

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

CP No.: 2380/441/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. 118 (10) of the Companies Act, 2013.

**Punishment Provided Under:**

S. 118 (11) 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/441/257787/175 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. 118 (10) of the Companies Act, 2013 (hereinafter as **Act**) where the Company fails to observe the Secretarial Standards provided U/s. 3 of the Company Secretaries Act, 1980 with respect to Board and General meetings of the Company.
3. The Learned RoC also reported that, the Company has made the said default good by holding the first AGM on **26.09.2016** and in the said meeting the Secretarial Standards were followed.

**Submissions from the Applicants/ Defaulters:**

4. The Learned Representative for the Applicants/Defaulters herein, submitted that, the Contravention of the provisions of S. 118 (10) 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. As the other Directors are non-resident of India therefore, without any mala fide intention, the Company has contravened the provisions of the Act.
6. It is further submitted that, the Applicants/Defaulters herein, made the default good by holding the first AGM on 26.09.2016. In the said meeting the Financials for the F.Y. 2014-15 and necessary e-forms are also with the RoC. But as the delay is caused in holding the first AGM 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 ₹ 30,000/- 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 convened the first AGM, though belatedly, as per the provisions of the S. 118 (10) 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. 118 (10) of the Act. And for the said violation the punishment is provided u/Section 118 (11) of the Act. The Sections which are relevant in this Case, are as follows:-

**S. 118 (10):** “Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980), and approved as such by the Central Government.”

**S. 118 (11):** “If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.”

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. 118 (10) 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. 2380/441/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.

SD/ -

Dated : 03.10.2018

M. K. SHRAWAT