

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, KOLKATA.**

**Company Petition No751/KB/2017.**

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

And

In the matter of :

Usha Martin Telematics Ltd., a company incorporated under the Companies Act, 1956 and having its Registered Office at 8<sup>th</sup> Floor, RDB Boulevard, Plot K1, Block EP & GP , Sector-V, Salt Lake City, Kolkata 700091.

And

Usha Martin Telematics Limited

----- Applicant

Judgment delivered on : 9-2-2018

**CORAM:**

**Shri V.P. Singh, Hon'ble Member (J)**

**Shri Jinan K.R., Hon'ble Member (J)**

Rajarshi Dutta, Advocate      -    For the Applicant

Sreemoyee Purkayastha, Advocate

Sukriti Rai, Advocate

## ORDER

### Per Shri V.P. Singh, Member (Judicial)

The instant Company Application has been filed under section 441 of the Companies Act, 2013 (the Act), praying for compounding of offence allegedly committed under section 203 (1) (iii) of the Act, as indicated in the show cause notice dated 06.09.2016, bearing No. ROC/69502/Inspn/206(5)/203(iii)/DNC/4/71 issued by Registrar of Companies, West Bengal (RoC,WB). The said application has been filed by the Company supported by an affidavit affirmed by its Company Secretary, on 10.08.2017, having been authorized by the circular resolution passed by the Board of Directors of the Company "Usha Martin Telematics Limited" (the company) on 10.05.2017.

2. Briefly, the facts, as emerged from the said Compounding Application, are that the Company is a public limited company incorporated under the Companies Act, 1956 on 16.03.1995 having its registered office at 8<sup>th</sup> Floor, RDB Boulevard, Plot K1, Block EP & GP, Sector-V, Salt Lake City, Kolkata-700091, West Bengal. The authorized share capital of the Petitioner Company as on 31<sup>st</sup> March 2017 was Rs. 1,976,792,000/- divided into 197,679,200 equity shares of Rs.10/- each and the issued, subscribed and paid up share capital of the Company as on such date was Rs. 1,975,954,440 divided into 197,595,444 equity shares of Rs.10/- each. The equity shares or other securities of the Company are not listed in any Stock Exchange. The RoC,WB issued a show cause notice dated 6<sup>th</sup> September,

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2016 to the Company and its officers alleging that during the financial year 2014-15 ending as on 31<sup>st</sup> March, 2014 the company has paid-up capital of Rs.197.60 crores, however, the company has not appointed CFO and appointment of CS-cum-Manager was made on 1<sup>st</sup> April, 2015 which is contrary to the provisions of Section 203 of the Act. The Company by its letter dated 29<sup>th</sup> September 2016 responded to the show cause notice stating that the Company appointed Mr. Barun Kumar Roy as its Chief Financial Officer, Mr. Prakash Balchandra Waikar as its Manager and Mr. Shrikant Wasudeo Hawaldar as its Company Secretary on 23.08.2016. Form DIR-12 has been filed by the Company in relation to such appointments. Further, the applicant has stated that it had been making efforts to appoint separate individual as its Chief Financial Officer, Company Secretary and Manager and it had also engaged Ethos HR Management & Projects Private Limited, a consultant, for identifying candidates for these positions and issued advertisements in newspapers inviting applications in this regard. However, despite its best endeavours, the Company was unable to identify suitable candidates in view of, inter alia, the Company's low scale of operations, nature of activities of the Company as an investment company and the duties and functions of such key managerial position under the relevant statutory provisions having become more extensive. Note 24 of the financial statements of the Petitioner Company for the financial year ended 31<sup>st</sup> March, 2015 also includes specific disclosure in this regard. In fact, such appointment of the Chief Financial Officer, the Manager and the Company Secretary was made prior to the receipt of the

show cause notice and as such no violation has subsisted as on the date of the show cause notice. It has also stated that the Company had appointed Ms. Daisy Mehta as Company Secretary on 20<sup>th</sup> July 2012 and as Manager on 28<sup>th</sup> August 2012; but, she resigned from the Company on 31<sup>st</sup> March 2015. Thereafter, the Company appointed Mr. Amit Ramesh Vegad as its Company Secretary and Manager on 1<sup>st</sup> April 2015 and he also resigned from the Company on 29<sup>th</sup> April 2016. The Company did not have any mala fide intention or ulterior motive in not appointing the relevant key management personnel. The Applicant Company is a closely held unit and it does not have any public shareholders. None of the members or creditors of the Company or any third party has been prejudicially affected by the non-appointment of the Chief Financial Officer and the appointment of a single individual as the Manager and Company Secretary and in any event, the Company has been advised to file this application, pursuant to Section 441 of the Companies Act, 2013 for compounding of the default under Section 203 of the Companies Act, 2013.

