

BEFORE THE
NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

CP. No. 109/2015

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(3B) 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

O R D E R

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:




- J
- 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) in the Deferred Tax Assets, the unabsorbed depreciation of Rs.2617 lakh is included. But the nature of evidence supporting recognition of such deferred tax assets was not disclosed. This resulted in violation of Accounting Standard-22
 - ii) 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 is 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 used. This resulted in violation of Accounting Standard-26.
 - iii) no disclosure was made about the contingent liabilities in the Balance Sheet. This resulted in violation of Accounting Standard-29.

This is contrary to provision of section 211(3B), deviations from the accounting standards and the reasons of such deviations have not been provided.

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

- i) 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.
- ii) 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 31.03.2012. Therefore, the offence has been set right from 2011-12.
- iii) 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 notes explanatory"

3. The Registrar of Companies, West Bengal (ROCWB), 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) 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.

ii) 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 subsequently Balance Sheet as at 31.03.2012.

iii) Non-disclosure about the 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 Sheet 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(3B) 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(3B) 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 5,000/- X 3 instances = Rs. 15,000/-
2.	One Erstwhile Company Secretary	Rs 4,000/- X 3 Instances = Rs. 12,000/-
		Total : Rs. 27,000/-

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.