

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 16.10.2020

THROUGH VIDEO CONFERENCING

CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Ashok Kumar Borah, NCLT KOCHI
2. Hon'ble Member (T), Shri Ashutosh Chandra

| CP/CA No. | Purpose | Sec | Name of Petitioner | Petitioner Advocate | Name of Respondent | Respondent Advocate |
|-----------------------|---------------|--------------------------|--|------------------------------------|--------------------|---------------------|
| CP No. 158/BB/2020 | For admission | Sec 441 of CA 2013 | Marble Industry [Mangalore] Pvt Ltd & Others | Chethan Jeevandas Nayak, PCS | ROC | |

ADVOCATE FOR PETITIONER/s:


CHETHAN J. NAYAK

ADVOCATE FOR RESPONDENT/s:

ORDER



Heard Shri Chethan Jeevandas Nayak, learned PCS for the Petitioner, through Video Conference.

CP No.158/BB/2020 is disposed of by separate order.


Member (T)

Krishna


Member (J)



Court Officer

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU**

C.P. No.158/BB/2020
U/s 621A of Companies Act, 1956 and
Section 441 of Companies Act, 2013

IN THE MATTER OF:

1. **Marble Industry (Mangalore) Pvt. Ltd.**
Regd. Off: Sri Krishna Saudha,
Kankanady Bye Pass Road,
Mangalore – 575 002.

2. **Mr. Rajaram Bharadwaj**
S/o. Alchar Devanna Nayak
No.25-2-90/8, Sri Krishna Soudha,
Kankanady Bye Pass Road, Kankanady,
Mangalore – 575 002.

3. **Ms. Vijayalkshmi Nayak**
D/o. Alchar Devanna Nayak
A/2, St. Patricks Town,
Kalpana Empress Society, Hadpsar
Pune – 411 013.

- Petitioners

Versus

Registrar of Companies, Karnataka
E-Wing, 2nd Floor, Kendriya Sadan,
Koramangala,
Bangalore – 560 034.

- Respondent

Date of Order: 16th October, 2020

Coram: 1. Hon'ble Shri Ashok Kumar Borah, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (Through Video Conference):

For the Petitioners : Mr. Chethan Jeevandas Nayak, PCS

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. This Petition has been filed by M/s. Marble Industry (Mangalore) Private Limited and its two Directors namely Mr. Rajaram Bharadwaj and

Ms. Vijayalakshmi Nayak (hereinafter referred to as 'Petitioners') under Section 621A of the Companies Act, 1956 and Section 441 of the Companies Act, 2013 by inter alia seeking the compounding of offence for violation of the provisions of Section 215 of the Companies Act, 1956 and Section 134 of the Companies Act, 2013, etc.

2. Brief facts of the case, as mentioned in the instant Petition, are as follows:

- (1) M/s. Marble Industry (Mangalore) Private Limited (hereinafter referred to as 'Company / Petitioner No.1') was incorporated as a Private Limited Company on 28.04.1984 bearing CIN: U14101KA1984PTC006057 and having its registered office at Sri Krishna Soudha, Kankanady Bye Pass Road, Mangalore-575002. The Authorised Capital of the Company is Rs.10,00,000/- divided into 10,000 Equity Shares of Rs.100/- each and the Issued, Subscribed and Paid-up Capital is Rs.88,000/- divided into 880 Equity Shares of Rs.100/- each. Its main objects *inter alia* are to carry on the business of manufacturers, processors, dealers, traders, agents, importers, exporters, layers and polishers of marble and marble products in all their varieties, ranges and forms, etc.
- (2) Mr. Rajaram Bharadwaj ('Petitioner No.2') and Ms. Vijayalakshmi Nayak ('Petitioner No.3') are the Directors and Members of the said Company.
- (3) It is stated that the ROC, Karnataka suo moto struck off the Petitioner Company name from the Register in the year 2007 due to defaults in statutory compliances, namely, failure to file the Financial Statements and Annual Return for the FYs from 1996-97 to 2006-07. The Petitioner 2 and 3 had filed the Petition u/s 252 of the Companies Act, 2013 before this Tribunal for restoration of the name of the Company and obtained the order for restoration dated 04.12.2018, wherein, the Tribunal ordered to file compounding of the offence for violating Section 215 of the Companies Act, 1956 and Section 134 of the Companies Act, 2013 for not preparing financial statements which includes auditors report, balance sheet, profit and loss account and any notes annexed to or forming part of such financial statement and signed on behalf of the Board as detailed in the said sections; approving the balance sheet and profit and loss account by

the Board of Directors; preparing report by Board of Directors and signed on behalf of the Board as detailed in Section 134; circulating the above documents signed copy of every financial statement, including consolidated financial statement, if any, as per Section 134(7).

