

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No.: 2376/441/NCLT/MB/MAH/2018

Under Section 441 of the Companies Act, 2013

In the matter of

M/s. Aruba Chemicals India Private Limited, B
– 7, Om Parshwanath Apartments, Desai and
Sheth Nagar, Sai Baba Nagar, Borivali (W),
Mumbai - 400092.

.... Applicant Company

Order Pronounced on:03.10.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

For the Petitioner:

Mr.HemantSethi, Advocate i/b. Tejas B. Shah & Associates, Company Secretaries –
Authorised Representative for the Applicant.

For the RoC :

Mr.Neelambuj – Advocate for the RoC.

Per: M.K. Shrawat, Member (J)

ORDER

Applicant/Defaulter Herein:

- 1) M/s. Aruba Chemicals India Private Limited – Company.
- 2) Mr. Sameer Borse – Whole Time Director.
- 3) Mr. Mark A. Henning – Director.

Section Violated:

S. 149 (1) (a) of the Companies Act, 2013.

Punishment Provided Under:

S. 450 of the Companies Act, 2013.

1. This Compounding Application was filed before the Registrar of Companies, Mumbai (hereinafter as **RoC**) and the same has been forwarded to the NCLT, Mumbai along with its report bearing no. ROC/Mum/441/257787/171 dated 09.08.2018 (hereinafter as **RoC Report**).

2. The Learned RoC has informed that, this application was filed because the Company has violated the provisions of S. 149 (1) (a) of the Companies Act, 2013 (hereinafter as **Act**) where the Company fails to appoint the minimum number of Directors as per requirements of the provisions.
3. The Learned RoC also reported that, the Company has made the said default good by appointing Mr. Sameer Borse as Whole Time Director and Mr. Mark A. Henning as Director in the EGM held on 30.08.2016. This appointment was done w.e.f. 01.01.2016.

Submissions from the Applicants/ Defaulters:

4. The Learned Representative for the Applicants/Defaulters herein, submitted that, the Contravention of the provisions of S. 149 (1) (a) of the Act was bona fide and without any mala fide intention.
5. It is also submitted that, due to inadvertent mistake on the part of the Directors this offence has been committed. It is also submitted that the Holding Company of the Applicant / Defaulter Company is a Foreign based Company and therefore because of the lack of knowledge of the Indian Laws this contravention has happened.
6. It is further submitted that, the Applicants/Defaulters herein, made the default good by appointing the two Directors namely, Mr. Sameer Borse – WTD and Mr. Mark Henning as Director w.e.f. 01.01.2016 in the EGM held on 30.08.2016. But as the delay of 242 days is caused in holding the Board Meeting as per the provisions of the Act the Applicants / Defaulters herein has filed this Compounding Application suo-moto to compound the committed offence.
7. It is also submitted that, the RoC in its Report also recognises that, the Company has made the default good. However for the said period of default imposed a consolidated fine of ₹ 7,56,000/- which is very excessive and unreasonable as presently the Company does not having much revenue generation, pleaded by the Learned Representative.

Findings:

8. I have gone through the submissions made by the Learned Representative for the Applicants / Defaulters herein. I have also gone through the pleadings on record and on perusal it is noticed that, the Company had duly appointed the required minimum number of Directors, though belatedly, as per the provisions of the S. 149 (1) (a) of the Act. Further that, the RoC has also been intimated about the same, by the Company.

9. Accordingly, by going through the facts of the case and the submissions made by the Learned Representative for the Applicants/Defaulters herein, the conclusion can be drawn that, the Applicants/Defaulters herein had violated the Provision of S. 149 (1) (a) of the Act. And for the said violation the punishment is not provided in the same Section therefore we have to look the miscellaneous provisions wherein the punishment for the violation of any provisions is provided u/Section 450 of the Act. The Sections which are relevant in this Case, are as follows:-

S. 149 (1) (a) : “Every company shall have a Board of Directors consisting of individuals as directors and shall have a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company.”

S. 450: “If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.”

10. By going through the submissions and pleadings on record I hereby record my satisfaction that, the Application / Petition filed by the Applicants / Defaulters herein, for violation of S. 149 (1) (a) of the Act merits consideration.
11. On examination of the circumstances as discussed above a Compounding Fee of ₹ 10,000/- by the Defaulting Company and ₹ 5,000/- by the each Defaulting Director (i.e. ₹ 20,000/- in Total), shall be sufficient as a deterrent for not repeating the impugned default in future. The imposed remittance shall be paid by way of Demand

Draft drawn in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai" within 30 days from the receipt of this order.

12. This Compounding Application No. 2376/441/NCLT/MB/2018 is, therefore, disposed of on the terms directed above. Needless to mention, the offence shall stand compounded subject to the remittance of the Compounding Fee imposed. A compliance report, therefore, shall be placed on record. Only thereafter the Learned RoC shall take the consequential action.

13. Ordered accordingly. To be consigned to Records.

Dated : 03.10.2018

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)

Avinash