

In the National Company Law Tribunal

New Delhi Bench

C.P No- 12/441/ND/18

In the Matter of

Mr. Keshav Prasad Dixit

.... Applicant No.1

AND

Mrs. Kusum Lata Dixit

.... Applicant No. 2

Order Delivered on – 31.05.2018

CORAM: SMT. INA MALHOTRA, HON'BLE MEMBER(J)

SMT. DEEPA KRISHAN, HON'BLE MEMBER (T)

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

The petitioners, as Directors of the company G. K Dairy and Milk Products Private Limited have filed this application u/s 441 of the Companies Act, 2013 praying for compounding of the offence u/s 233B (11) of the Companies Act, 1956 , having defaulted in filing the Cost Audit Report for the F.Y 2012-2013. The default has been made good as the company has filed Form 23C vide SRN G34780056 for the appointment of Cost Auditor for Cost Audit of Financial year 2012-13 . They now pray for compounding of the offence.

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2. It is submitted by the petitioners that on account of technical glitches experienced on the portal of the MCA, they were unable to file the Cost Audit report in XBRL Format. The said default had occurred inadvertently for reasons beyond their control and without any malafide intention.

It is pointed out that the same offence was filed against the company and its other directors namely, Mr. Gaurav Dixit, Mr. Gopal Dixit and Mrs. Usha Dixit which was duly compounded by this Bench vide its Order dated 23.11.2017. The present application is filed by Mr. Keshav Prasad Dixit and Mrs. Kusum Dixit, two Ex-Directors of the company who have been held responsible for their defaults during their tenure.

3. The default in not complying with the Statutory requirements pertaining to the relevant year attracted fine and penalty in terms of Section 233B (11) of the Companies Act, 1956;

“ If default is made in complying with the provisions of this section, the company shall be liable to be punished with fine which may extend to five thousand rupees, and every officer of the company who is in default, shall be liable to be punished with imprisonment for a term which may extend to fifty thousand rupees, or with both”.

4. The said petition has been routed through the office of the RoC along with their comments. There is no repudiation by the department of the applicant's assertion that default has been made good.

5. The applicants place reliance on order dated 23.11.2017 whereby compounding has been permitted in respect to the company and its Directors. They therefore pray for parity. Further the present two applicants are no longer directors of the company and as the offence relates to financial year 2012-2013 prior to the Companies Act, 2013, notwithstanding the fact that prosecution has been initiated, permission of the prosecuting court is not required.

6. As the default has been made good, the petitioners/applicants' prayer can be granted. Accordingly, in view of the facts of the case, it would be just and equitable to compound the offence against the present applicant on payment of Rs. 5000/- each on grounds of parity with the fine earlier imposed on the other Directors.

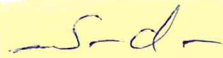
Name of Defaulter	Amount (in Rs.)*
Mr. Keshav Prasad Dixit	Rs. 5,000/-
Ms. Kusum Lata Dixit	Rs. 5,000/-

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7. Fine imposed on the Directors/officers shall be paid out of their personal accounts.

8. Subject to the remittance of the aforesaid fine within 15 days, the offence shall stand compounded. Copy of the order be sent to the office of the RoC. Compliance Report be placed on record.

9. Petition stands disposed off in terms of the above and be consigned to Record Room.



Deepa Krishan
Member (T)



Ina Malhotra
Member (J)