

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP No.: 352/441/NCLT/MB/MAH/2017

Under section 441 of the Companies Act, 2013

In the matter of

M/s. D'décor Home Fabrics Pvt. Ltd.,  
6<sup>th</sup> 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

**Section Violated:**

S. 148(8) of the Companies Act, 2013.

**Punishment Provided Under:**

S. 147(1) of the Companies Act, 2013.

1. This Compounding Application was filed before the Registrar of Companies Maharashtra, Mumbai on 9<sup>th</sup> May, 2017 and the same has been forwarded



along with the RoC Report to NCLT, Mumbai Bench on 10<sup>th</sup> July, 2017. The Ld. Registrar of Companies intimated that the Applicant Company has filed the aforementioned Compounding Application suo moto for late filing of the Cost Audit Report by the Company for the Financial Year 2015-16 with the MCA as stipulated time prescribed in the Section 148(8) of the Companies Act, 2013.

2. Pursuant to Section 148(8) 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 148(8) of the Companies Act, 2013 and the same is punishable u/s. 147(1)) of the Companies Act, 2013.
3. The Ld. RoC has also reported that the Applicant Company has made the default good by filing Cost Audit Report in Form I XBRL for the financial year 2015-16 vide SRN No. G41494618 dated April 21, 2017. However, the applicants claimed that the Compounding Application is filed, so as to put the matter to rest.

#### **Facts of the Case:**

4. As per the Applicant's own submissions made in the Compounding Application filed by them for violation of Section 148(8) of the Companies Act, 2013, 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 148 of the Companies Act, 2013 read with the Companies (Cost Accounting Records) Rules, 2014 Rules, for the financial year 2015-16, the board of directors of the Company had appointment M/s. N. I. Mehta & Co. as their cost auditor for the Company.*
- b. *The Cost Audit Report for the financial year 2015-16 was filed by the Company on April 21, 2017 vide SRN No. G41494618. The delay in filing Cost Audit Report for the financial year 2015-16 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 2015-16 was filed on April 21, 2017 vide SRN No. G41494618.*
- c. *The Company is, therefore, desirous of compounding this offence for the contravention of the provision of section 148 of the Companies Act, 2013 for late filing of the Cost Audit Report for the financial year 2015-16.*

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*d. This application is being made by the Company suo moto in order to compound the offence of late filing of the Cost Audit Report by the Company for the financial year 2015-16 with the Ministry of Corporate Affairs, Government of India ("MCA").*

5. From the side of the Applicants, Learned Practicing Company Secretary Manisha Sawant had appeared and explained that, the contravention of S. 148(8) had occurred because of late filing the Cost Audit Report for the financial year 2015-16 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.
6. The Representative for the applicants further submitted that, due to unavoidable circumstances the Applicants/defaulters had violated the provisions of S. 148(8) of the Companies Act, 2013. Although, the Applicants/defaulters was willing to comply with those provisions *bona fide*. Ld. Representative of the Applicants/defaulters also stated that the aforestated 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 in Form I XBRL for the financial year 2015-16 vide SRN No. G41494618 dated April 21, 2017. 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 148(8) of the Companies Act, 2013. And the said offence is punishable under Section 147(1) of the Companies Act, 2013. These relevant sections are as follows:

**"Section 148(8) :** *If any default is made in complying with the provisions of this section, - (a) The Company and every officer of the company who is in default shall be punishable in the manner as provided in sub-section (1) of section 147 of the Companies Act, 2013."*

**"Section 147 (1) :** *If any of the provisions of section 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to 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 one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both."*

*NUJ*



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 148(8) which is punishable under Section 147(1) of the Companies Act, 2013, merits consideration; especially when the default had not continued rather made good as on 21<sup>st</sup> April, 2017 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 five defaulters totalling ₹ 50,000/-), 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. 352/441/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: 11<sup>th</sup> September, 2017**

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