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BEFORE THE
NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

C.P. No. 112/2015

CORAM

Shri Vijai Pratap Singh
Hon'ble Member(J)

Shri S. Vijayaraghavan
Hon'ble Member(T)

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(3A) of the Companies Act, 1956

And

In the Matter of
1M/s. Corporate Ispat Alloys Limited, a Company Incorporated under the Companies Act, 1956 and having its Registered Office at Insignia Tower, EN-1, 3rd Floor, Sector-V, Salt Lake City, Kolkata – 700091.

And

1.Mr. Vidya Sagar Banarsi Das Garg, Whole-time Director
2.Mr. Hirak Kumar Ghosh, Ex-Company Secretary.

.... Applicants

Present for the Parties :

.Ms. Neha Somani, Pr.C.S - For the Applicants

ORDER

Heard Ms. Neha Somani, Pr.C.S. appearing for the applicants and perused the case records. The brief facts ,as emerged from the applications, are that:

a) Applications were filed by one Whole-time Director and one Ex-Company Secretary of M/s Corporate Ispat Alloys Ltd. before the Company Law Board, Kolkata Bench, under section 621A of the Companies Act, 1956 (Act.1956) for compounding of offence for violation of section 211(3B), which is punishable under section 211(7) of the said Act. The said applications stand transferred to this National Company Law Tribunal, Kolkata Bench, for disposal upon dissolution of the Company Law Board.

b) The Asstt. Registrar of Companies, West Bengal, (AROCWB) issued a notice on 16.07.2013 to the applicants, indicating that upon scrutiny of the Balance Sheet as at 31.03.2011 and other related documents, it was found that :-

   i) while Accounting Standard 5 requires that the nature of prior period items should be separately disclosed in the statement of profit and loss. In the Balance sheet as at 31.03.2011 no disclosure of the said facts was made in respect of prior period expense items amounting to Rs.31.76 lakhs. This resulted in violation of Accounting Standard-5.

   ii) while it is stated in the Directors' Report that "The Company undertakes research activities at its in-house facilities for improvement in quality of production and reduction of costs", no expenditure on research and development was reported in the profit and loss accounts. This violated Accounting Standard-26.

   iii) in the Deferred Tax Assets, it is stated that unabsorbed depreciation of Rs.2617 lakhs was included. But the nature of evidence supporting recognition of such deferred tax assets was not disclosed. This resulted in violation of Accounting Standard-22.

   iv) in the Accounting Policies it is stated that Software was amortized over a period of three years and in the profit and loss account it was reported that the amortization of software made was Rs.59.11 lakhs for the year. But in the Balance Sheet no disclosure was made about the amortization method use. This resulted in violation of Accounting Standard-26.

v) in the Accounting Policies it is stated that the By-products were valued at Net Realizable Value. The said value must have been deducted from the value of inventories of finished goods. But nothing in this regard was stated in the Balance Sheet. This resulted in violation of Accounting Standard-2.

vi) in the Balance Sheet no disclosure was made about the contingent liabilities. This resulted in violation of Accounting Standard -29.

This is contrary to the provisions of section 211(3A) read with Accounting Standard 5, 26, 22, 2 and 29 of the Companies Act, 1956.

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

i) the Company has adequately disclosed nature and amount of prior period item in the financial year ended 31.03.2012. It is submitted that neither the Schedule VI nor the AS-5 requires of item wise disclosure of prior period items. Further, there is no option in XBRL format for providing item wise disclosure of prior period item. Therefore, the offence has been set right in from 2011-12.

ii) the Company incurred expenses of routine nature only. There was no expenditure on research & development and accordingly, necessary disclosures were made in the financial year ended 31.03.2012. Therefore, the offence has been set right in from 2011-12.

iii) the deferred tax liability was majorly in respect of excess depreciation claimed in the Income Tax Laws and hence deferred tax assets, created on unabsorbed depreciation (i.e. relating to the excess depreciation claimed than the profit available) which is created under the same governing law, was adjusted with the deferred tax liabilities. Since the Company had net deferred tax liability as at 31st March, 2011, no evidence was given for recognizing of deferred tax asset on unabsorbed depreciation.

iv) the Company has disclosed that the "software are amortized over a period of three years", which itself means that the depreciation are charged on straight line method. However, the Company has specifically stated the method of depreciation for software in the financial year ended 31.03.2013. Therefore, the offence has been set right in from 2011-12.

v) Since, the deduction of the realizable value of the by-product is the integral part of absorption costing method, this was not disclosed separately in the accounting policies.

vi) While filing the Annual Audited Accounts in the XBRL format for the financial year ended 31.03.2012, the Company has disclosed contingent liabilities under the head "Disclosure of additional balance sheet note explanatory".

