

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

CP No.: 08/621A/NCLT/MB/MAH/2016

Under section 441 of the Companies Act, 2013

In the matter of

The Maharashtra Executor and Trustee
Company Private Limited, 568, Narayan Peth,
Kesari Wada, 1st Floor, Next to Bank of
Maharashtra, Narayan Peth Branch, Pune
411030, Maharashtra, India.

.... Applicant Company

Order delivered on: 18.10.2017

Coram :

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Raghvendra J. Joshi, Practicing Company Secretary i/b. Apte Joshi & Associates –
Authorised Representative for the Applicants.

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

ORDER

Applicants/Defaulters Herein:

- 1) The Maharashtra Executor and Trustee Company Private Limited – Company.
- 2) Mrs. Madhuri Jayant Kulkarni – Manager
- 3) Mr. Ramesh Jagtap – Manager

Section Violated:

S. 211 (3A) and (3B) and S. 217 (2AA) of the Companies Act, 1956.

Punishment Provided Under:

S. 217 (5) of the Companies Act, 1956.

1. This Compounding Application was filed by “The Maharashtra Executor and Trustee Company Private Limited” (hereinafter as **Company**) before the Registrar of Companies, Pune (hereinafter as **RoC**) on 4th July, 2016 and the same has been forwarded to the NCLT, Mumbai on 8th August, 2016 alongwith the Report of the RoC.

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2. The Learned RoC has informed vide its two Reports dated 5th August, 2017 and 6th October, 2017 bearing nos. ROCP/STA/621A/2016/4915 AND ROCP/STA/621A/2016/5721 that, this application was filed because the Company has violated the provisions of S. 211 (3A) and (3B) and S. 217 (2AA) of the Companies Act, 1956 (hereinafter as **Act**) where the Company, in the Balance Sheet and Profit and Loss Account, fails to comply with the Accounting Standards and further there is no disclosure regarding such non-compliance as per provisions of S. 211 (3B) of the Act r.w. AS-3, AS-15, AS-18 and AS-20. Further the Company fails to give Director Responsibility Statement in Board's Report as per the provisions of S. 217 (2AA) of the Act. The default has been committed during the F. Y. 2011-2012, F. Y. 2012-2013 and F. Y. 2013-2014.
3. The Learned RoC also in its another report, dated 13th October, 2017 bearing No. ROCP/STA/621A/15/8937, reported that, the Company has made the said default good in the Balance Sheet as at 31st March, 2016 by giving disclosures as per the said provisions of the Act.

Submissions:

4. The Learned Representative for the Applicants/Defaulters herein, submitted that, the Contravention of the said provisions of the Act was bona fide and without any mala fide intention. The Company and its Officers inadvertently have not complied with the said provisions of the Act.
5. It is further submitted that, the Applicants/Defaulters herein, made the default good in the Balance Sheet as at 31st March, 2016 and complied with the Accounting Standards which are applicable to the Company as well as the said provisions of the Act.
6. Further, the Company is a Wholly Owned Subsidiary of the "Bank of Maharashtra" and the Company and Officers are acting upon the information received from the Nominee Directors on the Board.
7. It is further submitted that, as the Company is "Private Limited" and a subsidiary Company, hence, while imposing the Compounding Fee lenient view may be taken.

Findings:

8. 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. 211 (3A) and (3B) and S. 217 (2AA) of the Act. And for the said

violation the punishment is provided u/Section 217 (5) of the Act, which is relevant in this Case, is as follows:-

If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of subsections (1) to (3), or being the chairman, signs the Board's report otherwise than in conformity with the provisions of sub-section (4), he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to twenty thousand rupees, or with both.

9. 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 Learned Representative at the time of hearing and noted that Application made by the Applicants/Defaulters herein for compounding of offence committed under S. 211 (3A) and (3B) of the Companies Act, 1956 r. w. AS-3, AS-15, AS-18 and AS-20 and S. 217 (2AA) of the Companies Act, 1956, merits consideration.
10. On examination of the circumstances as discussed above a Compounding Fee of ₹ 5000/- by each Applicant/Defaulter herein, stated to be 3 in total, for each defaulting year (i.e. ₹ 5000/- for default during F.Y. 2011-2012, ₹ 5000/- for default during F.Y. 2012-2013 and ₹ 5000/- for default during F.Y. 2013-2014, ₹ 45,000/- 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.
11. This Compounding Application No. 08/621A-441/NCLT/MB/2016 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 give effect of this Order.
12. Ordered accordingly.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 18.09.2017