BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

COMPOUNDING APPLICATION NO. 36/621A/441/NCLT/MB/2016

CORAM: **SHRI M.K. SHRAWAT**
                                          MEMBER (JUDICIAL)

In the matter of Section 621A of the Companies Act, 1956 for violation of Section 211 r.w. Part I of Schedule VI of the Companies Act, 1956.

In the matter of **M/s. Vidya Buildcon Private Limited**, having its Registered Office at 610, Damaji Shamji Trade Centre, Vidya Vihar (W), Mumbai - 400086, Maharashtra, India.

PRESENT FOR APPLICANT:

Mr. Arjun Piiti – Authorised Representative for the Applicant.

ORDER

Date of Order : 10.07.2017

Applicants in Default:

(1) M/s. Vidya Buildcon Private Ltd. – Company

(2) Shri Pankaj Kandoi – Director

(3) Smt. Sulochana Devi Kandoi – Director

Section Violated:

Section 211 r.w. Part I of Schedule VI of the Companies Act, 1956.

1.   This Compounding Application was filed before the Company Law Board, Regional Bench, Mumbai on 10th October, 2013 which was forwarded to NCLT Mumbai Bench by Registrar of Companies, Maharashtra, Pune along with RoC Report. The Ld. Registrar of Companies intimated that the Applicant Company has filed the aforementioned Compounding Application suo moto for not disclosing the investment done by the Company in the other Private Limited Companies, in the balance sheet as at 31.03.2010 i.e. 2009-2010

2.   Therefore, it is evident that the Applicant Company committed the default under the provisions of Section Section 211 r.w. Part I of Schedule VI of the Companies Act, 1956.

Facts of the Case:

3.   As per the Applicant's own submissions made in the Compounding Application filed by them for violation of Section 211 r.w. Part I of Schedule VI of the Companies Act, 1956, the Applicant has committed default as follows:-

> "5.   The applicants being the directors of the Company are officers in default in terms of the provisions of S. 211 (7) r.w. 209 (6) of the Act.

> 6.   On scrutiny of Balance Sheet of the Company as at 31.03.2011 u/S. 234 of the Act, the Registrar of Companies, Maharashtra vide Letter No. ROC/STA(M)/194247/3874 dated 6th November, 2012 alleged that the published balance sheet as at 31.03.2010 and 31.03.2011 indicate that the share capital with premium raised by the Company during 2009-2010 and 2010-2011 has been invested in shares of some other private limited companies. The disclosures of these investment are not done in terms of AS – 13 r.w. S. 211 r.w. Part I of Sch. VI of the Companies Act, 1956 in the Balance Sheet as at 31.03.2010. The total of this investment rose upto ₹ 6.21 Cr. as on 31.03.2011 but the Company did not give any details in the published Balance Sheet as at 31.03.2011....."

4.   Accordingly, the Applicant has violated the provision under Section 211 r.w. Part I of Schedule VI of the Companies Act, 1956. Section 211 (7) of Companies Act, 1956 for violation of Section 211 of Companies Act, 1956, which is relevant in this Case, is as follows:-

> "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 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 one thousand rupees, or with both: Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section and the other requirements"

5.   From the side of the Applicant, Ld. representative Mr. Arjun Pitti appeared and explained that inadvertently the Applicant Company could not fulfil the conditions laid down under Section 211 of the Companies Act, 1956 although the Applicant was willing to comply with the provisions of the Companies Act, 1956 *bona*

fidely. Ld. Representative of the Applicant also stated that the aforestated violation was unintentional and without any wilful or *mala fide intention.* The default was made good by filing Form GNL – 1 on 22nd June, 2017. The applicants also placed on record the copy of the said form.

6.   This Bench has gone through the Application of the Applicant and the Report submitted by the Registrar of Companies, Maharashtra, Mumbai and also the submissions made by the Ld. representative for the Applicant at the time of hearing and noted that Application made by the Applicant for compounding of offence committed under Section 211 of the Companies Act, 1956 merits consideration. Also noted that the default is not a continuing default but it was made good by filing requisite information to Registrar of Companies on 22nd June 2017.

7.   On examination of the circumstances as discussed above a fine of ₹ 1000/- (₹ One Thousand only) by each applicant who is in default, i.e. the Company and the two Directors, 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".

8.   This Compounding Application No. 36/621-A/441/NCLT/MB/2016 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 of this order.

9.   Ordered accordingly.

Sd/-

Dated: 10th July, 2017   **M. K. SHRAWAT**
                                                              Member (Judicial)