

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI**

**BENCH-III**

**C.P.- 73/441/ND/2018**

**Coram: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**DR. V.K.SUBBURAJ, MEMBER (TECHNICAL)**

**IN THE MATTER OF:**

SECTION 441 OF THE COMPANIES ACT, 2013 FOR VIOLATION OF  
SECTION 297 OF THE COMPANIES ACT, 1956

**AMONGST**

**1. STRYKER INDIA PRIVATE LIMITED,  
HAVING ITS REGISTERED OFFICE AT  
C-5, 3<sup>RD</sup> FLOOR, SDA COMERCIAL COMPLEX,  
NEW DELHI-110016**

**...PETITIONER NO.1**

**AND**

**2. MR. ROHIT MALHOTRA, MAHANGING DIRECTOR,  
S/O MR. JAGDISH CHANDER MALHOTRA,  
RESIDENT OF 2601 ODEYSSEY 1,  
HIRANANDANI GARDEN, POWAL, MUMBAI-400076**

**..PETITIONER NO. 2**

**AND**

**3. MS. TANU ARORA, COMPANY SECRETARY,  
D/O MR. SHARAMVIR ARORA,  
RESIDENT OF 106, TYPE IV, SADIQ NAGAR,  
SECTOR 3, NEW DLHI-110049**

**...PETITIONER NO.3**

ADVOCATE FOR THE PETITIONERS: MR. ALOK KUMAR TRIPATHI, PCS  
FOR CS RAJEET PANDEY (COMPANY SECRETARY PRACTICE)

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**ORDER**

**ORDER DELIVERED ON: 28.08.2018**

1. The applicant Company along with two of its directors have filed the above application for compounding of default in compliance with the provisions of section 297 of the Companies Act, 1956 read with section 188 of the Companies Act, 2013, stating that the Applicant Company entered into an agreement with Stryker Global Technology Centre Private Limited for sale of furnished goods, purchase of finished goods, sharing of infrastructural cost and salary cost allocation in the financial year 2011-12 & 2013-14 without obtaining the prior approval of the Central Government which is in contravention of section 297 of the Act, 1956.
  
2. The petitioner claims that the petitioner company entered into a contract with Stryker Global Technology Centre Private Limited which had common directors, and thus, Section 297 was attracted, thus the company was unable to obtain prior approval of Central Government (Regional Director) except for the financial year 2012-13. The petitioner also claims that the "Petitioner Company" and Stryker Global Technology Centre Private Limited are closely held fellow subsidiary companies having common Directors. It is further pleaded in the Petition that the violation committed under section 297 of the Companies Act, 1956 is not willful and that in the circumstances as they have voluntarily reported the non-

compliance on their own, the same may be duly considered while taking into consideration the imposition of fine, as prescribed under the relevant provisions of the companies act, 2013.

3. The Registrar of Companies has filed a detailed report and a perusal of which shows that no prosecution in relation to the offence has been filed or launched and that similar offence has not been compounded during the last 3 years. It is further reported that the default has been made good as per details furnished by RoC which is in accordance with the compilation, as extracted in paragraph 2 above. Further, it is also represented by the RoC in the report dated 01.02.2018 that no complaint has been received against the company and that there is no inspection or investigation proceeding pending against the Company.
  
4. The plea made by the Applicants in the above company petition and the documents annexed therewith and the report of the RoC have been taken into Consideration. Further, in passing this order, this Tribunal is also guided by the Judgement of the Hon'ble NCLAT passed in *M/S Vivai Solutions Private Limited & Ors Vs. Registrar or Companies, NCT Delhi and Haryana* in relation to compounding of offence similar to the one herein imposing of fine and compounding of an offence.



