

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

Before Shri Jinan K.R., Hon'ble Member (J)

C.P. No. 369/KB/2018

In the matter of:

An application u/s. 441 read with Section 450 of the Companies Act, 2013 for compounding of offences under Section 55 read with Section 62(1)(c) of the Companies Act, 2013;

-And-

In the matter of:

Orissa Sponge Iron & Steel Ltd. & 3 others.

...

-Versus-

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Applicants/ Petitioners

The Registrar of Companies, Corporate Bhawan, 3rd Floor, Plot No. 9(P), Sector 1, CDA, Cuttack 753 014.

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Respondent

Counsel appeared:

1. Mr. Pratik Shanu, Advocate

] For the Petitioner

Order pronounced on 04/09/2018

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ORDER

1. This is an application filed u/s. 441 of the Companies Act, 2013 in the matter of Orissa Sponge Iron & Steel Ltd. for compounding of the offence under section 55 read with Section 62 (1)(c) of the Companies Act 2013.
2. The applicant company has allotted two Crores 10% Cumulative Non-convertible Redeemable Preferential Shares on 14/08/2014 without complying the provisions of Section 55 read with Clause 9(3) of the Company (Share Capital and Debentures) Rules, 2014 as no special resolution was passed by the company in the past several years vide clause 11 of the corporate governance.
3. The issuance of the Cumulative Non-convertible Redeemable Preferential Shares by the applicant company was challenged by one of the shareholders with the Registrar of Companies, Cuttack and in pursuance thereof a show cause notice was issued by the Registrar of Companies, Cuttack to the applicant Company.
4. The applicant company deliberated the same with the legal adviser and upon getting advice the Board of Directors had decided to declare the conversion of shares as void since the redemption of redeemable preferential shares was in contravention of the applicable

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provisions of the Companies Act and Rules described thereunder and the Articles of Association. Consequently the Board Resolutions dated 30/05/2014 and 14/08/2014 are void and may be rescind by the Board. Upon the said decision of the Board of Directors the following resolution has been made :-

"RESOLVED THAT 1,95,10,000 (one crore ninety five lakh ten thousand shares) 10% Cumulative Non Convertible Redeemable Preference Shares of Rs. 10 each bearing Distinctive No. 00000001 to 19510000, at par, aggregating Rs. 19,51,00,000 (Rupees Nineteen Crore Fifty One Lakh) invalidly allotted to Monnet Ispat & Energy Limited vide Board Resolution dated 14/08/2014 be and is hereby cancelled being null and void ab initio."

Thereby the applicant company rectified the error made and filed this application for compounding of offence u/s. 55 read with Section 62(1) (c) of the Companies Act, 2013.

5. The Registrar of Companies, Cuttack has forwarded the compounding application along with the remarks which reads as follows :-

"In reference to paragraph 7 of this office's report dated 13/06/2017 it is stated that as per the provision of Section 450 of the Companies Act, 2013, provides inter alia that: If a company or any officer of a company or any other person contravenes any of the

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provisions of the 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 or every day after the first during which the contravention continues. In this case the offence is continued from 14/08/2014 to 18/02/2017 (approximate 914 days)."

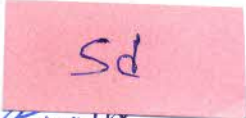
6. Heard the Ld. Counsel appearing on the side of the applicant.
7. Ld. Counsel for the applicant submits that the appellant company has been a loss making company since the year 2009 and prays for compounding fee to be reduced.
8. Considering the contentions taken by the applicant company and submissions of the Ld. Counsel appearing for the applicant it appears to me that the compounding fee is to be reduced to Rs. 5,00,000/- instead of Rs. 9,14,000/- which could be levied for the continuance of the offence extended to 914 days.

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9. Subject to the remittance of the fine within 30 days, the offence shall stand compounded. Copy of the order be sent to the Office of the Registrar of Companies, Cuttack. Compliance Report be placed on record.

10. The application stand disposed off in terms of the above.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


4/9/18
(Jinan K.R.)
Member (J)

Signed on this, the 4th day of September, 2018.

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