

NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD

In Company Petition 16/233/2015

Dated Thursday The 8th Day of December, 2016

Coram

Mr. V. S. R. Avadhani (Member-Judicial)

&

Mr. H. P. Chaturvedi (Member Judicial)

IN THE MATTER OF:

CARPET EXPORT PROMOTION COUNCIL & OTHERS

.....Petitioners

AND

IN THE MATTER OF PETITION FOR COMPOUNDING OF OFFENCES UNDER SECTION 441 OF COMPANIES ACT, 2013

FOR VIOLATION OF SECTION 92 OF THE COMPANIES ACT, 2013

ORDER

(Per Mr. H. P. Chaturvedi (Member Judicial))

The Case is fixed for passing order under section 441 read with Section 92 of Companies Act, 2013, whereby the petitioner has prayed the relief to compound the alleged default/offences under Section 92, of Companies Act, 2013. As the Company had failed to file its statutory returns (Annual Return) within prescribed period to the office of registrar of companies . Mr. Anil Kumar PCS, appearing for petitioner pursuant to the direction of this tribunal also submitted Written Submissions dated 28.11.2016. In his Written Submissions he has duly explained the reason for delay occurred in filing annual return specifically in Para 6 of Written Submissions. For convenience para 6 to 8 of Written submission are reproduced below:

6. That the delay occurs due to the following reasons:
 - I. The Elected Members of the Committee of Administration are small exporters of Carpets from all Over India.
 - II. Most of the Elected Members do not have their DIN Number as they are either from Proprietorship firm or Partnership firm and do not possess DIN Number.
 - III. For obtaining DIN Number the Petitioner Company has to obtain DSC and thereafter apply for DIN.
 - IV. To complete the above processes, the Petitioner Company took more than 4 months.
 - V. The Petitioner Company on completion of the formalities filed the Annual Return.
 - VI. The Petitioner Company has paid the prescribed fee for delay filing of Annual Return for the year 2013-14 in compliance with Section 403 of the 2013 Act.

That the aforesaid omission on the part of the Petitioner Company was on account of oversight and is bonafide and unintentional.

7. That the Petitioner Council submits that the default of not complying with the requirement of the Companies Act is not a wilful default by the Petitioner Company and the violation has since been complied and overall Period of default from 08.11.2014 to 25.02.2015 i.e. 109 days.

8. That the Petitioner Company and its Directors acted bona-fide and diligently upon the said violation of Section 92 under the new Act, 2013, coming to their knowledge. The violation of the requirement contained in the said section has been made good by the Petitioner Company.

In view of above peculiar facts and circumstances of the case it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

- a. The Hon'ble Board be pleased to compound the alleged default/offence under the provisions of the Companies Act, 2013 for the period 08.11.2014 to 25.02.2015 i.e. 109 days, by taking lenient view.
- b. Such further Order or other Orders be made and or directions be given as it may deem fit and proper.

We have considered the submission of the learned PCS appearing for the petitioner. The office of Registrar of Companies has proposed to launch the prosecution against the Company for the violation of Section 92 (5) (6) of Companies Act, 2013.

We examined the contents of the compounding petition. The petitioner has explained that petitioner company is an association of non-profitable organisation and is incorporated as a Company Limited by Guarantee under Section 25 of Companies Act, 1956, incorporated on 12.12.1982. The members of the petitioner company are not equity holder hence they are not entitled to share profit and loss if any.

The Articles of Association of the petitioner company provides such that the management of funds, business affairs and the control of the company shall be vested in the Committee of Administration. The members of the Committee of Administration consisting of 16 elected trade member and four government nominees, who are not being paid any salary or dividend. It is submitted that petitioner company could not able to file its annual return within 60 days from the date of completion of its Annual General Meeting, because the members of Committee of the Administration were elected by election process on 10th September, 2014 only and however the annual return could be filed only on 26 Feb, 2015.

The petitioner company explained the reason for the delay occurred as stated in Para 9 of the CP and the main reasons among other is that elected members of

administration committee was not having DIN No., as they are either from proprietary /partnership firm. For obtaining DIN No., the petitioner company is required to obtain DSC and thereafter apply for DIN. Such process took 4 months' time for applying for DIN No. It is also submitted company after completing the necessary formalities filed annual return and also paid late fees prescribed for filing Annual Return under section 403 of Companies Act, 2013. The Company also submitted that the petitioner Carpet Export Promotion Council has been setup by Ministry of Textile, Government of India and a non- profit organisation. It is engaged in activities of support, protect, maintain increase and promote the export of hand knotted carpets, woollen druggets and floor coverings etc. therefore above stated delay in filing of a Annual Return deserved to be condoned and alleged offence under section 92(5) (6) to be compounded with the permission of this tribunal. It is a matter of record that the present petition was initially filed before CLB, New Delhi on 14.07.2015 and pursuant to the direction of CLB, New Delhi a report from office of ROC Kanpur (UP & Uttarakhand) was called for. The ROC vide his report dated 31.07.2015 has submitted that matter may be decided on merits. However, in Point 22 of its report. He also recommended for compounding/composition of offence. This means that the office of ROC has no objection for compounding of alleged offences.

