

COURT-I

306

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. No. 26 / 2017

Present: Hon'ble Member (J) Ms. Manorama Kumari

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 08th March, 2017, 10.30 A.M

| | | | | |
|---------------------|--|----------------------------------|---------------------|--|
| Name of the Company | | LNR Investment & Trades Pvt.Ltd. | | |
| Under Section | | 441/621A | | |
| Sl. No. | Name & Designation of Authorized Representative (IN CAPITAL LETTERS) | Appearing on behalf of | Signature with date | |

P K SANGHAI

Petitioner
Dr Goenka
Advocate
S. Gupta


8/3/17

ORDER

The order is passed vide separate sheets.


(Manorama Kumari)
Member(J)

**BEFORE THE
NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA**

CP No. 26/2017

CORAM

**Ms. Manorama Kumari
Hon'ble Member (J)**

In the matter of the Companies Act, 1956 Section 621A read with Section 209(5) of the said Act

And

In the matter of Section 621A of the Companies Act, 1956

And

In the matter of Section 209(3)(b) of the Companies Act, 1956

And

In the matter of M/s. LNR Investments & Trades Pvt. Ltd.

And

In the matter of

*Mr. Niranjana Kumar Goenka, Erstwhile Director
Mr. Ajay Kumar Dokania, Erstwhile Director
Mr. Sujash Gupta, Erstwhile Director*

Parties on Record :

Mr. PK Sanghai, Practising CA | Representing Applicants/Directors

Dates of Hearing

: 08-03-2017



Since the aforesaid offence has been regularised in the year 2016, the offence under Section 209(3)(b) of the Companies Act, 1956 for the Balance Sheet as on 31-03-2014 and 31-03-2015 may be compounded with imposition of minimum compounding amount and upon compounding the offence, the ROC, WB may be directed not to launch any prosecution against the applications

Section 441 of the Companies Act, 2013 confers powers to the Tribunal for compounding of offence and the said Section came into force with effect from 01-06-2016. Section 209 of the Companies Act, 1956 has been repealed and corresponding Section 128 of the Companies Act, 2013 came into force with effect from 01-04-2014. The offence under Section 209(3)(b) of the Companies Act, 1956 pertains to the year ended on 31-03-2014 and 31-03-2015 and as such the compounding fees will be determined as per the penal provision of Section 128 of the Companies Act, 2013.

As stated in the applications, Mr. Niranjana Kumar Goenka, Mr. Ajay Kumar Dokania and Mr. Sujash Gupta, erstwhile Directors of the Company resigned from the Directorships on 20-02-2016, 23-02-2016 and 28-04-2015 respectively,

The Registrar of Companies, West Bengal has stated in his report dated 18-01-2017, that in the subsequent Balance Sheet and other related documents as at 31-03-2015, the similar offence under Section 209(3)(b) has been committed i.e. Employees Benefit Expenses accrual method of Accounting has not been followed by the Company and however, the applicants have decided to maintain such employees benefit and the default would be made good by the Company in the accounts for the financial year 31-03-2016 and that the offence is still continuing and not made good in the Balance Sheet as at 31-03-2015.

Since the Pr. CA representing the applicants has confirmed that the offence has been regularised and made good in the Balance Sheet for the year ended on 31-03-2016 and on such admission before the Bench and taking into account the facts and circumstances of the case, I am inclined to permit the applicants to compound the offence as aforesaid as per Section 441 of the Companies Act, 2013 read with Section 128 of the Companies Act, 2013 (which corresponds to Section 209(3)(b) of the Companies Act, 1956) and do hereby compound the aforesaid offence committed by the applicants under Section 128 of the Companies Act, 2013 for the two years i.e., 31-03-2014 and 31-03-2015 subject to depositing the compounding amount by each of the applicants as indicated hereinbelow :

Chandra

ORDER

Shri PK Sanghai, Pr. CA representing the applicants being the erstwhile Directors of M/s. LNR Investments & Trades Pvt. Ltd.("the Company") pleaded for compounding of offence relating to the default under Section 209(B)(b) of the Companies Act, 1956 ("The Act, 1956") pertaining to the Balance Sheet as at 31-03-2014, as pointed out by the Registrar of Companies, West Bengal (ROC, WB) in the show cause Notice dated 18-04-2016.

As averred in the applications, the Pr. CA has stated that upon scrutiny of the Balance Sheet as at 31-03-2014 and related documents, the ROC, WB has found that in the profit & Loss Account of the Company as at 31-03-2014, the Employee Benefit Expenses of Rs. 6,85,000/- has been shown but no provision has been made for Employee Benefits during the said financial years and thus, accrual method of Accounting has not been followed by the Company leading to violation of Section 209(3)(b) of the Act, 1956. The show cause notice was issued to the applicants on 18-04-2016.

In regard to the said breach, the Company by its letter dated 23-05-2016, has stated that none of the employees of the Company were employees for more than 05 years in the Company and therefore, there was no reason to make provision for Employees Benefits in the Balance sheet as at 31-04-2014 and that all the Employees Benefit liabilities had been discharged and provided appropriately in the Financial Statements of the Company for the year ended 31-03-2016. To supplement this, the applicants have stated further that the Company being a Private Limited Company, having no business during the relevant year, had only temporary employees and not in permanent pay roll and there was no necessity of making of any provision in the accounts for either short or long term benefits due to such employees and however, this disclosure could have been made in the notes on accounts in terms of accounting standard AS-15 to avoid the confusion or for better presentation. The authorised representative prayed for compounding of the above said offence under Section 209(3)(b) of the Act, 1956 read with Section 621A.

The Pr. CA has further submitted that similar violations of the provision of Section 209(3)(b) of the Companies Act, 1956 has been detected in the Balance Sheet for the year ended on 31-03-2015 and on such detection, the non compliance of the statutory requirement has been regularised in the subsequent Balance Sheet for the year ended on 31-03-2016 which has already been filed with the ROC, WB.

Chakraborty

| Sl. No. | Defaulting Director/Applicant | Compounding imposed (Rs.) amount | Total |
|---------|-------------------------------|----------------------------------|---------------|
| 1 | Three erstwhile Directors | 03x 2 years x Rs. 2000 | Rs. 12,000=00 |
| | | Total | Rs. 12,000=00 |

MANORAMA KUMARI
MEMBER(J)