

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

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CP No.: 48/441/NCLT/MB/MAH/2017

Under section 441 of the Companies Act, 2013

In the matter of

M/s. Prabhudas Lilladher Financial Services
Pvt. Ltd., PG 3, Rotunda Building, Mumbai
Samachar Marg, Mumbai, Maharashtra -
400023.

.... Applicant Company

Order delivered on: 16.10.2017

Coram :

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

For the Petitioner :

Kumudini Bhalerao, Practising Company Secretary.

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

ORDER

Defaulters Herein:

- 1) M/s. Prabhudas Lilladher Financial Services Pvt.
- 2) Mr. Parag Shashikant Paigankar – Whole time Director.
- 3) Mr. Ratan Nashir Karanjia – Director.
- 4) Mr. Kishore Jashwantilal Vora – Director.

Section Violated:

S. 134(3) 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 Maharashtra, Mumbai on 14th March, 2017 and the Company has submitted the same application with NCLT on 21st February, 2017. The Ld. Registrar of Companies intimated that the Applicant Company has filed the aforementioned Compounding Application suo moto for not making the required expenditure for CSR and the reason for not spending the CSR amount have not been disclosed in Board Report of Financial Year 2014-15.
2. The Learned RoC has informed that, this application was filed because the Company has violated the provisions of S. 134 of the Companies Act, 1956 (hereinafter as **Act**) where as per section 135(5) the board of every company liable for CSR u/s 135(1) shall ensure that the Company spends, in every financial year, at least two percent (2%) of the average net profit of the company during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility policy, Provided that if company fails to spend such amount, the board shall, in its report made under clause (O) of sub-section (3) of section 134 of the Act, specify the reasons for not spending the amount. The Company has not made the required expenditure for CSR within the time prescribed and the reasons for not spending the CSR amount have also not been disclosed in Board Report of Financial Year 2014-15.
3. The Learned RoC reported that, the Board of Directors of Company at their meeting held on 01.03.2017 adopted the CSR Policy for the Company and uploaded the same on the website of the Company. Also the company is under process of granting necessary CSR donations amounting to Rs. 9.58 lacs to charitable trusts. The Company will also disclose the requirement of CSR for

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the financial year 2014-15 in the Director's report for the Financial Year 2016-17.

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 because of several notifications were issued thus caused confusion. 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 by granting necessary CSR donations amounting to Rs. 9.58 lacs to charitable trusts as the details given below and complied with the said provisions of the Act.

Name of the Trust	Amount Spent (in Rupees)	Date of Spending
Light of Life Trust	4,00,000/-	14.03.2017
Prabhudas Lilladher Charitable Trust	5,60,000/-	24.03.2017
Total	9,60,000/-	

Findings:

6. 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. 134 (3) of the Act. And for the said violation the punishment is provided u/Section 134 (8) of the Act, which is relevant in this Case, is as follows:-

"Section 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."

7. 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. 134 (3) of the Companies Act, 2013, merits consideration.
8. This Bench has 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) GSR. 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.

9. On examination of the circumstances as discussed above a Compounding Fee of ₹5,000/- by each Applicant/Defaulter herein, (i.e. ₹20,000/- 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.
10. This Compounding Application No. 48/441/NCLT/MB/MAH/2017 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.
11. Ordered accordingly. Consigned to records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 16th October, 2017