

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

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

C.P. No. 189/KB/2018

In the matter of:

An application u/s. 441(1) of the Companies Act, 2013 for compounding of offence for contravention of Section 165 of the Companies Act, 2013;

-And-

In the matter of:

Subhankar Kayal, having DIN: 03568470 and residing at 87A, Prosanta Roy Road, Barisha, Thakurpukur, Kolkata 700 008, West Bengal.

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Petitioner

Counsel appeared:

1. Mr. Atul Kumar Labh, Pr. CS] For the Petitioner

Order pronounced on 30.08.2018

ORDER

1. This is an application forwarded by the Registrar of Companies, West Bengal for compounding of an offence punishable under section

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165(1) of the Companies Act, 2013 read with section 441 of the Companies Act, 2013.

2. The applicant was the director of 31 companies as on 01/04/2014 when the Section 165 of the Companies Act, 2013 (Act of 2013) came into force. As per Section 165(1) of the Companies Act, 2013 *"No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time:"*

"Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten."

Sub-section (3) of Section 165 further provides that *"that any person holding office as director in companies more than the limits as specified in sub-section, immediately before the commencement of this Act shall, within a period of one year from such commencement, -*

(a) choose not more than the specified limit of those companies, as companies in which he wishes to continue to hold the office of director,

(b) resign his office as director in the other remaining companies; and

(c) intimate the choice made by him under clause (a) to each of the companies in which he was holding the office of director

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before such commencement and to the Registrar having jurisdiction in respect of each such company."

2. Since Section 165 (1) of the Act of 2013 came into force w.e.f. 01/04/2014 the number of companies in which applicant can hold as director is limited to 20 companies. The applicant director being failed to reduce the number of directorship from 31 to 20 companies within the stipulated time the Registrar of Companies, West Bengal has issued show cause notice dated 24/08/2017 (**Annexure A**) to show cause within 15 days of the receipt of the notice as to why prosecution should not be initiated under appropriate penal provision of Section 165 of the Act of 2013 with an alternative option to prefer an application for compounding the offence within 15 days from the date of receipt of the notice.
3. Upon receipt of the show cause notice (**Annexure A**) referred to above the applicant submit his application which has been forwarded by the Registrar of Companies, West Bengal to this Tribunal.
4. The Registrar of Companies in his application reported that the offence committed by the applicant-director has been made good by vacating the directorship/reduced to below 20 Private Companies on 30/05/2016 with a delay of 1 month and 29 days and the applicant is liable for punishment to the extent of violation period as per Section 165(6) of the Act.

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5. As per Section 165(6) of the act *"If a person accepts an appointment as a director in contravention of sub-section (1), he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees for every day after the first during which the contravention continues."*

6. The Ld. Pr. CS was heard and perused the records.

7. Ld. Pr. CS submits that the offence committed by the director not falls u/s. 165(1) but under sub-section (3) of Section 165 and the penal provisions applicable to the offence committed by the director in the case in hand is Section 450 of the Act of 2013 and not u/s. 165(6) of the Act of 2013 and, therefore, the fine, if any liable to be paid is not u/s. 165(6) of the Act of 2013 but u/s. 450 of the Act of 2013. According to him the violation not falls u/s. 165(1) because he did not accept any new directorship exceeding 20 companies subsequent to the commencement of Section 165(1) of the Act of 2013 but was holding more than 20 companies and delayed in vacating the office of directorship immediately after the commencement of Section 165(1). According to him the penal provision for violating Section 165(3) is not fall u/s. 165(6) of the Act and therefore Section 450 of the Act of 2013 would attract.

8. A reading of Section 165 as a whole it appears to me that the submissions of the Pr. CS has no force at all. Because holding of

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directorship beyond the prescribed number u/s. 165(1) is punishable u/s. 165(6) of the Act of 2013. Section 165(3) can only be read along with Section 165(1) of the Act of 2013. As per Section 165(3) a director who is holding more than 20 companies as on the date of commencement of the provisions of the Act, can vacate the office within 1 years, and can avoid any penalty as provided under section 165(6) of the Act. He being not done so committed the offence and fine to be imposed is as per Section 165(6) and not under Section 450 of the Act of 2013. Therefore, the submissions on the side of the Ld. Pr. CS that the fine is to be calculated u/s. 450 of the Act of 2013 is devoid of any merit.

9. The applicant herein reduced the directorship of excess companies with effect from 30/05/2016 as per the documents annexed with the application in this case. The list of companies showing reduction of directorship of the applicant in the ten companies is annexed with **Annexure C** of the application. Since the applicant reduced the directorship w.e.f. 30/05/2016 there is a delay of 424 days in order to comply with the direction as per Section 165(1) of the Companies Act, 2013. The fine to be imposed is therefore for 424 days as per Section 165(6) of the Act. The minimum penalty is for Rs.5,000/- per day with a maximum of Rs. 25,000/- per day. Therefore, total fine in the case may extend upto Rs. 21,20,000/-. According to the Ld. Pr. CS appearing for the appellant the delay was occurred due to sudden change in the law with

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the introduction of new Companies Act, 2013 and lack of knowledge of the said provisions by the applicant. He would further submit that the default was beyond the control of the director and purely unintentional and there is no mala fide in continuing with the directorship in violation of Section 165(1) of the Companies Act, 2013. He prays for extending leniency in regard to the fine to be imposed upon compounding the offence.

10. Being satisfied that the applicant has made good to come into purview of Section 165(1) of the Companies Act, 2013 as on 31/05/2016 and want to avoid the prosecution voluntarily admitted the default and applied for compounding, it appears to me that this is a fit case in which leniency is to be extended. Accordingly the offence committed by the applicant is liable to be compounded upon payment of Rs. 4,29,000/- (Rupees Four Lakhs Twenty Nine Thousand only).

11. Fine imposed on the applicant shall be paid out of his personal account.

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

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12. Petition stands disposed off in terms of the above and consigned to Record Room.

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

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(Jinan K.R.)
Member (J)

Signed on this, the 30th day of August, 2018.

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