

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

CP No.: 312/441/NCLT/MB/MAH/2017

Under section 441 of the Companies Act, 2013

In the matter of

M/s. Danfoss Power Solutions India Private
Limited, Gat No. 94100, Hicliiff Industrial
Estate, Wagholi Rahu Road, Kesnand, Off
Nagar Road, Pune – 412207.

.... Applicant Company

Heard on : 17.08.2017

Order delivered on: 18.09.2017

Coram :

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Mukesh Siroya, Practicing Company Secretary – Authorised Representative for the
Applicants.

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

ORDER

Applicants/Defaulters Herein:

- 1) M/s. Danfoss power Solutions India Private Limited – Company.
- 2) Upinder Kishen Razdan – Managing Director.
- 3) Mohan Rawat – Whole Time Director and Company Secretary.

Section Violated:

S. 148 of the Companies Act, 2013.

Punishment Provided Under:

S. 148 (8) (a) r.w. S. 147 (1) of the Companies Act, 2013.

1. This Compounding Application was filed before the Registrar of Companies, Pune (hereinafter as **RoC**) on 3rd April, 2017, and the same has been forwarded to the NCLT, Mumbai on 17th May, 2017.
2. The Learned RoC has informed that, this application was filed because the Company has violated the provisions of S. 148 of the Companies Act, 2013 (hereinafter as **Act**) where the Company fails to appoint the Cost Auditor for the F.Y. 2015-2016 and F.Y. 2016-2017.
3. The Learned RoC also reported that, the Company has made the said default good by appointing the Cost Auditor on 11th January, 2017 for both the financial years. Hence, there is a delay of 1 Year, 3 Months and 11 Days for the appointment of Cost Auditor for F.Y. 2015-2016 as it is to be appointed on or before 30th September, 2015. Further there is a delay of 3 Months and 11 Days for the appointment of Cost Auditor for the F.Y. 2016-2017 as it is to be appointed on or before 30th September, 2016. But this application is filed so as to matter at rest.

Facts of the Case:

4. As per the Applicant's/Defaulters herein, own submissions made in the Compounding Application filed by them for violation of Section 148 of the Act, the Applicants/Defaulters herein, had committed default as follows:-

"9.....

(vii) That the Company was under the bona fide impression that the product that it manufactures doesn't fail under the said Rules relying solely on the provisions of Section 148 read with Rules made thereunder as applicable on April 1, 2014 and inadvertently missed the subsequent amendments thereto, notified in December, 2014.

(viii) That upon realising that its Product fails under the said Rules and requires it to appoint a Cost Auditor, it immediately convened a meeting of the Board of Directors of the Company which was held January 11, 2017 and appointed Cost Auditor to conduct the Audit of Cost Records maintained by the Company for the Financial Year 2015-16 as well as 2016-17."

Submissions:

5. The Ld. Representative for the Applicants/Defaulters herein, submitted that, the Contravention of the provisions of S. 148 of the Act r.w. Rules made thereunder

was bona fide and without any mala fide intention. The Company and its Officers inadvertently didn't notice the amendments made to the Rules made u/S. 148 of the Act.

6. It is further submitted that, the Applicants/Defaulters herein, made the default good by appointing the Cost Auditor on 11th January, 2017. Though it is belated (referred *Supra*), it shows the intention of the Applicants/Defaulters herein, to comply with the provisions of the Act. The document to that effect i.e. eForm CRA – 2 is filed with the RoC on 12th January, 2017 and the copy of the same is attached with this application at page 128-135. The RoC in its Report also recognises that, the Company has made the default good. However for the said period of default imposed a consolidated fine of ₹ 45,000/- which is very excessive and unreasonable, pleaded by the Learned Representative.

Findings:

7. Accordingly, by going through the facts of the case and the submissions made by the Learned Representative for the Applicants/Defaulters herein, the conclusion can be drawn that, the Applicants/Defaulters herein had violated the Provision of S. 148 of the Act. And for the said violation the punishment is provided u/Section 148 (8) (a) of the Act, which is relevant in this Case, is as follows:-

“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;”

Further S. 147 (1) of the Act, which is relevant in this Case, is as follows:-

“If any of the provisions of sections 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.”

8. 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. 148 of the Companies Act, 2013, merits consideration.

9. On examination of the circumstances as discussed above a Compounding Fee of ₹ 10,000/- by each Applicant/Defaulter herein, (i.e. ₹ 30,000/- 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.
10. This Compounding Application No. 312/441/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.
11. Ordered accordingly.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 18.09.2017

Avinash