

BEFORE THE  
NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, KOLKATA

C.P. No. 212/KB/2017

CORAM

Shri Vijai Pratap Singh  
Hon'ble Member(J)

Shri S. Vijayaraghavan  
Hon'ble Member(T)

In the matter of Section 441 of the Companies Act, 2013

And

In the matter of Section 217(2A) and 217(3) of the Companies Act, 1956

And

In the Matter of

1. Mani Square Limited, a Company incorporated under the  
Companies Act, 1956 and having its Registered Office at 164/1,  
Maniktala Main Road, Kolkata – 700054.

And

1. Mr. Sanjay Jhunhunwala, Managing Director.

2. Mr. Nirmal Kumar Saraf, Director

3. Mr. Debasis Sengupta, Director

4. Mr. Surendra Kumar Singhi, Director

5. Mr. Vinod Kejriwal, Director,

6. Mr. Srikant Jhunhunwala, Director

..... Applicants

Present for the Parties:

Mr. Yogesh Gupta, Pr.C.A.

- for the Applicants

## ORDER

Heard Mr. Yogesh Gupta, Pr.C.A. appearing for the applicants and perused the case records. The brief facts, as emerged from the applications, are that:

- a) Applications have been filed by one Managing Director and five Directors of M/s Mani Square Ltd. under section 441 of the Companies Act, 2013, for compounding of offences, for violation of section 217(2A) and 217(3) of the Companies Act, 1956 (Act 1956), which is punishable under section 217(5) of the said Act.
- b) The Deputy Registrar of Companies, West Bengal, issued separate notices on 30<sup>th</sup> May, 2016 to the applicants, indicating that upon scrutiny of Balance Sheet and other related documents in XBRL format as on 31.03.2014, the violations of Section 217(2A) and 217(3) of the Act, 1956 have been detected which are as under: -

(1) Violation under section 217(2A)

\* The Board's report as per section 217(2A) of the Companies Act, 1956 read with the Companies (Particulars of employees) Rule, 1975, shall contain the following particulars namely of the employees:

- (a) Designation of the employee.
- (b) Remuneration received.
- © Nature of employment, whether contractual or otherwise.
- (d) Other terms and conditions.
- (e) Nature of duties of the employees.
- (f) Qualifications and experience of the employee.
- (g) Date of commencement of employment.
- (h) The age of the employee.
- (i) The last employment held by such employee before joining the company.

81.

- (j) The percentage of equity shares held by the employee in the company within the meaning of sub-clause (iii) of clause (a) of sub-section (2A) of section 217 of the Act.

But the Board's Report attached to the Balance Sheet for the year ended 31.03.2014 does not contain nature of employment whether contractual or otherwise, nature of duties of the employee and the percentage of equity shares held by the employee in the company as required under section 217(2A), thereby leading to violation of section 217(2A) of the Companies Act, 1956 read with Companies (particular of employees) Rule, 1975.

This is contrary to the provisions of section 217(2A) of the Companies Act, 1956.

(2). Violation under section 217(3)

The Board of Directors did not furnish fullest information and explanations in the Directors' Report regarding the reservation/qualification/ adverse remark of the Auditors made in their report on the Balance Sheet for the year ending 31.03.2014 which are as under: -

- a. In the Auditors' Report for the year ended 31.03.2014, the auditor has mentioned that "on the basis of our examination of records and according to the explanations given to us, there are no dues in respect of Service Tax, VAT, Provident Fund, ESIC etc. which have not been deposited on account of any dispute except disputed amount of WBST/VAT of Rs. 49.24 lacs under Commercial Taxes Appellate and Revision Board and CST of Rs. 11.13 lacs".
- b. In the Balance Sheet for the year ended 31.03.2014, it was stated in the auditors' report that the company has held the investments in its own name except in a few cases where those investments are acquired under schemes of amalgamation.

This violates the provisions of section 217(3) of the Companies Act, 1956.



2. In regard to the aforesaid violations, Pr.CA appearing for the Applicants has stated that:

For the violation under section 217(2A):

- a. The details regarding nature of employment have been inadvertently missed out in the XBRL and we ensure that such mistakes would not recur in future. However, it has been duly mentioned in Note 40 to the Audited Balance Sheet and Profit & Loss Account for the year under review.
- b. However, the Company has taken note of the above lapses and it shall take adequate steps. All the disclosures as required to be mentioned in pursuance to Section 134 of the Companies Act, 2013 (Corresponds to Section 217 of the Companies Act, 1956) have been disclosed in Board's Report for the financial year ended on 31.03.2015 and the violation has been made good in compliance with the show cause notice.

