

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

CP No.: 76/441/NCLT/MB/MAH/2017

Under section 441 of the Companies Act, 2013

In the matter of

M/s. Chintamani Estates Pvt. Ltd.,  
60/62 Parsi Gallimirza Street, Mumbai  
400003.

.... Applicant Company

Heard on : 10.08.2017  
Order delivered on: 10.09.2017

**Coram :**

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

**For the Petitioner :**

Ms. Jyoti N. Kholia, Practicing Company Secretary – Authorised Representative  
for the Applicants.

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

**ORDER**

**Applicants/Defaulters Herein:**

- 1) M/s. Chintamani Estates Pvt. Ltd. – Company.
- 2) Mr. Kumar Girdharlal Shah – Director.
- 3) Mr. Kirtikumar Girdharlal Shah – Director.
- 4) Mr. Anantrai Girdharlal Shah – Director.

**Section Violated:**

S. 134 (3) (o) of the Companies Act, 2013.

**Punishment Provided Under:**

S. 134 (8) of the Companies Act, 2013.

1. This Compounding Application was filed before the Registrar of Companies, Mumbai (hereinafter as **RoC**) on 14<sup>th</sup> December, 2016 and the same has been forwarded to the NCLT, Mumbai on 06<sup>th</sup> March, 2017. The Learned RoC has informed that, this application was filed because the Company has violated the provision of S. 134 (3) (o) of the Companies Act, 2013 (hereinafter as **Act**) r.w. Rule 8 of Companies (Corporate Social Responsibility Policy) Rules, 2014 for the Financial Year 2014-2015.

2. According to the provision of S. 135 (5) of the Act, the Board of Company was required to spend, in every financial year, at least 2% of the average net profit of the Company during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility (CSR) policy, applicable to every company having net worth of ₹ Five Hundred Crore or more, or turnover of ₹ one thousand crore or more, or having net profit of ₹ Five Crore or more, during Financial Year.. Further the provision of S. 134 (3) (o) provides that, if company fails to comply with the provision of S. 135 (5), then the Board in its report shall specify the reasons for not spending the amount. But the Defaulters herein, have not complied with the provision of S. 134 (3) (o) of the Act. Hence, this Compounding Application has been filed by the Applicants/Defaulters herein so as to put the matter at rest.

3. The Learned RoC also reported that, the Company has made the said default good by revising the Directors Report for the Financial year 2014-2015 and therein complying with the provisions of S. 134 (3) (o).

**Facts of the Case:**

4. As per the Applicant's own submissions made in the Compounding Application filed by them for violation of Section 134 (3) (o) of the Companies Act, 2013, the Applicant has committed default as follows:-

".....

2. The Applicants hereby states that the Company had defaulted in complying with the reporting with respect to the CSR to be provided in the Directors Report as per the provisions of S. 134 (3) (o) of the Companies Act, 2013.

3. The Applicants had received a Letter dated May 18, 2016 from Registrar of Companies, Maharashtra, Mumbai for calling of information u/S. 206 (1) of the Companies Act, 2013 – CSR for the Financial year 2014-2015. The Applicant company had provided the requisite information to ROC Mumbai in the specified format.

4. Thereafter, the Applicants have received a Show Cause Notice u/S. 134 (8) for violation of S. 134 (3) (o) read with Section 135 (5) of the Companies Act, 2013 dated September 16, 2016....."

**Submissions:**



5. The Ld. Representative for the Applicants/Defaulters herein, submitted that, the Company had spent ₹ 2,09,000/- towards CSR for the Financial year 2014-15 but inadvertently there was a shortfall in expenditure incurred for CSR in F.Y. 2014-2015 and further there is no disclosure, for the said shortfall in expenditure, in the Directors Report for the F.Y. 2014-2015.
6. It is further submitted that, inadvertently the Applicants/Defaulters herein could not fulfil the conditions laid down under S. 134 (3) (o) of the Act, although the Applicants/Defaulters herein were willing to comply with the provisions of the Act *bona fide*. Ld. Representative also stated that the aforesaid violation was unintentional and without any wilful or *mala fide intention* as S. 135 of the Act was notified in the year 2014 and there is ambiguity regarding applicability of the Section to the Company.
7. It is further submitted that, the Applicants/Defaulters herein made the default good by revising the Directors Report for the F.Y. 2014-15 and subsequently complied with the provision of S. 134 (3) (o) of the Act. The said report was duly approved by the Company at its meeting held at 3<sup>rd</sup> November, 2016 and annexed it as **Annexure G** to this Application. The Learned RoC in its report also recognises the same.

**Findings:**

8. Accordingly, the conclusion can be drawn that, the Applicants/Defaulters herein had violated the Provision of S. 134 (3) (o) of the Act. And for the said violation the punishment is provided u/Section 134 (8) of Companies Act, 2013, which is relevant in this Case, is as follows:-

*"If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both."*

9. This Bench has taken into consideration that, this provision regarding CSR is newly incorporated in the Statute and thereafter number of circulars were issued and as a result of those circulars no clear clarification regarding the provision can be recorded by the Company or its Directors. The list of those Circulars is as follows :



- i) S. O. 582 (E) dated 27<sup>th</sup> February, 2014 which talks about Commencement of CSR Provision and Schedule VII of the Act.
- ii) G.S.R. 130 (E) dated 27<sup>th</sup> February, 2014 which talks about the Amendment in Schedule VII of the Act.
- iii) G.S.R. 261 (E) dated 31<sup>st</sup> March, 2014 which talks about the further Amendment in Schedule VII of the Act.
- iv) General Circular No. 21/2014 dated 18<sup>th</sup> June, 2014 which gives clarifications with regard to the provisions of CSR u/S. 135 of the Act.
- v) General Circular No. 36/2014 dated 17<sup>th</sup> September, 2014 which gives clarifications with regard to the provisions of CSR u/S. 135 of the Act.
- vi) General Circular No. 01/2015 dated 3<sup>rd</sup> February, 2015 which talks about the Constitution of CSR Committee.

10. The further important argument taken into consideration that, the determination of the Quantum of the CSR responsibility can only be ascertained/quantified after the finalisation of accounts at the close of the Books of Accounts of a particular financial year. As a result, the amount to be contributed for charitable purpose as CSR responsibility can be intimated to the concerned authorities thereafter only i.e. after the finalisation of accounts of a particular financial year.

11. This Bench has gone through the Application of the Applicants/ Defaulters herein and the Report submitted by the RoC and also the submissions made by the Ld. Representative at the time of hearing and noted that Application made by the Applicants/Defaulters herein for compounding of offence committed under S. 134 (3) (o) of the Companies Act, 2013, merits consideration.

12. On examination of the circumstances as discussed above a Compounding Fee of ₹ 10,000/- by each Applicant/Defaulter herein, (i.e. ₹ 40,000/- in total) 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" within 30 days from the receipt of this order.

13. This Compounding Application No. 76/441/NCLT/MB/2017 is, therefore, disposed of on the terms directed above. Needless to mention, the offence shall stand compounded subject to the remittance of the Compounding Fee imposed. A compliance report, therefore, shall be placed on record. Only thereafter the Ld. RoC shall take the consequential action.

14. Ordered accordingly.

Sd/-

**BHASKARA PANTULA MOHAN**  
**MEMBER (JUDICIAL)**

Sd/-

**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**

**Dated : 10.09.2017**

**Avinash**