

CORAM: 1. Hon'ble Member (J) Ms. Manorama Kumari

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 29<sup>th</sup> May, 2017, 10.30 A.M

Name of the Company		S.R. Addhya Finance Pvt.Ltd.	
Under Section		621A	
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

ARYIND KUMAR SINGH.  
CHARTERED ACCOUNTANTS.S R Addhya Finance  
(P) Ltd.Arunind Singh  
29/5/2017.

Date : 29-05-2017 CP No. 68/2016 – SR Addhya Finance Pvt. Ltd.

**ORDER**

The petitioner is present.

The Order is pronounced in a separate sheet.



MANORAMA KUMARI  
MEMBER(J)

BEFORE THE  
NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, KOLKATA

T.P. No. 183 of 2017  
In  
CP. No. 68/2016

CORAM

Ms. Manorama Kumari  
Hon'ble Member(J)

In the matter of Section 621A of the Companies Act, 1956 (Presently  
Section 441 of the Companies Act, 2013).

And

In the matter of Section 211(1) and 211(3A) of the Companies Act, 1956

And

In the Matter of

1.M/s. S.R. Addhya Finance Private Ltd., A Company Incorporated under the  
Companies Act, 1956 and having its Registered Office at 11A, Chowringhee  
Lane, Kolkata – 700016.

And

1.Mr. Sankar Addhya, Director  
2.Ms. Jyostana Addhya, Director.

..... Applicants

Parties on Record :

1. Mr. Arvind Kumar Singh, Pr. C.A. } For the Applicants

ORDER

Heard Ms. Arvind Kumar Singh, Pr.C.A. appearing for the applicants and  
perused the case records.

*Arvind*

2. The brief facts of the case, as emerged from the applications, are that in course of scrutiny of Balance Sheets and other related documents for the year ended as on 31<sup>st</sup> March, 2012 and 31<sup>st</sup> March, 2013, the Registrar of Companies, West Bengal (ROCWB) has noticed the following breach of provisions of sections 211(1) & 211(3A) of the Companies Act, 1956 (1956 Act):

a) Section 211(1) of the Companies Act, 1956S

On the face of the Balance Sheet as at 31.03.2013 a Note/Schedule No. 8 is mentioned regarding Short Term Borrowings is provided along with the Balance Sheet, this resulted in violation of the provisions of section 211(1) of the Act read with schedule VI of the Act - This is contrary to the provisions of Section 211(1) of the Companies Act, 1956.

b) Section of 211(3A) of the Companies Act, 1956.

- i. No disclosure was made regarding earning per share (EPS) for the year ended as on 31.03.2012 in the Balance Sheet, as required by Accounting Standard-20.
- ii. No disclosure was made regarding earning per share (EPS) for the year ended as on 31.03.2013 in the Balance Sheet, as required by the Accounting Standard-20 – This is contrary to provisions of Section 211(3A) of the Companies Act, 1956.

Having found the aforesaid violations of the Companies Act, 1956, the Asstt. Registrar of Companies, West Bengal, (AROCWB) issued separate notices on 23.07.2015 to Ms.Jyostana Addhya and Mr. Sankar Addhya, Directors/being the Officers in default of the above named Company. The present applications have been filed by the said officers in default under section 621A of the Companies Act, 1956, for compounding of offences under sections 211(1) and 211(3A) of the Companies Act, 1956, which are punishable under section 211(7) of the said Act. The said applications stand transferred to National Company Law Tribunal, Kolkata Bench, for disposal upon dissolution of the Company Law Board.





3. In regard to the aforesaid violation, the Pr.C.A. appearing for the Applicants has stated that :

- a. There were clerical errors in the Balance Sheet for the financial year ended 31.03.2013, in the matter of no disclosure of note/schedule No.8 regarding Short Term Borrowings even though it is mentioned on the face of the Balance Sheet.
- b. In the matter of non-disclosure of note/schedule No.8 even though it is mentioned on the face of the Balance Sheet company's intention was not to hide any information which are required by the provisions of the Section 211(1) of the Companies Act, 1956 or to impair a true and fair view of the state of affairs of the company as at the end of financial year and shall comply with the requirement of Part I of Schedule VI, so far as applicable thereto. This is purely a human error and not an intentional one.
- c. in the matter of no disclosure of Earning Per Share (EPS) as required by Accounting Standard-20, there were clerical errors in the Profit and Loss Account for the same financial year ended 31.03.2013 as well as the comparative figures for the Financial Year ended 31.03.2012.
- d. In the matter of non-disclosure of earning per share (EPS) as required by Accounting Standard-20 in the profit & Loss Account for the financial year ended 31.03.2013 as well as the comparative figures mentioned for the Financial Year ended 31.03.2012, Company's intention was not to hide any information as the omission was not having any financial impact on financial statements due to missing or non-disclosing of this information on the face of Profit & Loss Account for the said financial year. This is purely a human error and not an intentional one.