We have carefully considered the above stated facts/ circumstances of the case. We feel that the delay caused in filing of annual return (by the company) due to certain procedural formalities to be completed for obtaining DIN No. and those was a prerequisite for filing the Annual Return. Such procedural aspect took certain time resulting in delay in filing of the same. Hence, it cannot be assumed that the company was having deliberate intention for causing delay in filing of Annual Return and made violation of statutory provision of section 92 of Companies Act. Moreover, the company has filed its Annual Return along with the late fee, on 26 February 2015 i.e 109 days. The statutory provision Section 403 of Companies Act, 2013 permits for filing belated return up to two hundred and seventeen days. The relevant portion of the above referred section may be reproduced herein below.

403. Fee for filing, etc

(1) Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed:

Provided that any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing,

registering or recording, within a period of two hundred and seventy days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed:

It would be appropriate to mention herein that the Hon'ble SC also came to examine such issue in its decision in the matter of *V.L.S. Finance Ltd.'s. Union of India (UOI) and Ors.*¹ by examining the relevant provision for compounding the offence it held such can be exercised by CLB & court. A parallel power has been conferred to be exercised by CLB or other authorities mentioned in Companies Act and prior permission of criminal court is not necessary for compounding the offences. For the sake of convenience, the relevant portion of the Judgement of apex court may be reproduced herein below:

15. From the conspectus of what we have observed above, it is more than clear that an offence committed by an accused under the Act, not being an offence punishable with imprisonment only or imprisonment and also with fine, is permissible to be compounded by the Company Law Board either before or after the institution of any prosecution. In view of Sub-section (7) of Section 621A, the criminal court also possesses similar power to compound an offence after institution of the prosecution.

16. Now the question is whether in the aforesaid circumstances the Company Law Board can compound offence punishable with fine or imprisonment or both without permission of the court. It is pointed out that when the prosecution has been laid, it is the criminal court which is in seisin of the matter and it is only the magistrate or the court in seisin of the matter who can accord permission to compound the offence. In any view of the matter, according to the learned Counsel, the Company Law Board has to seek permission of the court and it cannot compound the offence without such permission. This line of reasoning does not commend us. Both Sub-section (1) and Subsection (7) of Section 621A of the Act start with a non-obstante clause. As is well known, a non-obstante clause is used as a legislative device to give the enacting part of the section, in case of conflict, an overriding effect over the provisions of the Act mentioned in the non-obstante clause.

17. Ordinarily, the offence is compounded under the provisions of the Code of Criminal Procedure and the power to accord permission is conferred on the court excepting those offences for which the permission is not required. However, in view of the non-obstante clause, the power of composition can be exercised by the court or the Company Law Board. The legislature has conferred the same power to the Company Law Board which can exercise its power either before or after the institution of any prosecution whereas the criminal court has no power to accord permission for composition of an offence before the institution of the proceeding. The legislature in its wisdom has not put the rider of prior permission of the court before compounding the offence by the Company Law Board and in case the contention of the Appellant is accepted, same would amount to addition of the words "with the prior permission of the court" in the Act, which is not permissible.

18. As is well settled, while interpreting the provisions of a statute, the court avoids rejection or addition of words and resort to that only in exceptional circumstances to achieve the purpose of Act or give purposeful meaning. It is also a cardinal rule of interpretation that words, phrases and sentences are to be given their natural, plain and clear meaning. When the language is clear and unambiguous, it must be interpreted in an ordinary sense and no addition or alteration of the words or expressions used is permissible. As observed earlier, the aforesaid enactment was brought in view of the need of leniency in the administration of the Act because a large number of defaults are of technical nature and many defaults occurred because of the complex nature of the provision.

19. From what we have observed above, we are of the opinion that the power under Sub-section (1) and Sub-section (7) of Section 621A are parallel powers to be exercised by the Company Law Board or the authorities mentioned therein and prior permission of Court is not necessary for compounding the offence, when power of compounding is exercised by the Company Law Board. In view of what we have observed above, the order impugned does not require any interference by this Court.

¹ AIR2013SC3182, [2013]114CLA300(SC)

20. In the result, we do not find any merit in the appeal and it is dismissed accordingly but without any order as to costs.

In the light of above stated legal position as propounded by the Hon'ble Supreme Court and considering the fact and circumstances of the present case, we are of the view the reason explained by the petitioner company appears to be reasonable, plausible and are sufficient to grant leave for compounding of offence under section 441 of the Companies Act. Therefore, present CP is allowed and leave is granted as prayed for therein.

A copy of this order be forwarded to the office of the ROC of Kanpur (UP & Uttarakhand) with direction to take necessary action in the matter pursuant to the order of this tribunal.

A copy of this order also be forwarded to registered office of the Company through its PCS for information and further follow up actions if any in the matter.

The CP is allowed. Accordingly stands disposed of.


Mr. V. S. R. Avadhani (Member-Judicial)


Mr. H. P. Chaturvedi (Member Judicial)

Dated: 08.12.2016

