

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

CP No.: 410/441/NCLT/MB/MAH/2018

Under section 441 of the Companies Act, 2013

In the matter of

M/s. Techno Products Bombay Private
Limited, 1, Expert House, Opp Jari Mari
Pipe Line, Jarimari, Mumbai, Maharashtra
400072.

.... Applicant Company

Order Pronounced on : 05.10.2018

Coram :

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

For the Petitioner :

Mr. G. S. Shetty, PCS – Authorised Representative for the Applicants.

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

ORDER

Applicants / Defaulters Herein:

- 1) M/s. Techno Products Bombay Private Limited – Company.
- 2) Mr. Balkrishna Rajiv Shetty – Director.
- 3) Mrs. Saibala Dharmaraj Shetty – Director.
- 4) Mr. Dharmaraj Subbanna Shetty – Director.
- 5) Ms. Rajeshwari Dharmaraj Shetty – Director.

Section Violated:

S. 134 (3) (o) of the Companies Act, 2013.

Punishment Provided Under:

S. 134 (8) 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 the RoC Report. The Learned RoC has informed that, this application was filed because the Company has violated the provision of S. 134 (3) (o) of the Companies Act, 2013 (hereinafter as **Act**) r.w. Rule 8 of Companies (Corporate Social Responsibility Policy) Rules, 2014 wherein the Company fails to give explanation for the non-spending of the CSR amount for the Financial Year 2014-15 in Director's Report.
2. According to the provision of S. 135 (5) of the Act, the Board of Company was required to spend, in every financial year, at least 2% of the average net profit of the Company during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility (CSR) policy, applicable to every company having net worth of ₹ Five Hundred Crore or more, or turnover of ₹ One thousand crore or more, or having net profit of ₹ Five Crore or more, during Financial Year. Further the provision of S. 134 (3) (o) provides that, if company fails to comply with the provision of S. 135 (5), then the Board in its report shall specify the reasons for not spending the amount. But the Applicants / Defaulters herein, have not complied with the provision of S. 134 (3) (o) of the Act. Hence, this Compounding Application has been filed by the Applicants / Defaulters herein so as to put the matter at rest.
3. The Learned RoC also reported that, the Company has made the said default good by revising the Directors Report for the Financial year 2014-15 and therein complying with the provisions of S. 134 (3) (o).

Submissions by the Applicants / Defaulters herein :

4. The Ld. Representative for the Applicants / Defaulters herein, submitted that due to inadvertent mistake the Company has failed to comply with the provisions of the S. 134 (3) (o) although the Applicants/Defaulters herein were willing to comply with the provisions of the Act *bona fide*ly.

5. It is further submitted that the Company, during the F. Y. 2015-16 has spent an amount of ₹ 13,67,502/- towards the CSR. The bifurcation of the amount is as follows :

<i>Name of Institute</i>	<i>Purpose</i>	<i>Amount</i>	<i>Cheque No.</i>	<i>Date</i>	<i>Bank</i>
<i>Navodaya English High School</i>	<i>Promoting Education</i>	<i>500,000.00</i>	<i>516557</i>	<i>03/08/2016</i>	<i>Vijaya Bank</i>
<i>Bunts Institute For Higher Education (Donation of Computers via Viscom Infosys)</i>	<i>Promoting Education</i>	<i>410,400.00</i>	<i>516559</i>	<i>18/08/2016</i>	<i>Vijaya Bank</i>
<i>Bombay Bunts Association (Book Shelves & Other Related Items)</i>	<i>Promoting Education</i>	<i>457,102.00</i>	<i>516562</i>	<i>26/07/2017</i>	<i>Vijaya Bank</i>
<i>Total</i>		<i>1,367,502.00</i>			

6. It is further submitted that, the Applicants / Defaulters herein made the default good by spending the amount of CSR in subsequent Financial Years and the RoC has also been intimated about the same and necessary e-forms were also filed.
7. It is also submitted that, due to number of Circulars / Notifications issued by the Government the Applicants / Defaulters herein, could not ascertain the actual position of the CSR amount to spend and therefore the said contravention has happened.

Findings:

8. The Bench has gone through the pleadings on record and the submissions made by the Learned Representative for the Applicants / Defaulters herein and accordingly

the conclusion can be drawn that, the Applicants / Defaulters herein had violated the Provision of S. 134 (3) (o) of the Act. And for the said violation the punishment is provided u/Section 134 (8) of Companies Act, 2013. The Sections which are relevant in this case are as follows :

“S. 134 (3) (o) : There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year.”

“S. 134 (8) : 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.”

9. This Bench has also taken into consideration that, this provision regarding CSR is newly incorporated in the Statute and thereafter number of circulars were issued and as a result of those circulars no clear clarification regarding the provision can be recorded by the Company or its Directors. The list of those Circulars is as follows :

- i) S. O. 582 (E) dated 27th February, 2014 which talks about Commencement of CSR Provision and Schedule VII of the Act.
- ii) G.S.R 130 (E) dated 27th February, 2014 which talks about the Amendment in Schedule VII of the Act.

- iii) G.S.R. 261 (E) dated 31st March, 2014 which talks about the further Amendment in Schedule VII of the Act.
 - iv) General Circular No. 21/2014 dated 18th June, 2014 which gives clarifications with regard to the provisions of CSR u/S. 135 of the Act.
 - v) General Circular No. 36/2014 dated 17th September, 2014 which gives clarifications with regard to the provisions of CSR u/S. 135 of the Act.
 - vi) General Circular No. 01/2015 dated 3rd February, 2015 which talks about the Constitution of CSR Committee.
10. The further important argument taken into consideration that, the determination of the Quantum of the CSR responsibility can only be ascertained / quantified after the finalisation of accounts at the close of the Books of Accounts of a particular financial year. As a result, the amount to be contributed for charitable purpose as CSR responsibility can be intimated to the concerned authorities thereafter only i.e. after the finalisation of accounts of a particular financial year.
11. This Bench has gone through the Application of the Applicants / Defaulters herein and the Report submitted by the RoC and also the submissions made by the Ld. Representative at the time of hearing and noted that Application made by the Applicants / Defaulters herein for compounding of offence committed under S. 134 (3) (o) of the Companies Act, 2013, merits consideration.
12. On examination of the circumstances as discussed above a Compounding Fee of ₹ **20,000/-** by the Defaulter Company and ₹ **10,000/-** by each Director in Default (i.e. in total ₹ **60,000/-**) 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.
13. This Compounding Application bearing CP No. 410/441/NVLT/MB/MAH/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 Ld. RoC shall take the consequential action.

14. Ordered accordingly. To be consigned to Records.

Dated : 05.10.2018

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