*Chitwan*

- e. The Company has prepared and filed the Balance Sheet and Profit and Loss Accounts for the year 2012-13 together with the directors' and auditor's report thereon dated 09.10.2013 and the annual return on 07.10.2013.
  - f. The applicants do not want that the matter to be subjected to weary litigation involving time and expenditure and desire that the matter to be amicable compromised and compounded. The applicants are ready and willing to pay such reasonable amount by way of compounding charges as may be determined by the Hon'ble Authority.
  - g. As per directions of this Bench, several attempts were made to refile the signed copy of Balance Sheet as at 31.03.2013 in the requisite forms with MCA Portal, but the system did not accept such transaction as the status of old form has not changed in the MCA Portal and it is still showing the status approved towards the SRN: Q12834446 filed on 09.10.2013. The ROCWB has issued a rejection letter dated 28.04.2016, of the Form 23 AC dated 09.10.2013 (SRN : Q128344446) under STP-marked as defective)
4. The Registrar of Companies, West Bengal (ROCWB), in his report dated 01-04-2013 has forwarded for compounding of offence with the observations that :
- a. The offence committed once & for all during the year ended 31.03.2013 and 31.03.2014. It appears from the subsequent Balance Sheet for the year ended 31.03.2015 disclosure with respect to notes on borrowings has been provided. Hence, the offence has been made good.
  - b. The offence committed once & for all during the year ended 31.03.2012, 31.03.2013 and 31.03.2014. It appears from the subsequent Balance Sheet for the year ended 31.03.2015 disclosure with respect to notes on (EPS) has been provided. Hence, the offence has been made good.





He has further stated that no prosecution has been launched against the Directors of the Company under section 211(1) and 211(3A) of the Companies Act, 1956, and that the Officers of the Company are liable for the violation of the section 211(1) and 211(3A) of the Companies Act, 1956.

5. The provisions of section 621A of the Companies Act, 1956 is analogous to Section 441 of the Companies Act, 2013 which confers power to the Tribunal, for compounding of the offences. Section 441 of the Companies Act, 2013 came into force w.e.f. 01.06.2016. The breach of the provisions of section 211(1) & 211(3A) of the Act 1956 has been detected by ROCWB in course of scrutiny of the Balance Sheets as at 31.03.2012 & 31.03.2013 and other documents which is punishable under section 211(7) of the said Act.

6. It appears from the applications that the applicants have prayed for compounding of offences committed under section 211(1) and 211(3A) of the Companies Act, 1956 in respect of financial year ended 31.03.2013, whereas as per show cause notices dated 23.07.2017 issued to the applicants by the Asstt. Registrar of Companies, West Bengal, the violations of the provisions of section 211(1) have been detected in respect of the Balance Sheet as at 31.03.2013 and the violations of the provisions of section 211(3A) have been detected in respect of Balance Sheets as at 31.03.2012 & 31.03.2013. In the report dated 01.04.2016, ROCWB has observed that offence has committed for non-compliance of the provisions section 211(1) in respect of the Balance Sheets for the year ended 2013 and 2014 and the offence has committed for non-compliance of section 211(3A) in respect of the Balance Sheets for the year ended 2012, 2013 & 2014 and the necessary disclosures have been provided in the subsequent Balance Sheet as at 31.03.2015.

7. Perused the applications. Having considered the submissions of Pr.C.A. appearing for the applicants who prayed for leniency while imposing the cost as it was not intentional and is first offence as such prayed for imposing minimum compounding amount. Heard, seen the reports of ROCWB, I am inclined to permit the applicants to compound the offences as aforesaid. Accordingly, I do hereby compound the aforesaid offence under section 211(1) of the Companies Act, 1956 in respect of the Balance



Sheets as at 31.03.2013 & 31.03.2014 and the offence under section 211(3A) of the Act 1956 in respect of the Balance Sheets as at 31.03.2012, 31.03.2013 and 31.03.2014 subject to depositing the compounding fees by each of the applicants as indicated herein below:

I. For the violation of Section 211(1) of the Companies Act, 1956

Sl.No.	Applicant	Compounding fee imposed on each year
1.	Two Directors	Rs 5000/- X 2 X 2 yrs. = Rs.20,000/-
Total		Rs.20,000/-

II. For the violation of Section 211(3A) of the Companies Act, 1956

Sl.No.	Applicants	Compounding fees imposed on each year and each instance
1.	Two Directors	Rs.5000/- X 2 X 3 Yrs . = Rs.30,000/-
Total		Rs. 30,000/-

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

  
(Manorama Kumari)

Member (J)

Signed this 29<sup>th</sup> day of May, 2017.