

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No.: 353/441/NCLT/MB/MAH/2017

Under section 441 of the Companies Act, 2013

In the matter of

M/s. D'décor Home Fabrics Pvt. Ltd.,
6th Floor, Solitaire Corporate Park, S14
Guru Hargovindji Marg, Chakala, Andheri
(E), Mumbai - 400093.

.... Applicant Company

Order delivered on: 11.09.2017

Coram :

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Manisha Sawant, Practicing Company Secretary.

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

ORDER

Defaulters Herein:

- 1) M/s. D'décor Home Fabrics Pvt. Ltd.
- 2) Ajay Virendra Arora – Director
- 3) Virendra Kumar Dharamchand Arora – Director
- 4) Simone Ajay Arora - Director
- 5) Shripad Gopal Talwelkar - Director
- 6) Amit Diwakar Sabley – Ex-Director

Section Violated:

S. 233B of the Companies Act, 1956 [read with section 148(8) of the Companies Act, 2013].

Punishment Provided Under:

S. 233B (11) of the Companies Act, 1956 [read with section 148(8) of the Companies Act, 2013].

me7

1. This Compounding Application was filed before the Registrar of Companies Maharashtra, Mumbai on 6th February, 2017 and the same has been forwarded along with the RoC Report to NCLT, Mumbai Bench on 8th August, 2017. The Ld. Registrar of Companies intimated that the Applicant Company has filed the aforementioned Compounding Application suo moto for delay in filing Cost Audit Report of the Company for the Financial Year 2012-13 and 2013-14 within stipulated time as prescribed in the Section 233B of the Companies Act, 1956 [read with section 148(8) of the Companies Act, 2013].
2. Pursuant to Section 233B of the Companies Act, 1956 a Company is required to file a Cost Audit Report in respect of each of its financial year commencing on or after the 1st day of April, 2012, audited by a cost auditor. Hence, the Applicant Company committed the default under the provisions of Section 233B of the Companies Act, 1956 and the same is punishable u/s. 233B (11) of the Companies Act, 1956.
3. The Ld. RoC has also reported that the Applicant Company has made the default good by delaying in filing Cost Audit Report for the Financial Year 2012-13 and 2013-14. However, the applicants claimed that the Compounding Application is filed, so as to put the matter to rest. Relevant portion of the report is reproduced below;

"1) The Company has filed Cost Audit Report in Form IXBRL for the financial year 2012-13 vide SRN No. GS37775756 dated 10/05/2015.

2) The Company has filed Cost Audit Report in Form IXBRL for the financial year 2013/14 vide SRN No. GS45087137 dated 25/01/2016."

Facts of the Case:

4. As per the Applicant's own submissions made in the Compounding Application filed by them for violation of Section 233 of the Companies Act, 1956, the Applicant and officers in default has committed default as follows:-
 - a. *The Company is an existing private limited company within the meaning of the Companies Act. Since Cost Audit was mandatory for the Company under Section 233B of the Companies Act, 1956 read with the The Companies (Cost Accounting Records) Rules, 2011 Rules, for the financial years*

2012-13 and 2013-14, the board of directors of the Company had appointment M/s. N. I. Mehta & Co. as their cost auditor for the Company.

