

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
CHENNAI BENCH

Arguments heard on, 07.09.2016.

Orders passed on, 18.10.2016.

Company Appln No.3 of 2016

Applicants : M/s.Infastech Fastening Technologies India Pvt. Ltd.
Plot No.OZ-14, Oragadam Growth Centre, Hi Tech SEZ, SIPCOT
Ind. Growth Centre, Oragadam-602 105

AND

Three others represented by counsels Mr. S.Yasar Arafath and
Mr.K.V.Omprakash

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ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)

CH MOHD SHARIEF TARIQ
MEMBER(JUDICIAL)

ORDER

This application came to be filed under Section 621A of the Companies Act, 1956 before the Registrar of Companies, Tamil Nadu and Aandaman & Nichobar Islands, Chennai, stood forwarded to NCLT, Chennai Bench, along with his comments for compounding of the offence as provided under Section 621A(4)(a) of the Act. The application has been numbered as C.A. No.3 of 2016.

2. The applicants, represented by their counsels Mr. S.Yasar Arafath and Mr.K.V.Omprakash have filed the above application for compounding of the offence for contravening the provisions of Section 383A of the Companies Act, 1956 and section 203 of the Companies Act 2013, in not appointing a whole time company secretary.

3. M/s.Infastech Fastening Technologies India Private Ltd., is a company incorporated on the 26th of November 2007 in the State of Tamil Nadu [CIN : U29253TN2007PTC064895], with its registered office at

Plot No.OZ-14, Oragadam Growth Centre, Hi Tech SEZ, SIPCOT Industrial Growth Centre, Oragadam, Tamil Nadu – 602 105 (hereinafter referred to as ‘Company’).

4. The authorised Share Capital of the company is Rs.9,00,00,000/- divided into 90,00,000 shares of Rs.10/- each. The paid up capital is Rs.8,42,38,500/- divided into 84,23,850 shares of Rs.10/-. The objects of the Company, inter alia, include carrying out all types of business activities relating to mechanical fastening and installation products in any industry including manufacture, sale distribution, import, export, reselling, marketing, maintenance, sourcing, transfer, research, identification, improvement, evaluation, selection and testing and to engage in specialised after-sale-services for such mechanical fastening and installation products either in India or abroad.

5. As per Section 383A of the Companies Act, 1956, every company having a paid up capital of ten lakh rupees or more, shall file with the Registrar, a certificate from a Secretary in whole-time practise in such form and within such time and subject to such conditions may be prescribed, as to whether the company has complied with all the provisions of this Act and a copy of such certificate shall be attached with Board’s report referred to in section 217. Under section 383A(1A) if, a company fails to comply with the provisions of sub-section (1), the company and every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues. The company and the directors are also liable for violation of section 203 of the Companies Act, 2013 [provisions enforced w.e.f. 1.4.2014] read with R-8A of the Companies (Appointment & Remuneration) Rules, 2014, as the violation remained continued till 31.07.2014. For contravening the provisions of Section 203, the company is liable to be punished with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every

director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

6. The maximum amount of fine under the charging sections is calculated as Rs.47,08,000/- by the Registrar of Companies, Tamil Nadu, in his report dated 18.08.2016 which is as follows :-

Sections violated	Fine Amount
Violation of provisions u/s 383A(1A) of the Companies Act, 1956	Rs.39,70,000
Violation of provisions u/s 203 of the Companies Act, 2013	Rs. 7,38,000

7. The Registrar of Companies in his report made it clear that the offence is made good and the applicants themselves have filed the compounding application. However, the Registrar stated that he has no objection if the offence is compounded and submitted that the company may be directed to file e-form INC 28 along with compounding order, if passed.

8. The Registrar of Companies has recorded the financial position of the company as per the latest audited balance sheet for the financial year closing on 31st March 2015 which is as follows :

Current Assets, Loans and Advances	119476802
LESS : Current Liabilities and provisions	95112558
Net current Assets	24364244
ADD : Fixed Assets	14193703
LESS: Secured and Unsecured Loans	0
Net worth of the company	38557947
Represented by	
Share capital	84238500
Reserves and surplus	- 43684129
Deferred tax liabilities (net)	0
LESS : Misc Exp or Loss	0
(B)	40554371

There are Long Term Loans & Advances of Rs.1996424 which have not been adjusted above.

9. In view of the fact that the applicants have confessed the commission of offence and the financial statement which shows that the company is already reeling under financial crunch, a lenient view has been taken and the application is allowed by compounding the offence committed under Section 383A (1A) of the Companies Act, 1956 and u/s 203 of the Companies Act, 2013, read with R-8A of the Companies (Appointment & Remuneration) Rules, 2014, by imposing the fine on the applicants as follows :-

i) For violation u/s 383A(1A) of the Companies Act, 1956

Defaulter	Period of violation	Fine Amount
Infastech Fastening Technologies India Pvt. Ltd.	24.03.2008 to 15.03.2009 = 356 days 15.10.2009 to 31.03.2009 = 1629 days Total = 1985 days	1985x Rs.100= Rs.1,98,500
Rangaraju Sivasubramaniyan -Director	24.03.2008 to 15.03.2009 = 356 days 15.10.2009 to 31.03.2009 = 1629 days Total = 1985 days	1985x Rs.100= Rs.1,98,500
Puay Chye Teo – Director	24.03.2008 to 15.03.2009 = 356 days 15.10.2009 to 31.03.2009 = 1629 days Total = 1985 days	1985x Rs.100= Rs.1,98,500
Kevin Vince Fernando – Director	24.03.2008 to 15.03.2009 = 356 days 15.10.2009 to 31.03.2009 = 1629 days Total = 1985 days	1985x Rs.100= Rs.1,98,500
Total		Rs.7,94,000

ii) For violations u/s 203 of the Companies Act, 2013

Defaulter	Period of violation	Fine Amount
Infastech Fastening Technologies India Pvt. Ltd.	01.04.2014 to 31.07.2014 = 122 days	Rs.1,00,000 + 122 X Rs.200 = Rs.1,24,400
Rangaraju Sivasubramaniyan – Director	24.03.2008 to 31.07.2014 = 122 days	Rs. 20,000 + 122 x 100 = Rs. 32,200
Puay Chye Teo – Director	24.03.2008 to 31.07.2014 = 122 days	Rs. 20,000 + 122 x 100 = Rs. 32,200
Kevin Vince Fernando – Director	24.03.2008 to 31.07.2014 = 122 days	Rs. 20,000 + 122 x 100 = Rs. 32,200
Total		Rs.2,21,000

10. However, the Applicants No.2 to 4 shall pay the amount of the fine from their own resources. All the applicants shall comply with the order within three weeks from the date of passing the order and the company shall file e-form INC 28 along with the compounding order with the Registrar of the Companies, Chennai in due time. Accordingly, the application is disposed of.


ANANTHA PADMANABHA SWAMY
MEMBER(JUDICIAL)


CH MOHD SHARIEF TARIQ
MEMBER(JUDICIAL)