5. Taking into consideration the yardstick as laid down in the section 188 of the Companies Act, 2013 and Companies Act, 1956 it is seen that the defaulter had made good the default. However, as seen under the provisions of the Companies Act, 1956, the punishment for default requiring for obtaining the prior approval of the Central Government before entering into an agreement with the closely held subsidiary company having common directors, is attendant with fine as reproduced below:

*297. Board's sanction to be required for certain contracts in which particular directors are interested.*

*(1) Except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company-*

*(a) for the sale, purchase or supply of any goods, materials or services; or*

*(b) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company:<sup>1</sup> Provided that in the case of a company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government.]*

*(2)<sup>2</sup> Nothing contained in clause (a) of sub-section (1) shall affect-*

*(a) the purchase of goods and materials from the company or the sale of goods and materials to the company, by any director, relative, firm, partner or private company as aforesaid for cash at prevailing market prices; or*

*(b) any contract or contracts between the company on one side and any such director, relative, firm, partner or private company on the other for sale, purchase or*

supply of an goods, materials and services in which either the company, or the director, relative, firm, partner or private company, as the case may be, regularly trades or does business: Provided that such contract or contracts do not relate to goods and materials the value of which, or services the cost which, exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract or contracts; or

(c) in the case of a banking or insurance company any transaction in the ordinary course of business of such company with any director, relative, firm, partner or private company as aforesaid.

(3) Notwithstanding anything contained in sub-sections (1) and (2), a director, relative, firm, partner or private company as aforesaid may, in circumstances of urgent necessity, enter, without obtaining the consent of the Board, into any contract with the company for the sale, purchase or supply of any goods, materials or services even if the value of such goods or cost of such services exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract; but in, such a case, the consent of the Board shall be obtained at a meeting within three months of the date on which the contract was entered into.

(4) Every consent of the Board required under this section shall be accorded by a resolution passed at a meeting of the Board and not otherwise; and the consent of the Board required under sub-section (1) shall not be deemed to have been given within the meaning of that sub-section unless the consent is accorded before the contract is entered into within three months of the date on which it was entered into.

(5) If consent is not accorded to any contract under this section, anything done in pursuance of the contract shall be voidable at the option of the Board.

(6) Nothing in this section shall apply to any case where the consent has been accorded to the contract before the commencement of the Companies Amendment Act 1960 .] (65 of 1960 .)

6. The report of the RoC brings out the fact that in relation to the Petitioner No.3 since her appointment as a Company Secretary was made only on 31.03.2014 and hence no fine has been calculated. However in this regard it is to be seen that the said petitioners have filed a joint application in C.A.144/C-III/ND/2018 under rule 23A of NCLT Rules, 2013 to jointly prosecute this petition on the basis and in respect of same cause of action with the same relief being prayed and thus having a common interest. In view of above and as Petitioner No.3 has claimed to have common interest, Petitioner No.3 cannot be made an exception and in the circumstances will be liable to pay the fine as calculated below. The offence is attendant only with fine as evident from a perusal of section 629 A of Companies Act, 1956 as section 297 of the Act does not prescribe a fine or punishment in relation to the offence. Further in view of fine being the only attendant punishment for the offence, even though the petition relates to offences committed in relation to two different years, section ~~481~~<sup>451</sup> of the Companies Act, 2013 may not be applicable under the circumstances.

7. Hence, in the circumstances of the case, this tribunal is of the view it will be fit and proper to impose the following fine on the defaulters for each of the cases, thus aggregating in all to Rs. 956,000/- for the two years namely 2011-12 and 2013-14

,the break-up of which is given as follows:

s. no	Name of the Applicants	No. of Delays/Per day fine imposed	No. of Contracts	Amount of fine payable (Rs)
1.	M/s. Stryker India Private Limited	2011-12 365 x 150 + 5000	04	59,750 x 4= Rs. 239,000/-
		2013-14 365 x 150 + 5000	04	59,750 x 4= Rs. 239,000/-
2.	Mr. Mohit Malhotra	2013-14 365 x 150 + 5000	04	Rs. 239,000/-
3.	Ms. Tanu Arora	365 x 150 + 5000	04	Rs. 239,000/-
	TOTAL			Rs. 956,000/-

8. Subject to the remittance of the aforesaid fine, the offence shall stand compounded. For compliance within three weeks. Fine levied on the Directors/ Officer in default shall be paid out of their personal accounts.

9. Petition stands disposed off in terms of the above.

*Sd/-*  
28/8/18  
**(DR. V. K. SUBBURAJ)**  
**MEMBER (TECHNICAL)**

U.D.MEHTA/K

*Sd/-*  
28/8/18  
**(R.VARADHARAJAN)**  
**MEMBER (JUDICIAL)**