

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

CP No.: 350/441/NCLT/MB/MAH/2017

Under Section 441 of the Companies Act, 2013

In the matter of

M/s. Umicore Anandeya India Private
Limited, Plot 23-26, Phase IIIA, Goa-IDC,
Industrial Area, Zuarinagar, Goa- 403726.

.... Applicant Company

Heard on : 08.11.2017

Order delivered on: 06.12.2017

Coram :

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Mahesh Darji, Practicing Company Secretary – Authorised Representative for the Applicants.

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

ORDER

Applicants/Defaulters Herein:

- 1) M/s. Umicore Anandeya India Private Limited – Company.
- 2) Mr. Bhavik Trivedi – Director.
- 3) Mr. Anup Patel – Director.
- 4) Mr. Ravindranath K. P. – Director.

Section Violated:

S. 148 of the Companies Act, 2013.

Punishment Provided Under:

S. 148 (8) (a) r.w. S. 147 (1) of the Companies Act, 2013.

1. This Compounding Application was filed before the Registrar of Companies, Goa (hereinafter as **RoC**) on 14th August, 2016, and the same has been forwarded to the NCLT, Mumbai on 9th October, 2017 along with its report bearing no. ROCGDD/u/s 441/998 (hereinafter as **RoC Report**).

MB

2. The Learned RoC has informed that, this application was filed because the Company has violated the provisions of S. 148 of the Companies Act, 2013 (hereinafter as **Act**) where the Company fails to appoint the Cost Auditor for the F.Y. 2015-2016.
3. The Learned RoC also reported that, the Company has made the said default good by appointing the Cost Auditor on 15th December, 2016 for the F. Y. 2015-2016. Hence, there is a delay of 1 Year, 1 Month and 15 Days for the appointment of Cost Auditor for F.Y. 2015-2016 as it is to be appointed on or before 30th September, 2015. But this application is filed so as to matter at rest.

Submissions from the Applicants:

4. The Learned Representative for the Applicants/Defaulters herein, submitted that, the Contravention of the provisions of S. 148 of the Act r.w. Rules made thereunder was bona fide and without any mala fide intention. The Company and its Officers inadvertently didn't notice the amendments made to the Rules made u/S. 148 of the Act.
5. It is also submitted that, due to financial and operational un-viability and other reasons discontinued its commercial operations from June 2015. Considering the discontinued operations, the Company was under the impression that the appointment of Cost Auditor is not required for the F. Y. 2015-16.
6. It is further submitted that, the Applicants/Defaulters herein, made the default good by appointing the Cost Auditor on 15th December, 2016. Though it is belated (referred *Supra*), it shows the intention of the Applicants/Defaulters herein, to comply with the provisions of the Act. The document to that effect i.e. eForm CRA – 2 is filed with the RoC on 20th December, 2016 and the copy of the same is attached with this application as Exhibit – C.
7. It is further submitted that, on receipt of the Cost Audit Report from the Cost Auditor the Company has filed the same with the RoC vide form CRA – 4 on 24th January, 2017 and the copy of the same is also annexed as Exhibit – D to this Application.
8. It is also submitted that, the RoC in its Report also recognises that, the Company has made the default good. However for the said period of default imposed a consolidated fine of ₹ 8,00,000/- which is very excessive and unreasonable as presently the Company do not having the business, pleaded by the Learned Representative.

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. 148 of the Act. And for the said violation the punishment is provided u/Section 148 (8) (a) of the Act, which is relevant in this Case, is as follows:-

“the company and every officer of the company who is in default shall be punishable in the manner as provided in sub-section (1) of section 147;”

Further S. 147 (1) of the Act, which is relevant in this Case, is as follows:-

“If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to 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 one year or with fine which shall not be less than ten thousand rupees but which may extend to one 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. 148 of the Companies Act, 2013, merits consideration.
11. 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.
12. This Compounding Application No. 350/441/NCLT/MB/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 take the consequential action.

13. Ordered accordingly.

Sd/-

**BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)**

Sd/-

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

Dated : 06.12.2017

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