

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO. 16/84/2016
CA. NO.

PRESENT: SMT. INA MALHOTRA
Hon'ble Member (J)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NEW DELHI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 27.04.2017**

NAME OF THE COMPANY: M/s. Metro Buildtech Pvt.Ltd.

SECTION OF THE COMPANIES ACT: 621A

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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Present: Mr. Kamal Kant Jha, Senior Panel Counsel for RoC

Mr. Manish Raj, Company Prosecutor, RoC Delhi

Ms. Rekha Mittal, Company Secretary.

ORDER

This petition has been filed u/s 621A of the Companies Act, 1956 praying for compounding of the offence u/s 211(3A), (3B) & (3C) of the Companies Act r/w AS-15 issued by ICAI. As per averments, during the inspection carried out by the Directorate it was observed from the record of the company, that no provision for payment of gratuity and other retirement benefits like leave encashment etc, was made in accordance with AS-15. These particulars were missing from the Profit and Loss Accounts for the years ending 31.03.2011, 31.03.2012 and 31.03.2013.



2. As per the provision of Section 211(3A) (3B) & 3(C) of the Companies Act, 2013:

“(3A) Every profit and loss account and balance-sheet of the company shall comply with the accounting standards.

(3B) Where the profit and loss account and the balance-sheet of the company do not comply with the accounting standards, such companies shall disclose in its profit and loss account and balance-sheet, the following, namely:—

(a) the deviation from the accounting standards;

(b) the reasons for such deviation; and

(c) the financial effect, if any, arising due to such deviation.

(3C) For the purposes of this section, the expression “accounting standards” means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under sub-section (1) of section 210A:

Provided that the standards of accounting specified by the Institute of Chartered Accountants of India shall be deemed to be the accounting standards until the accounting standards are prescribed by the Central Government under this sub-section.”

The petitioner's offence relates to the financial year ending 31.03.2011 to 31.03.2013. The fine and penalty envisaged under the Act has been provided in Section 211(7) of the applicable Act.



3. As per the report of the RoC, the default has not been made good. The maximum fine which is recommended by the office of the RoC is Rs. 10,000/- for each year's default on each of the applicants, which aggregates to Rs. 30,000/- on each for default of 3 years.

4. In Court however, the Ld. PCS appearing on behalf of petitioner submits that there is no violation of the aforesaid provision inasmuch as the said requirements were inapplicable in their case. A reply was also sent by them in response to the show cause notice.

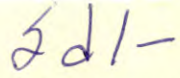
5. Given this argument that in fact there is no default, notice was issued to the office of the RoC to explain why the petitioners were allegedly under the threat of prosecution when they maintain that no wrong had been done. Pursuant to the notice, Ld. Company Prosecutor appeared and maintained their stand that violations had been detected for which prosecution shall lie.

In the circumstances, Ld. PCS was granted liberty to withdraw and contest the prosecution as and when initiated, but at this stage she submits that she withdraws her objections and prays for compounding of the offence.

6. Having accepted their default, this application is allowed, and the petitioner/applicants' prayer is being considered. Accordingly, this Bench deems it sufficient to impose an aggregate fine of Rs. 5000/- on each of the defaulting parties as a single default has a cascading effect of attracting several violations, each required to be compounded. Accordingly, fine is imposed as under:

For	Amount
Mr. Rajinder Kumar Goyal	5000/-
Mr. Aakash Deep Goyal	5000/-
Mrs. Salochna Goyal	5000/-

7. Fine imposed on the Directors/officers shall be paid out of their personal accounts.
8. 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 RoC. Compliance Report be placed on record.
9. Petition stands disposed off in terms of the above.


(Ina Malhotra)
Member Judicial

(Sapna Bhatia)