3. Pertinent to mention here that the show cause notice dated 06.09.2016 was issued to the Company and its officers by the Registrar of Companies, West Bengal, for contravention of section 203 (1) (iii) of the Companies Act, 2013. The present compounding application has been filed by the Company itself and the officers in default did not join this application. The said breach of section 203(1) (iii) of the Act has been noticed by the Inspecting Officer in course of inspection of the books of accounts and other relevant records of the company carried out

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under petition 206(5) of the Companies Act, 2013.

4. It would be relevant to refer to the provisions of section 203(1) of the Companies Act, 2013 which reads thus:

“Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel:-

- (i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;
- (ii) company secretary; and
- (iii) Chief Financial Officer.

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Office of the company at the same time after the date of commencement of this Act unless, -

- (a) the articles of such a company provide otherwise; or
- (b) the company does not carry multiple business.

Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

5. The offence under section 203(1) (iii) of the Act as mentioned (supra) alleged to have been committed by the Applicant Company and its officers is compoundable in nature. The penalty for the breach of the said section is provided under sub-section (5) of section 203 of the Act which stipulates that if a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, and every director and key managerial personnel of the Company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

6. The Compounding Application filed by the Company has been routed through the office of the Registrar of Companies, West Bengal. The RoC, WB has stated in his report dated 12.09.2017 that the prosecution has been launched against the company and its officers in default and, he has confirmed in his report that the company has appointed, Mr. Barun Kumar Dey, as its Chief Financial Officer, Mr. Prakash Balchandra Waikar as its Manager and Mr. Shrikant Wasudeo Hawaldar as its Company Secretary on 23.08.2016 and thus, the offence committed under section 203 for the financial year 2014-15 is once for all. As per the said report, the maximum penalty stipulated under sub-section (5) of section 203 of the Act is five lakh rupees. The ROC, WB does not have any objection to compounding the offence as prayed by the Applicant Company.



7. Ld. Advocate appearing for the Applicant Company while reiterating the contentions as pleaded in the application, prayed for compounding of offence as aforesaid imposing a minimum penalty amount by taking a lenient view as the breach has already been made good and set right.

8. Heard Ld. Advocate appearing for the Applicant Company and perused the record including report of RoC, WB. Section 441 of the Companies Act, 2013 confers power to the Tribunal for compounding of the offence which is punishable with fine only. Section 441 of the Act came into force w.e.f. 01.06.2016. The breach of the provisions of section 203(1) (iii) of the Act has been detected by the Inspecting Officer in course of inspection of the books of accounts and other relevant records of the company carried out under section 206(5) of the Companies Act, 2013 and the said breach of section 203(1) (iii) has been rectified. The compounding application has been filed by the Company after initiation of prosecution by the RoC, WB. There is wide scope and power vested in the Tribunal to compound the offence of the nature provided in the section either before or after the institution of any prosecution. Offence under section 203(5) of the Companies Act, 2013 is punishable with fine only. It is not in dispute that the Applicant Company has violated the provisions of section 203 (1) (iii) of the Act as noticed by the Inspecting Officer in course of inspection of books of accounts and our records of the Company carried out under Section 206 (5) of the Companies Act, 2013. Subsequently, the Company appointed Chief Financial Officer, Manager and Company Secretary on 23.08.2016 and it has also filed

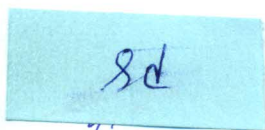
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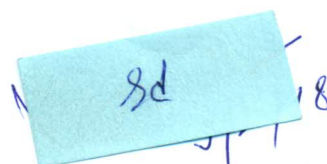
Form DIR-12 as confirmed by RoC, WB in his report dated 12.09.2017 and thus, the offence has been made good on 23.08.2016. The said offence relates to the financial year 2014-15. However, had the management of the Company been more vigilant for timely compliance of the provision of the Companies Act, 1956/2013, they could have avoided such breach of the provision of Law and filing of application before the concerned authority for composition of offence as mentioned (supra).

9. In view of the above background, we are inclined to compound the violation under section 203 (1) (iii) of the Companies Act, 2013 in terms of the provisions of section 441 of the Act. Accordingly, we do hereby compound the aforesaid offence against the Applicant Company subject to depositing the compounding fee of Rs. 2,00,000/- (Rupees Two lakhs only) by the Applicant Company within 15 days hereof.

10. A copy of this order be forwarded to the Registrar of Companies, West Bengal for taking appropriate action in the matter pursuant to the order of this Tribunal.



(Jinan K.R.)  
Member (J)



(V.P. Singh)  
Member (J)

Signed on this 9<sup>th</sup> day of February 2018.