

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

CP No.: 378/441/NCLT/MB/MAH/2017

Under section 441 of the Companies Act, 2013

In the matter of

M/s. L & T Valves Ltd., L & T House, Ballard
Estate, Mumbai – 400001.

.... Applicant Company

v.

Registrar of Companies, Mumbai.

.... Respondent

Heard on : 13.09.2017

Order delivered on : 22.09.2017

Coram :

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Faisal Sayyed, Advocate i/b. Manilal Kher Ambalal & Co. – Authorised
Representative for the Applicants.

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

ORDER

Applicants/Defaulters Herein:

- 1) M/s. L & T Valves Ltd. – Company.
- 2) Mr. Venkata Subramanian – Manager.
- 3) Mr. Subramanian Ramkrishnan Subramanian – Director.
- 4) Mr. Vaidyanathan Subramanian – CFO & Company Secretary.
- 5) Mr. Ventasubramanian – Director.
- 6) Mr. Balsubramaniam Ramkrishnan – Director.
- 7) Mr. Pathik Rajmalbhai Kothari – Director.

Section Violated:

S. 149 of the Companies Act, 2013.

Punishment Provided Under:

S. 172 of the Companies Act, 2013.

1. This Compounding Application was filed before the Registrar of Companies, Mumbai (hereinafter as **RoC**) on 7th February, 2017 and the same has been forwarded to the NCLT, Mumbai on 23rd August, 2017 along with its Report.
2. The Learned RoC has informed that, this application was filed because the Company has violated the provisions of S. 149 of the Companies Act, 2013 (hereinafter as **Act**) r.w. Rule 3 of the Companies (Appointment and Qualification of Director) Rules, 2014 (hereinafter as **Rules**) where the Company fails to appoint one Woman Director in pursuance of these provisions. It has also been reported by RoC that a Prosecution has been filed vide C.C. No. 4005409/SS/2015. Further the 'filing Position' reported is that the Company had filed the Annual Return and Balance Sheet to the financial year audited on 31st March, 2017.
3. The Learned RoC also reported that, the Company has made the said default good by appointing the Woman Director on 21st September, 2016 in compliance of the Provisions of the Act and Rules.

Facts of the Case:

4. As per the Applicants/Defaulters herein own submissions made in the Compounding Application filed by them for violation of Section 149 of the Act, the Applicants/Defaulters herein, had committed default as follows:-

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iii) The Applicant Company initiated efforts to bring on board a Woman Director as mandated by Section 149 (1) of the Companies Act, 2013 read with Rule 3 of the Companies (Appointment & Qualification of Director) Rules, 2014 back inn 2014-15. However despite diligent search, the Applicant Company could not find an appropriate candidate to be appointed as the Woman Director.

..... vi) The Applicant Company had received a Show Cause Notice bearing Ref No. ROC/DN/149/2015/012188/298-304 dated 8th July, 2015 from the Deputy Registrar of Companies having identical contents.

vii) The Applicant Company vide its letter dated 17th July, 2015 replied to the aforesaid Show Cause Notice ROC/DN/149/2015/012188/298-304 informing the Registrar of Companies regarding the steps initiated to find a suitable candidate to be appointed as a Woman Director.

viii) *The Registrar of Companies filed a Complaint bearing No. 5409 of 2015 against the Applicant Company and its officers on the 29th of October, 2015 for alleged contravention of Section 149 (1) of the Companies Act, 2013 read with Rule 3 of the Companies (Appointment & Qualification of Directors) Rules, 2014 punishable under Section 172 of the Companies Act 2013. The Summons dated 4th August 2016 to appear was received in the name of Mr. Vaidyanathan Subramanian on the 9th August 2016.*

Submissions:

5. The Learned Advocate for the Applicants/Defaulters herein, submitted that, the Contravention of the provisions of S. 149 of the Act r.w. Rule 3 of the Rules, was bona fide and without any mala fide intention. Due to the compelling circumstances the Company and its Officers could not be able to comply with the said provisions for the Financial year 2014-15 and Financial year 2015-16.
6. It is further submitted that, the Applicants/Defaulters herein, made the default good by appointing the Ms. Kameswari Vissa as the Additional Director of the Company, through its Board Resolution dated 21st September, 2016. The same fact has been conveyed to the RoC by the Company vide its letter dated 26th September, 2016. Copy of the said letter is annexed herewith this Application as **Annexure A – 6**.
7. It is further submitted that, the Company has filed eForm No. DIR – 12 with the RoC on 4th October, 2016 bringing on record the appointment of the said Additional Director of the Company. The copy of the said Form is hereby annexed with this Application as **Annexure A – 7**. The RoC in its Report also recognises that, the company has made the default good; however for the said period imposed a consolidated fine of Rs. 3,50,000/- (accused 7 x 50,000); which is very excessive and unreasonable pleaded by the learned Advocate.

Findings:

8. 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. 149 of the Act r.w. Rule 3 of the Rules. And for the said violation the punishment is provided u/Section 172 of the Act, which is relevant in this Case, is as follows:-

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"If a Company contravenes any of the provisions of this chapter for which no specific punishment is provided therein. The Company and every officers who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees."

9. 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 Learned Advocate for the Applicants/Defaulters herein at the time of hearing and noted that Application made by the Applicants/Defaulters herein for compounding of offence committed under S. 149 of the Act r.w. Rule 3 of the Rules, merits consideration.
10. On examination of the circumstances as discussed above, a Compounding Fee of ₹ 5000/- by each Applicant/Defaulter herein (i.e. ₹ 35,000/- 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.
11. This Compounding Application No. 378/441/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.
12. Ordered accordingly.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 22.09.2017