- (4) It is stated that due to the circumstances beyond the control of the Company and with the prolonged illness and unexpected death of the Promoter-Director Late Alchar Devanna Nayak on 30.05.2000 the activities of the Company were discontinued. The Company has failed to comply with the aforesaid provisions by not preparing and signing on behalf of the Board of the financial statements as defined in the Act, along with Directors Report and circulating the same among the Members of the Company for the FYs 1996-97 to 2017-18 due to the death of the said Director led to slump in growth of business and the then existing Directors were not grounded to the roots of this business to steer it out of the slump as all key controls and functioning of the Company was with the deceased Director. This further led to operational issues, wherein the Company failed to comply with the aforesaid provisions of Companies Act, 1956 and Companies Act, 2013, and due to which the Company has neither gained any unfair advantage nor has caused any loss to the exchequer.
- (5) It is further stated that there was no willful or malafide intention on the part of the Company to contravene any provisions of the aforesaid Acts and currently the Company is fully compliant and made good all the aforesaid defaults for the FYs from 1996-97 to 2017-18. Due to this default, the minimum and maximum amount of penalty exposure the Company and every officer of the Company is Rs.6,34,000/- and Rs.1,51,34,000/- respectively. Therefore, it is prayed to condone the violations committed under the aforesaid provisions of the Companies Act.
3. Ld. Registrar of Companies, Karnataka has filed a report before this Tribunal dated 23.07.2020 intimating that an application u/s 441 of the Companies Act, 2013 was filed before it by the Petitioners herein for compounding of offence committed under Section 215 of the Companies Act, 1956 and Section 134 of the Companies Act, 2013, as the Company defaulted by not preparing and



signing on behalf of the Board the Financial Statements along with Directors Report and circulating the same among the Members of the Company for the FYs 1996-97 to 2017-18. A table depicting the period of default for the FYs 1996-97 to 2017-18 including the number of days of delay has been mentioned. ROC has *inter alia* observed that the Company has filed Annual Returns and Balance Sheets for the years 1996-97 to 2017-18 by mentioning wrong due date of AGM in e-Forms. Hence, additional fee paid for e-Forms is lower than required and that the Company need to file Compounding Application u/s 219 of the Companies Act, 1956 and u/s 136 of the Companies Act, 2013 for not circulating the copy of Financial Statement before the respective years due dates. Further, Vijayalakshmi Nayak, Additional Director has signed the Compounding Application though she was not Officer in default during the relevant period as she has been appointed as Additional Director only on 02.01.2019, and may be imposed with maximum penalty for the severe default.

4. Heard Mr. Chethan Jeevandas Nayak, learned PCS for the Petitioners through Video Conference. We have carefully perused the pleadings of the parties and extant provisions of the Companies Act and the Rules made thereunder.
5. Learned PCS for the Petitioners has stated that due to unprecedented circumstances the Company has committed default by not preparing and signing on behalf of the Board the Financial Statements along with Directors Report as stipulated in the Act and circulating the same among the Members of the Company for the Financial Years 1996-97 to 2017-18 under Section 215 of the Companies Act, 1956 and Section 134 of the Companies Act, 2013. It is also submitted that compliances could not be made for the years 2007 till 2018 as the name of the Company was struck off. Since these defaults have been made good and currently the Company is fully-compliant in respect of said defaults and there was no wilful or malafide intention on the part of the Company to contravene any provisions of aforesaid Acts, he requests the Tribunal to compound the offences committed by taking a lenient view.
6. We have carefully perused the provisions of Section 215 of the Companies Act, 1956 and Section 134 of the Companies Act, 2013, under which the aforesaid offences were committed, and it is seen that the maximum fine leviable for the



said defaults have been provided under Section 218(a) of the Companies Act, 1956 and Section 134(8) of the Companies Act, 2013 respectively, and the said provisions reads as under:

"Section 218 of Companies Act, 1956:

(a) If any copy of a balance sheet or profit and loss account which has not been signed as required by section 215 is issued, circulated or published; or the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

Note:

- 1. The Companies (Amendment) Act, 2000 came to effect on 13.12.2000.*
- 2. Before Companies (Amendment) Act, 2000, fine for the default was Rs.500/-.*
- 3. After Companies (Amendment) Act, 2000, fine for the default was Rs.5,000/-."*

"Section 134(8) of Companies Act, 2013:

If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both."

