

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No.: 94/441/NCLT/MB/MAH/2017

Under section 441 of the Companies Act, 2013

In the matter of

M/s. Castrol India Limited, Technopolis
Knowledge Park, Mahakali Caves Road,
Andheri (E), Mumbai – 400093.

.... Applicant

Order delivered on: 02.08.2017

Coram :

Hon'ble M.K. Shrawat, Member (J)

For the Petitioner :

- 1) Mr. Nrupang Dholkia, Practicing Company Secretary – Authorised Representative for the Applicant.
- 2) Mr. Nrupang Dholkia, Practicing Company Secretary – Authorised Representative for the Applicant.

Per: M.K. Shrawat, Member (J)

ORDER

Defaulters Herein:

- 1) M/s. Castrol India Limited
- 2) Mr. Omer Dormen, Managing Director
- 3) Ms. Rashmi Joshi, Whole Time Director
- 4) Mr. Jayanta Chatterjee, Whole Time Director

Section Violated:

S. 203 (4) of the Companies Act, 2013.

Punishment Provided Under:

S. 203 (5) of the Companies Act, 2013.

1. This Compounding Application was filed before the Registrar of Companies Maharashtra, Mumbai on 31st January, 2017 and the same has been forwarded along with the RoC Report to NCLT, Mumbai Bench on 22nd February, 2017. The Ld. Registrar of Companies intimated that the Applicant Company has filed the aforementioned Compounding Application suo moto for not appointing a whole time Company Secretary for the Company during the period from 13.09.2016 to 12.01.2017

2. Pursuant to Section 203 (1) of the Companies Act, 2013 a Company is required to appoint a Company Secretary. The Applicant Company committed the default under the provisions of Section 203 (4) of the Companies Act, 2013 and the same is punishable u/S. 203 (5) of the Companies Act, 2013. For the period stated in the application and affirmed in the RoC Report for a period of few months' vacancy was not filled, created due to resignation of the existing Company Secretary on 14th March, 2016. The Ld. RoC has also reported that the Applicant Company has made the default good by appointing the whole time Company Secretary on 12.01.2017. However, the applicants claimed that the Compounding Application is filed, so as to put the matter to rest.

Facts of the Case:

3. As per the Applicant's own submissions made in the Compounding Application filed by them for violation of Section 203 of the Companies Act, 2013, the Applicant and officers in default has committed default as follows:-

"..... (c) The Company Secretary of the Company Mr. Sandeep Deshmukh resigned with effect from 14th March, 2016, which caused vacancy in the office of Company Secretary of the Company.

(d) The Company initiated the process of recruitment of Company Secretary with the help of professional recruitment firms in order to find a replacement at the earliest.

(e) In the course of the recruitment process, the profiles of approximately 50 candidates were reviewed and approximately 30 were interviewed. The selection process of Company Secretary has taken some time given the significance and sensitivity around the role and the key stakeholders that the Company Secretary is required coordinate with, including the Ministry of Corporate Affairs, SEBI, the Stock exchange, the Shareholders, the Directors and the Senior management of the Company.

(f) The Board of Directors of the Company were updated about the Progress on appointment of Company Secretary in each meeting held after resignation of Mr. Deshmukh.

(g) After scrutiny of short listed candidates, Chairman of Nomination and Remuneration Committee interviewed the Candidate and recommended the same to the Committee in their Meeting held on 27th October, 2016.

(h) The committee approved the candidate and directed the Management to initiate process of issuing offer letter

and placing the same before the Board once the candidate has agreed the offer and date of joining.

(i) The Candidate was required to serve notice period in the earlier organisation and could join the Company upon compliance of the same, the Candidate agreed to join the Company on 12th January, 2017 and accepted the offer and consented to act as the Company Secretary of the Company.

(j) Upon acceptance by the candidate the Board of Directors in the meeting held on 16th December, 2016 appointed Ms. Chandana Dhar (ACS 17891) as the Company Secretary of the Company with effect from 12th January, 2017.

(k) The company was required to appoint Company Secretary on or before 13th September, 2016 being six months from the date of vacancy in the office of Company Secretary pursuant to Section 203 (4) of the said Act.

(l) The Company appointed the Company Secretary effective 12th January, 2017 being 121 days after expiry of six months as stated above.

(m) The Applicants submit that the non-compliance to the above requirement was not intentional. Further the Applicants have shown commitment to comply with the requirements of the Act by taking all necessary actions to fulfil the requirements of the relevant sections of the Act.”

4. The applicant Company is a listed Public Limited Company, hence Equity Shares are listed on BSE and NSE. The Capital Structure is as follows:

a) Issued, Subscribed and Paid-up Share Capital:

The issued, Subscribed and Paid-up Share Capital of the Company as on date is ₹ 2,47,28,05,960/- (₹ Two Hundred and Forty Seven Crores Twenty Eight Lakhs Five Thousand Nine Hundred and Sixty only) divided into 49,45,61,192 (Forty Nine Crores Forty Five Lakhs Sixty One Thousand One Hundred and Ninety Two) Equity Shares of ₹ 5/- (₹ Five Only) each.

5. By going through the submissions of the defaulters this Bench came to conclusion that, there happened to be violation of the provision under Section 203 (4) of the Companies Act, 2013. The offence is punishable under Section 203 (5) of the Companies Act, 2013. The relevant sections are as follows:

“Section 203 (4) : If the office of any whole-time key managerial personnel is vacated, the resulting vacancy

shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.”

“Section 203 (5) : *If a company contravenes the provisions of this section, the company shall be punishable 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. From the side of the Applicants, Learned Practicing Company Secretary's Mr. Nrupang Dholakia a/w. Ms. Bhumitra Dholakia had appeared and explained that, due to unavoidable circumstances the Applicants/defaulters had violated the provisions of S. 203 (4) of the Companies Act, 2013. Although, the Applicants/defaulters was willing to comply with those provisions *bona fide*. Ld. Representatives of the Applicants/defaulters also stated that the aforesaid violation was unintentional and without any wilful or *mala fide intention*. Further the Ld. Representatives of the Applicants/defaulters also submitted that, the default has been made good by appointing the whole time Company Secretary Ms. Chandana Dhar (ACS 17891) with effect from 12th January, 2017 and the document with this effect i.e. letter of consent as prescribed under Section 203 of the Companies Act, 2013 and Rule 8 of the Company (Remuneration of Managerial Personnel) Rules, 2014 is annexed.
7. This Bench has gone through the Application and the Report submitted by the Registrar of Companies, Maharashtra, Mumbai and also the submissions made by the Ld. Representatives for the Applicants/defaulters at the time of hearing and noted that Application made by the Applicant for compounding of offence committed under Section 203 (4) of the Companies Act, 2013, merits consideration.
8. On examination of the circumstances as discussed above, a Compounding Amount/Sum of ₹ 5000/- (₹ Five Thousand only) by the each applicant/defaulters, stated to be Four in number, shall be sufficient as a deterrent for not repeating the impugned default in future. The imposed remittance shall be paid by way of Demand Draft drawn in favour of “Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai”.

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9. This Compounding Application bearing CP No. 94/441/NCLT/MB/MAH/2017 is, therefore, disposed of on the terms directed above with a rider that the payment of the fine imposed be made within 15 days on receipt of this order. Needless to mention, the offence shall stand compounded subject to the remittance of the fine imposed. A compliance report, therefore, shall be placed on record. Only thereafter the Ld. RoC shall give effect to this order.

10. Ordered accordingly.

Dated: 02nd August, 2017

Sd/-

M. K. Shrawat
Member (Judicial)