

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
CHENNAI BENCH

Arguments heard on 23.09.2016

Orders passed on 18.10.2016.

C.A Nos.4 & 5 of 2016

Applicants : 1. Mr. Narayanaswamy Srinivasan
2. Mr. Balakrishnan Gopalakrishnan
both represented by their counsels Mr.T.K.Bhaskar &
Ms.Swetha Vasudevan

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ANANTHA PADMANABHA SWAMY
MEMBER(JUDICIAL)

CH MOHD SHARIEF TARIQ
MEMBER(JUDICIAL)

ORDER

Ch MOHD SHARIEF TARIQ - MEMBER (JUDICIAL) :- (ORAL)

1. The Applications that were filed before this Bench and having been numbered as C.A.No.4 of 2016 and C.A.No.5 of 2016 carry prayers for compounding the violations of provisions of Section 211 of the Companies Act, 1956 in exercise of the powers conferred under Section 621A of the said Act. In C.A.No.4 of 2016, the Applicant No.1 is the Director of M/s.The India Cements Ltd., (for short, the Company) the registered office of the Company situates at 'Dhun Building', No.827, Anna Salai, Chennai-600 002, Tamil Nadu. The Applicant No.2 was working as Company Secretary of the Company when the violations of the provisions of Section 211 of the Companies Act, 1956 took place. The reported offence is that the provisions of section 211 read with Schedule VI of Part I of the Act, 1956 have been violated by the Applicants by showing an amount of Rs.1363.57 lakhs that was paid to DISCOMS as "Advances". But the same was not to be treated as "Advances". So, the

Applicants failed to show in the company balance sheet, the true and fair view of the state of affairs of the company and violated the provisions of Section 211 read with Schedule VI Part I of the Companies Act, 1956, for treating the amount paid to DISCOMS under the protest as “Advances”.

2. Here, the Managing Director and the then Company Secretary of the Company, who are entrusted with the duty of seeing that the provisions of this section and the other requirements aforesaid are complied with, made default in doing so. In this matter, notice was issued by the Registrar of Companies concerned to the Applicants and their explanation was not found satisfactory. So, the Deputy Registrar of Companies, Chennai, has filed a complaint under Section 211 before the Magistrate (Economic Offences), Egmore, Chennai-8 in E.O.C.C.No.25 of 2016, relating to the offence alleged.

3. In C.A.No.5 of 2016 also, the Applicant No.1 is the Managing Director of the Company and the Applicant No.2 was working as Company Secretary of the Company when the violations of the provisions of Section 211 of the Companies Act, 1956 took place. In this case, the auditors had reported that the furniture and fixtures, office equipment were not physically verified. Therefore, the books of accounts did not reflect the true and fair view that resulted in violation of the provisions of Section 211 r/w Schedule VI Part I of the Companies Act, 1956. In this matter also, notice was issued by the Registrar of Companies concerned to the Applicants and their explanation was not found satisfactory. So, the Deputy Registrar of Companies, Chennai, has filed a complaint under Section 211 before the Magistrate (Economic Offences), Egmore, Chennai-8 in E.O.C.C.No.26 of 2016, relating to the offence alleged.

4. Under Sub Section (7) of Section 211 of the Companies Act, 1956, it is provided that 'if any such person as is referred to in sub-section (6) of section 209 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in the general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

5. As per the Applications and the report of the Registrar of the Companies, Chennai, the offence(s) committed under Section 211 of the Companies Act, 1956 have been admitted by both of the Applicants and the offences are separate and distinct. A lenient view has been taken and the Applications of the Applicants are allowed and offences are hereby compounded by imposing a fine of Rs.5,000/- on each of the Applicants in C.A.No.4 of 2016, and a fine of Rs.5,000/- on each of the Applicants in C.A.No.5 of 2016, for violations of the provisions of section 211 r/w with Schedule VI of Part I of the Act, 1956. The Applicants shall pay the fine from their own resources. Accordingly, the Applications are disposed of and the copy of the order be forwarded to the Registrar of Companies, Chennai who shall approach the competent court as per the procedures established to get the accused persons discharged.


ANANTHA PADMANABHA SWAMY
MEMBER(JUDICIAL)


CH MOHD SHARIEF TARIQ
MEMBER(JUDICIAL)