For the violation under Section 217(3) :

- a. The disclosure of disputed statutory dues amounting to Rs.49.24 lacs under Commercial Taxes Appellate and Revision Board and CST of Rs.11.13 lacs in the Audit Report, is only a statement of fact, it is neither a qualification nor an adverse remark in the Auditors' Report. Besides, the matter has been taken care of in the Notes to Accounts under the heading 'Contingent Liabilities'. Despite the immateriality of the amount, the said fact was mandatory to be disclosed in compliance with the Auditors' CARO report. This is not an unusual feature and is a regular feature in each and every business and this practice is being followed in majority of cases.
- b. The Company had acquired, inter alia, the following shares from erstwhile Teage Limited since amalgamated with the Company vide order of Hon'ble High Court at Calcutta dated 19<sup>th</sup> September, 2008 under Company Petition No. 336 of 2007 connected with Company Application No. 579 of 2007.

Company Name	No. of Shares	Value Amount in (Rs.)
BCL Financial Services Ltd.	300	2,640
Damania Airways Ltd.	9800	249,120
Himalaya Granites Ltd.	200	8,140
Panchmahal Steels Ltd.	200	1,750
Prudential Mouli Sugars Ltd.	3900	122,086
SJB Tubes Ltd.	400	5,840
Uniworth Textiles Ltd.	800	21,840

The Company had sent the shares for transfer in its favour along with the Court Orders and other necessary documents, but the matter is pending at their end. Most of the Companies have since become defunct and hence the process is delayed. The Company is in continuous follow-up in this regard and expect the solution in near future.

However, the Company has taken note of the above and it shall take adequate steps in future while preparing the annual accounts of the company. The above mentioned issue cannot be rectified now and the applicant would be careful in future having noted all the above points.

3. The Registrar of Companies, West Bengal (R0CWB), has sent his separate reports dated 22.03.2017, with the following observations:

- i) As regards the violation under **section 217(2A)**, the offence has been committed once and for all during the year ended 31.03.2014. However, the Company has rectified the offence in the subsequent year as it was observed in the Balance Sheet as on 31.03.2015, the Board's Report contains the particulars of employees as required under Section 197 of the Companies Act, read with Rule 5 of the Companies (Appointment and Remuneration of Managerial Personnel) Rule, 2014. He has further stated that the officers of the Company are liable for the violation of section 217(2A) of the Companies Act, 1956 and that prosecution



has been launched against the Directors of the company under section 217(2A) of the Companies Act, 1956

- ii) As regards the violation under **Section 217(3)**, the offence has been committed once and for all during the year ended 31.03.2014 and hence, the offence cannot be rectified. He has further stated that the Directors/Officers, who are in default, are liable for the violation and that prosecution has been launched against the directors of the company.

4. The provisions of section 441 of the Companies Act, 2013 which confers power to the Tribunal, for compounding of offences. Section 441 of the Companies Act, 2013 came into force w.e.f. 01.06.2016. The breach of the provisions of section 217(2A) and 217(3) of the Act 1956 has been detected by ROCWB in course of scrutiny of the Balance Sheet as on 31.03.2014 and other related documents and the said offences are punishable under section 217(5) of the said Act.

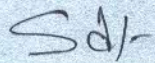
5. Perused the applications. Having considered the submissions of Pr.C.A., appearing for the applicants and the reports of ROCWB, we are inclined to permit the applicants to compound the offence for the violation of section 217(2A) of the Companies Act, 1956, as aforesaid. Accordingly, we do hereby compound the offence under section 217(2A) of the Act 1956 in respect of the Balance Sheet as at 31.03.2014, subject to depositing the compounding fees by each of the applicants as indicated herein below:

For violation under section 217(2A)

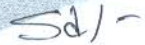
Sl.No.	Applicants	Compounding fee imposed on each instance
1.	One Manging Director	Rs. 10,000/- X 1 = Rs 10,000/-
2.	Five Directors	Rs. 10,000/- X 5 = Rs. 50,000/-
		Total : Rs. 60,000/-

The officers in default shall pay the compounding fees from their personal source. The compounding fees are to be deposited within 15 days hereof.

6. With regard to the violation of section 217(3) of the Companies Act, 1956, the applicants have stated that the company has taken note of the offence under section 217(3) of the Companies Act, 1956 and it shall take adequate steps in future while preparing the annual accounts of the company and that the issue cannot be rectified now and undertake to be careful in future having noted all the points as mentioned by Dy. Registrar of Companies, West Bengal. Since the Dy.ROCWB has stated in his report dated 22.03.2017 that the offence committed during the year ended on 31.03.2014, cannot be rectified, we are not inclined to permit the applicants to compound the offence for the violation of section 217(3) of the Companies Act, 1956 and hence, the applications are hereby rejected.



( S. Vijayaraghavan)  
Member (T)



(Vijai Pratap Singh)  
Member (J)

Signed this 30<sup>th</sup> day of May, 2017.