the following directions namely:

- (i) The Registrar of Companies/Respondent is ordered to restore the original status of the Applicant Company viz. **SIVA COTTON MILLS (INDIA) PRIVATE LIMITED** as if the name of the Company has not been struck off from the Register of Companies with resultant and consequential actions 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 Applicant Company’s name in the register being maintained by the RoC, the Applicant/ petitioner will file *inter alia* its annual returns and balance sheets as well other 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 Company’s name is also subject to the payment of cost of **₹50,000/- (Rupees Fifty Thousand only/-)** volunteered by the Counsel for the Petitioner through online payment in www.mca.gov.in under miscellaneous fees by mentioning the particulars as “payment of cost for revival of Company”, the same is consented by the Applicant during the hearing.
- (iv) Till all compliances are made by the Company, the Company shall not alienate or dispose of any of its valuable assets.
- (v) It is further observed that by virtue of this order of restoration of the name of Company in the register it will not entitle the Directors of the

Company whose names in 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 law.

- (vi) An affidavit of compliance of the aforesaid directions shall be filed by the Applicant within a period of 2 months from the date of this order.
- (vii) Further, this order allowing the Application shall also not circumscribe the power of the respondent to proceed against the Appellant 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.

15. This Application stands **allowed** on the aforementioned terms.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

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