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BEFORE THE
NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

C.P. No. 123/2015

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 217(3) of the Companies Act, 1956

And

In the Matter of

1.M/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.

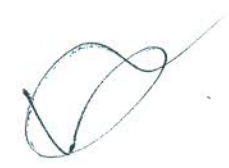
And

- 1.Mr. Vidya Sagar Banarsi Das Garg, Whole-time Director
- 2.Mr. Avishek Manoj Jayaswal, Director
3. Mr. Prakash Jayaswal, Director
4. Mr. Abhijeet Jayaswal, Ex-Director
5. Mr. Malay Kar, Ex-Director,
6. Mr. Manmohan Singh Kapur, Ex-Director
7. Mr.Rajendra Mohanlal Ganotra, Ex-Director
8. Manoj Jayaswal, Director Applicants

Present for the Parties:

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

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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 three Directors, one Whole-time Director and Four Ex-Directors 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 217(3) of the Act 1956, which is punishable under section 217(5) 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 in the XBRL format as at 31.03.2011, it was found that the Board of Directors did not furnish adequate explanations in the Directors' Report regarding the reservation(s)/qualification(s)/adverse remark(s) contained in the Auditors' Report made by the Auditors on the Balance Sheet in the XBRL format, for the year ending 31.03.2011 which read as under :-
 - i) the Company has an internal control system for purchase of inventory and fixed assets and with regard to sale of goods and services which needs to be strengthened as per the information and explanation provided to us, necessary steps are being taken to correct the weakness in the internal control system.
 - ii) the Company has an internal audit system which needs further improvement to make it commensurate with the size and nature of the business of the Company.
 - iii) During the year, material discrepancies between the physical inventories & book records were noticed as shortages and surpluses of certain raw

materials. Based on the Chairman's statement as mentioned in Note 22 of Schedule 18, material shortages have been accounted as cash sales and surplus have been recorded in the books and considered as cash sales and surplus have been recorded in the books and considered as part of inventories. In view of the above we were unable to express an opinion whether records of the inventory are maintained properly.

- iv) The Company has generally been regular in depositing undisputed statutory dues, including Provident Fund, Employees State Insurance, Income Tax, Sales Tax, Wealth Tax, Service Tax, Customs Duty, Excise Duty, Cess and any other statutory dues with the appropriate authorities during the year except in few cases.
- v) According to the information and explanation given to us, no undisputed amounts payable in respect of such statutory dues were outstanding as at 31st March, 2011 for a period of more than six months from the date they became payable except for the following:

Nature of the Dues	Period to which it relates	Amount (in lacs)
Electricity Duty	Up to September, 2010	96.65
Provident Fund	May, 2010 to August, 2010	1.28
Works Contract Tax	April, 2009 to March, 2010	0.02
Professional Tax	September, 2010	0.32

This is contrary to provisions of section 217(3) of the Companies Act, 1956

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

- i), ii) & iii) No such adverse remarks are there in the Auditors Report on the audited financial statements for the FY 2011-12. Since the non-compliance does not exist, the same stands corrected in the financial year 2011-2012.

iv) & v) the provisions of section 227(3)(e) states as follows ;

"The auditors' report shall also state –

(e) in thick type or in italics the observation or comments of the auditors which have any adverse effect on the functioning of the Company."

The Company's understanding of the above-mentioned Clause is that in case of an adverse remark, the Auditor is required to state the same in thick type or in italics.

In terms of provisions of Section 227(3)(e) of the Act, the said remark made by the Auditors was neither stated in bold not italicised since the same was not meant to be an adverse remark or qualification. Thus, no specific clarification was made in the Report of the Directors.

The Directors in their report have stated that "The Report of the Auditors of the Company is self-explanatory and hence no further clarification is needed." Therefore, lapses, if any stand corrected.

The Balance Sheet and the Statement of Profit & Loss (in XBRL format) of the Company for the financial year ended 31st March, 2012 filed vide SRN Q04323689 on 13th December, 2012.

3. The Registrar of Companies, West Bengal (ROCWB), in its 1st report dated 11.12.2013 has recommended for compounding of offences 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 his 2nd report dated 16.02.2017, ROCWB has stated that :

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- i) No explanation was furnished in the Director's Report regarding the adverse comment by the Auditors in the Auditors Report on internal control system of the Company:

It is observed that in the subsequent Balance Sheet as at 31.03.2012, the Auditors have not made any adverse comments on the internal control system for the Financial 2011-12 and hence the offence has been made good in the subsequently Balance Sheet as at 31.03.2012.

- ii) No explanation was furnished in the Director's Report regarding the adverse comment by the auditors in the Auditors Report on internal audit system of the Company:

It is observed that in the subsequent Balance Sheet as at 31.03.2012, the Auditors has not made any adverse comments on the internal audit system for the Financial Year 2011-12 and hence, the offence has been made good in the subsequent Balance Sheet as at 31.03.2012.

- iii) No explanation was furnished in the Director's Report regarding the comment by the Auditors in the Auditors Report on material discrepancies between physical inventories & book records were noticed as shortages and surpluses of certain raw materials :

It is observed that in the subsequent Balance Sheet as at 31.03.2012, the Auditors have made the favourable comments on the inventory records of the Company for the Financial Year 2011-12 and hence, the offence has been made good in the subsequent Balance Sheet as at 31.03.2012.

- iv) No explanation was furnished in the Director's Report regarding the comment by the Auditors in the Auditors Report on depositing of other statutory dues with the appropriate authorities during the year except in few cases :

It is observed by this office that in the subsequent Balance Sheet as at 31.03.2012, the Auditors have made the favourable comments on the statutory

dues of the Company for the Financial Year 2011-12 and hence, the offence has been made good in the subsequent Balance Sheet as at 31.03.2012.

- v) No explanation was furnished in the Director's Report regarding the comment by the Auditors in the Auditors Report on undisputed amounts payable in respect of such statutory dues with the appropriate authorities during the year :

It is observed that in the subsequent Balance Sheet as at 31.03.2012, the Company has disclosed that there is no undisputed amount payable in respect of such statutory dues were outstanding as at 31.03.2012 for a period of more than six months from the date they become payable except for sales tax amounting to Rs.76.73 lacs.

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 217(3) 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 217(5) 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, we are inclined to permit the applicants to compound the offences as aforesaid. Accordingly, we do hereby compound the aforesaid offences under section 217(3) 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:

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Sl.No.	Applicant	Compounding fee imposed on each instance
1.	One Whole Time Director	Rs. 10,000/- X5 instances = Rs 50,000/-.
2.	Three Directors	Rs. 10,000/- X 3 X 5 insances = Rs.1,50,000/-
3	Four Erstwhile Directors	Rs 10,000/- x 4 X 5 instances = Rs.2,00,000/-
		Total : Rs. 4,00,000/-

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.