- b. On April 30, 2015 the Company had received an email from Mr. Arvind Kumar, Assistant Director (Cost) of Ministry of Corporate Affairs, Government of India regarding non-filing of Cost Audit Report by the Company for the financial years 2012-13 and 2013-14.
- c. The Company denies the allegation that no reply was sent either by the Company or by the Cost Auditors to the email of the MCA dated April 30, 2015. The Company had vide its letters dated June 10, 2015, replied to both the emails of the MCA, and the reply was sent by speed post. Copies of the letters dated June 10, 2015.
- d. The Cost Auditors of the Company, M/s N. I. Mehta & Co. had also vide their letters dated May 15, 2015 replied to both the emails of the MCA.
- e. The plaint alleges that the Company did not reply to the show cause notice from the Office of the Cost Audit Branch, MCA bearing no. 52/20CAB/2015-74 dated October 9, 2015. On perusal of the plaint, we notice that the address of the Company mentioned therein is 206, Shivai Industrial Estate, 89, Andheri-Kurla Road, Sakinaka, Andheri (E)- 400072, which is not the registered office of the Company. In fact, the Company never had or maintained any office at the said address. The registered office address of the Company is 6th floor, Solitaire Corporate Park – S14 Guru Hargovindji Marg, Chakala, Andheri (E) Mumbai city MH 400093, which is reflected on the Company Master Data on the MCA website. Since there was no proper delivery of the SCN, there was no opportunity provided to the Company to present its case before the MCA. It is only on receipt of the complaint filed in the Metropolitan Magistrate 40th Court by the directors of the Company.
- f. The Company, in its response dated June 10, 2015 stated that the cost audit Report for the financial year 2010-13 was filed on May 10, 2015 vide SRN S37775756. The delay in filing Cost Audit Report for the financial year 2012-13 were due to pending reconciliations of excise items and the non-availability of the required data on time because of resignation of the person in charge for Cost Audit in the company. The Cost Audit Report for the financial year 2013-14 was delayed consequent to delay in the submission and filing of the Cost Audit Report for the financial year 2012-13. Subsequently, the Company filed the Cost Audit Report for the financial year 2013-14. On January 25, 2016 vide SRN S45087137.
- g. Later the Company became aware through its director Mr. Ajay Virendra Arora, that the ROC had launched prosecution against the Company in the Metropolitan Magistrate 40th Court, in relation to the delay in filing the Cost Audit Report u/s. 233B of the Companies Act, 1956 for the financial year 2013-14.

5. From the side of the Applicants, Learned Practicing Company Secretary Manisha Sawant had appeared and explained that, the contravention of S. 233B had occurred because the delay for filing the Cost Audit Report for the financial year 2012-13 were due to pending reconciliations of excise

items and the non-availability of the required data on time because of resignation of the person in charge for Cost Audit in the Company. And the Cost Audit Report for the financial year 2013-14 was delayed consequent to delay in the submission and filing of Cost Audit Report for the financial year 2012-13.

6. The Representative for the applicants further submitted that, due to unavoidable circumstances the Applicants/defaulters had violated the provisions of S. 233B of the Companies Act, 1956. Although, the Applicants/defaulters was willing to comply with those provisions *bona fide*. Ld. Representative of the Applicants/defaulters also stated that the aforesaid violation was unintentional and without any wilful or *mala fide intention*. Further the Ld. Representative of the Applicants/defaulters also submitted that, the default has been made good by filing Cost Audit Report for the Financial Year 2012-13 on 10th May, 2015 and the Cost Audit Report for the Financial Year 2013-14 on 25th January, 2016. The Report of the RoC also affirms the same.
7. By going through the above submissions this Bench came to conclusion that, there happened to be violation of the provision under Section 233B of the Companies Act, 1956. And the said offence is punishable under Section 233B (11) of the Companies Act, 1956. These relevant sections are as follows:

"Section 233B : *Where in the opinion of the Central Government it is necessary so to do in relation to any company required under clause (d) of sub- section (1) of section 209 to include in its books of account the particulars referred to therein, the Central Government may, by order, direct that an audit of cost accounts of the company shall be conducted in such manner as may be specified in the order by an auditor²who shall be a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959)"*

"Section 233B (11) : *If default is made in complying with the provisions of this section, the company shall be liable to be punished with fine which may extend to five thousand rupees, and every officer of the company who is in default, shall be liable to be **punished with imprisonment** for a term which may extend to three years, or with fine which may extend to fifty thousand rupees, or with both."*

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. Representative for the Applicants/defaulters at the time of hearing and noted that Application made by the Applicant for compounding of offence committed under Section 233B which is punishable under Section 233(11) of the Companies Act, 2013, merits consideration; especially when the default had not continued rather made good as on 10th May, 2015 and 25th January, 2016 by filing Cost Audit Reports.

8. On examination of the circumstances as discussed above, a Compounding Amount/Sum of ₹ 10,000/- (₹ Ten Thousand only) by the each applicant/defaulter herein, stated in the Defaulters list (i.e. ₹ 10,000/- each by six defaulters totalling ₹ 60,000/-), 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".
9. This Compounding Application bearing CP No. 353/441/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.

Sd/-

Bhaskar Pantula Mohan
Member (J)

Sd/-

M.K. Shrawat
Member(J)

Dated: 11th September, 2017