- 7. As seen from the Petition, the defaulters herein will be (1) M/s. Marble Industry (Mangalore) Private Limited – the Company (2) Mr Rajaram Bharadwaj (DIN: 07860195) – Director and they have violated the provisions of Section 215 and Section 134 of the Companies Act, 1956 / 2013 respectively, for which the punishment is provided under Section 218(a) of the Companies Act, 1956 and Section 134(8) of the Companies Act, 2013, as stated supra.*



8. On perusal of the Petition filed by the Petitioners, the Report submitted by the ROC, Karnataka, and also the submissions made by the learned PCS, we are of the view that the Petition made under Section 441 of the Companies Act, 2013 for compounding of offences committed under Section 215 of the Companies Act, 1956 and Section 134 of the Companies Act, 2013, merits consideration, even though we take note of the severity of the defaults, as pointed out by the ROC.. It is seen that Hon'ble NCLT Mumbai Bench also, in its Order dated 06.11.2019 passed in CP No.2358/441/NCLT/MB/MAH/2018, has taken a lenient view while levying a compounding fee for the offences committed by Petitioners therein under the provisions of Companies Act, 2013. This Tribunal too has taken a lenient view in applying the provisions for compounding where the circumstances so justify. It is also seen that the Company made good all the said defaults and filed the Financial Statements and Directors Report for the FYs 1996-97 to 2017-18 as Annexure-V to the Petition.
9. We observe from the circumstances narrated in the Petition and argued by the Ld. PCS, that the said violations committed under the Companies Act were due to the circumstances beyond the control of the Company, namely the unexpected death of the key Promoter-Director, as a result of which the Company suffered a slump in growth of business, as the other Directors were not familiar with the business. Another Director expired in 2012, as per the details of the Directors filed. It is also seen from the order passed under section 252 by this Tribunal on 04.12.2018 that at some stage the fixed assets of the company were frozen and hence could not be disposed off, and there was no business or revenue from operations for several years. Between 2007 and 2018 the Company remained struck off from the rolls of the ROC. In these circumstances, it does not appear that the default was willful or done for any monetary gain. It may work against the interests of the company if it is burdened with a huge penalty as per the provisions of the Companies Act 1956/2013 and taking a lenient view would not cause prejudice to anyone. Subsequently these defaults have been made good for the FYs 1996-97 to 2017-18. The Petitioner has itself worked out the minimum penalty payable at

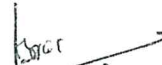


Rs 3,84,000, in all. We are of the view that the ends of justice would be served and the Petitioners would be restrained from repeating the offences if the Offences stated above are compounded by levying a lump sum Compounding Fees of a total amount of Rs 1,00,000 (Rupees One lakh only) in total.

10. Hence, in view of the foregoing circumstances and in exercise of the powers conferred on this Tribunal U/s 441 of the Companies Act, 2013, Compounding Fee of *Rs. 1,00,000 (Rupees One lakh only)* as total amount is hereby levied and the same shall be paid online in favour of the *'Pay and Accounts Officer, Ministry of Corporate Affairs, Southern Region, Chennai'* within 30 days from the date of receipt of this Order.
11. Accordingly, C.P. No.158/BB/2020 is disposed of on the above terms with a direction to the Petitioners to place on record the compliance of the same. Upon payment of the said compounding fee and submission of compliance report by the Petitioners to the ROC, Karnataka, the aforesaid offences shall stand compounded. Copy of this order be provided to the ROC, Karnataka by the Deputy Registrar, NCLT Bengaluru Bench.



ASHUTOSH CHANDRA
MEMBER, TECHNICAL



ASHOK KUMAR BORAH
MEMBER, JUDICIAL

Krishna