

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

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CP No.: 54/441/NCLT/MB/MAH/2017

Under section 441 of the Companies Act, 2013

In the matter of

M/s. Kunkel Wagner (India) Pvt. Ltd.,
Unit No. 307, 3rd Floor, Inizio, Opp. P & G
Plaza, Cardinal Gracias Road, Chakala,
Andheri (East), Mumbai, Mumbai City,
Maharashtra - 400099.

.... Applicant Company

Order delivered on: 09.11.2017

Coram :

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

For the Petitioner :

Mr. Hemant Sethi, Counsel for Applicant Company.

Per: Bhaskara Pantula Mohan, Member (J)

ORDER

Defaulters Herein:

- 1) M/s. Kunkel Wagner (India) Pvt. Ltd.
- 2) Mr. Aniruddh Kamdar - Managing Director.
- 3) Mr. Amit Goradia - Director.
- 4) Mr. Chang Shi, Director.
- 5) Mr. Frank Iburg - 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 1st February, 2017 and the Company has submitted the same application with NCLT on 14th 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 and 2015-16.
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

H. K. Shrawat

(hereinafter as **Act**) where the As per the 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.

3. The Learned RoC also reported that, the Company had given its reply to the RoC, in the reply dated 20th June, 2016 to the notice dated 19th May, 2016 for Financial Year 2014-15 the Company had inadvertently believed that the provisions of Section 134(3)(o) read with Section 135(5) were not applicable. However, in the reply dated 10th January, 2017 to the notice dated 30th December, 2016 for Financial Year 2014-15, the Company had realised of the inadvertent error and as this was a first offence for the Company, the Company had made a submission to the RoC for compounding of offence u/s 441(1) and 441(3)(a) of the Companies Act, 2013 as genuinely the Company had believed that it was not covered under the provisions of Section 134(3)(o) read with Section 135(5) and it wanted to admit to the offence and face the penalty u/s 134(8).
4. In the reply dated 18th January, 2017 to the Notice dated 12th January, 2017, the Company had requested for extension in time for filling of application for compounding of offence till 31st January, 2017.
5. Moreover, the Company realised the non-compliance of Section 134(3)(o) read with Section 135(5) for Financial Year 2015-2016 and suo-moto makes an application for compounding of offence u/s 441(1) and 441(3) of the Companies Act, 2013.
6. The Board of Directors of Company at their meeting held on 12.01.2017 gives authority to Mr. Aniruddh Kamdar, Managing Director of the Company for filling an application for compounding of offence under section 441 for Financial Year 2014-15 and 2015-16.
7. The Company informed vide their letter dated 20.02.2017 that necessary disclosure under Section 134(3) read with Section 135(5) of the Companies Act, 2013 will be done in the Board Report for Financial Year 2016-17 and will made the default good.

Submissions:

8. 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.

Findings:

9. 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:-

A. K. Kamdar:

“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.”

10. 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.
11. On examination of the circumstances as discussed above a Compounding Fee of Rs. 1,00,000/- (Rs. One Lakh only) (i.e. Rs. 10,000/- by each Applicant/Defaulter for one year) herein, 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.
12. This Compounding Application No. 54/441/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.
13. Ordered accordingly. Consigned to records.

Sd/-

**BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)**

Sd/-

**M. K. SHRAWAT
MEMBER (JUDICIAL)**

Dated : 17th November, 2017