3. The Registrar of Companies, West Bengal (R0CWB), in its 1st report dated 11.12.2013 has recommended for compounding of offence with the observation that the offence committed as aforesaid, is once for all and the same has not been made good. He has further stated that the directors/officers of the Company are liable for aforesaid violations. In the 2nd report dated 16.02.2017, Dy. ROCWB has stated that :

i) <u>Non-disclosure of Prior period expense items in the statement of profit and loss and balance sheet:</u>

It is observed that in the subsequent Profit and Loss Accounts as at 31.03.2012, the Company has adequately disclosed nature and amount of prior period item in the financial year ended 31.03.2012. It is submitted that neither the Schedule VI nor the AS-5 requires of item wise disclosure of prior items and hence, offence has been made good in the subsequent Balance Sheet as at 31.03.2012.

ii) Non-reporting of Research & Development Expenditure in the Profit and Loss Accounts:

It is observed that in the subsequent Balance Sheet as at 31.03.2012, the Company has incurred expenses of routine nature only. There was no expenditure on research & development and accordingly, necessary disclosures were made in the financial year ended 31.03.2012 and hence, the offence has been made good in the subsequent Balance Sheet as at 31.03.2012.

iii) Non-disclosure of evidence supporting recognition of such deferred tax assets:

It is observed that in the subsequent Balance Sheet as at 31.03.2012, the deferred tax assets were majorly in respect of excess depreciation claimed in the Income Tax Laws and hence deferred tax assets, created on unabsorbed depreciation which is created under the same governing law was adjusted with the deferred tax liabilities and hence, the offence has been made good in the subsequent Balance Sheet as at 31.03.2012.

iv) Non-disclosure of Method used for Amortization of Software in the Balance Sheet:

It is observed that the Company has specifically stated the method of depreciation for software in the financial year ended 31.03.2012 and hence, the offence has been made good in the subsequent Balance Sheet as at 31.03.2012.

v) Non-deduction of Net Realizable Value of By-product from the value of Inventories of finished goods :

It is observed that in the subsequent Balance Sheet as at 31.03.2012, the Company has stated that the deduction of the realizable value of the by-product is the integral part of the absorption costing method, this was not disclosed separately in the accounting policies.

vi) Non-disclosure about contingent liabilities in the Balance Sheet of the Company:

It is observed that in the subsequent Balance Sheet as at 31.03.2012, the Company has disclosed contingent liabilities under the head "Disclosure of additional balance sheet notes explanatory" and hence, the offence has been made good in the subsequent Balance Shet as at 31.03.2012.

4. 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 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(3A) read with Schedule VI of the Act 1956 has been detected by ROCWB in course of scrutiny of the Balance Sheet as at 31.03.2011 and other documents which is punishable under section 211(7) of the said Act.

5. Perused the applications. Having considered the submissions of Pr.C.S. appearing for the applicants and the reports of ROCWB & Dy.ROCWB, we are inclined to permit the applicants to compound the offences as aforesaid. Accordingly, we do hereby compound the aforesaid offences under section 211(1) read with Schedule VI of the Act 1956 in respect of the Balance Sheet as at 31.03.2011, subject to depositing the compounding fees by each of the applicants as indicated herein below:

Sl.No.	Applicant	Compounding fee imposed on each instance
1.	One Whole Time Director	Rs. 5000/-X 6 instances = Rs.30,000/-
2.	One Erstwhile Company Secretary	Rs 5000/-X 6 instances = Rs.30,000/-
		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.

Sd/-
(S. Vijayaraghavan)
Member (T)

Sd/-
(Vijai Pratap Singh)
Member (J)

Signed this 29th day of May, 2017.