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BEFORE THE
NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

CP No. 122/2015

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(1)(e) 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 Ganatra, Ex-Director
8. Manoj Jayaswal, Director .... 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 of the case, 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(1)(e) 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, it was found that :-

   i) in the Directors' Report it is stated 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 Directors' Report.

   ii) In the Directors' Report, foreign exchange earning of Rs.925.88 lakhs was reported. Export sale was reported in the profit and loss account for the year ended 31.03.2011 as Rs.925.88 lakhs. But in the Directors' Report no disclosure was made about activities relating to export, initiatives taken to increase exports, development of new export markets for products and services and export plans.

   iii) In the Directors' Report, no disclosure was made regarding consumption of power per unit of production.

This is contrary to provisions of section 217(1)(e) of the Companies Act, 1956.

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

i) 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 from 2011-12.

ii) the export sale as reported in the profit and loss account for year ended 31st March, 2011 as Rs.925.88 lacs are mainly on account of export of Ferro alloys. During the year under review, the Company exported Ferro Alloys of about 90% (approx.) of its Ferro Alloys turnover either directly or indirectly through Third Party. The Company is majorly doing exports, 90% of its production is being exported. Therefore, the export market for the Company is already well-developed and therefore it has not incurred any material expenditure towards development of export market. Accordingly, there are no new initiatives being taken by the Company to increase its export and there are no new development plans for export.

iii) The Company has adequately disclosed regarding consumption of power unit of production. Therefore, the offence has been set right from 2011-12.

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

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 his 2nd report dated 17.02.2017, ROCWB has stated that :

i) Non-reporting of Research & Development Expenditure in its Directors' Report :

It is observed that in the subsequent Balance Sheet as at 31.03.2012, the Company have made a disclosure in the Directors' Report during the Financial 2011-12 and hence, the offence has been made good in the subsequent 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 Company have made a disclosure of Foreign Exchange Earning and Outgo in the Directors' Report during the Financial Year 2011-12 and hence, the offence has been made good in the subsequent Balance Sheet as at 31.03.2012.

iii) Non-disclosure of Consumption of Power per unit in its Board Report :

It is observed that the Company have made a disclosure regarding consumption of power per unit of production in the Directors' Report in the subsequent Balance Sheet as at 31.03.2012 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 217(1)(e) 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:

Sl.No.	Applicant	Compounding fee imposed on each instance
1.	One Whole Time Director	Rs..10,000/-X 3 instances = Rs. 30,000/-
2.	Three Directors	Rs. 10,000/-X 3 X 3 Insstances = Rs. 90,000/-
3	Four Erstwhile Directors	Rs 8,000/-X4 x 4 instances = Rs.1,28,000/-
		Total : Rs. 2,48,000/-

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.