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BEFORE THE
NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

CP No. 107/2017

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 and
Section 441 of the Companies Act, 2013, as applicable.

And

In the matter of Section 234 of the Companies Act, 1956

And

In the matter of : M/s R.K. Finvest Pvt. Ltd.
(since merged with M/s Penguin Securities Pvt. Ltd.)

And

In the Matter of

1. Penguin Securities Private Limited.
2. Nirmal Kant Gupta, Director
3. Neeru Gupta, Ex- Director
4. Lalit Kumar Chhawchharia, Ex-Director Petitioners

Parties on Record :

1. Mr. N. Gurumurthy, Pr.C.A. : for the Petitioners
2. Mr. M.K. Maroti, Pr.C.A.

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ORDER

Shri N. Gurumurthy, Pr.C.A., appearing for the applicants being the Company and three officers in default, submitted that the Asstt. Registrar of Companies, West Bengal, (Asstt. ROCWB) had issued a notice on 23.05.2008 to M/s R.K. Finvest Pvt. Ltd. and its Directors/Officers of the Company, pointing out the breach of the provisions of section 234 of the Companies Act, 1956 (Act 1956) by not replying to the letter dated dated 03.10.2007 whereby the Company was called upon to furnish information/explanation in respect of the Share Application Money (Rs.5,10,000/-) shown under the head "Shareholders Fund" in the Balance Sheet as at 31.03.2006 contrary to the provisions of Part-I of Schedule VI to the Act 1956 read with section 211(1). The said violation was noticed in course of scrutiny of the Balance Sheet as on 31.03.2006. He further submitted that M/s Penguin Securities Pvt. Ltd. had sent a reply vide its letter dated 29.05.2008, stating that erstwhile M/s R.K. Finvest Pvt. Ltd. has been amalgamated with M/s Penguin Securities Pvt. Ltd. w.e.f. 01.04.2006 as per Scheme of Amalgamation sanctioned by Hon'ble High Court at Calcutta by its order dated 17.12.2007 and the information, as asked for, vide notice dated 23.05.2008 had been furnished in respect of Share Application Money (Rs. 5,10,000/-) and that out of the said amount, Rs.5,00,000/- and Rs.10,000/- had been refunded on 28.03.2007 and 29.03.2007 respectively. He further submitted that the aforesaid offence under section 234 of the Act 1956 be compounded as per the provisions of section 621A of the Act 1956 which corresponds to section 441 of the Companies Act, 2013 (Act 2013) by imposing a minimum compounding amount on the applicants.

The Registrar of Companies, West Bengal (ROCWB) in his report dated 10/11.01.2017, has stated that the Company (M/s Penguin Securities Pvt. Ltd.) sent its reply on 29.05.2008 in response to notice dated 03.10.2007 and provided the information sought under section 234(1) of the Act 1956 after a delay of 208 days and hence, the offence has been made good. He has

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also stated that prosecution has been launched against the officers in default under section 234 of the Act 1956

The provision 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 the offences. Section 441 of the Companies Act, 2013 came into force w.e.f. 01.06.2016. The offence relates to breach of section 234 of the Act 1956 which occurred by not providing the required information in respect of Share Application Money shown in the Balance Sheet as on 31.03.2006, as asked for by ROCWB in his notice dated 03.10.2007. However, the information is stated to have been provided belatedly by the amalgamated Company in response to the notice issued by Asstt. ROCWB, to transferor Company (M/s R.K. Finvest Pvt. Ltd.) which has been merged by the order dated 17.12.2007 of Hon'ble High Court at Calcutta. According to the report of ROCWB, the offence has been made good by the amalgamated Company which provided the information by its letter dated 29.05.2008 as asked for by the Asstt. ROCWB in his notice dated 03.10.2007. The information was due to be furnished by 02.11.2007 and there was a delay of 208 days in providing the information to ROCWB.

Perused the applications. Having considered the submissions of the authorised representative appearing for the applicants and the report of ROC, we hereby compound the aforesaid offence under section 234 of the Act 1956, subject to depositing the compounding amount by each of the applicants as indicated herein below:

Sl.No.	Applicant	Compounding amount imposed
1.	Company	Rs. 30,000/-
2.	Director	Rs. 15,000/-
3	Two Erstwhile Directors	Rs. 15,000 x 2 = Rs. 30,000/-
		Total Rs. 75,000/-

The officers in default shall pay the compounding amounts from their personal source.
The compounding amounts are to be deposited within 15 days hereof.

Sd/-
(S. Vijayaraghavan)
Member (T)

Sd/-
(Vijai Pratap Singh)
Member (J)

Signed this *20th* day of April, 2017.