

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

CP NO. 124/441/NCLT/MB/2017

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Section 441 of the Companies Act, 2013 for violation of Section 139 (6) of the Companies Act, 2013.

In the matter of **M/s. Zespri International (India) Private Limited**, having its Registered Office at 13th Floor, Building No. 2, IT Park, Goregaon, East Nirlon Compound, Mumbai - 400063, Maharashtra, India.

PRESENT FOR APPLICANT:

- 1) Mr. Siddharth Samantaray – Authorised Representative for the Applicant.
- 2) Ms. Nidhi Sharma – Authorised Representative for the Applicant.

ORDER

Date of Order : 10.07.2017

Applicants in Default:

- 1) M/s. Zespri International (India) Pvt. Ltd.
- 2) Lain Clifford Jager – Director
- 3) Ritesh Harish Bhimani – Director

Section Violated:

S. 139 (6) and punishable under S. 147 (1) of the Companies Act, 2013.

1. This Compounding Application was filed before the Registrar of Companies Maharashtra, Mumbai on 30th December, 2016 which was forwarded to NCLT Mumbai Bench by Registrar of Companies Maharashtra, Mumbai along with RoC Report on 17th April, 2017. The Ld. Registrar of Companies intimated that the Applicant Company has filed the aforementioned Compounding Application suo moto as the Company had not appointed the First Auditor of the Company as per prescribed by the provisions of the Section 139 (6) of the Companies Act, 2013.

2. Therefore, it is evident that the Applicant Company committed the default under the provisions of Section 139 (6) of the Companies Act, 2013 for not

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appointing the First Auditor of the Company within 30 days from the date of its Registration.

Facts of the Case:

3. As per the Applicant's own submissions made in the Compounding Application filed by them for violation of Section 139 (6) of the Companies Act, 2013, the Applicant has committed default as follows:-

"4.2. The Petitioner 1 was incorporated on 23rd March, 2015 and the Petitioner 2 and Petitioner 3 was required to appoint the first Auditor on or before 21st April, 2015 and in case of failure, the shareholders of the Company were required to appoint the First Auditor on or before 19th July, 2015.

4.3 The Petitioner 2 and Petitioner 3 failed to hold a meeting to intimate the shareholders about the non-appointment of first auditors after the expiry of 30 days from the due date and convened the First Board meeting on 6th September, 2016 to intimate the shareholders of the Company to appoint the first Auditors. The first Auditor was appointed by the shareholders of the Company at the EGM held on 21st September, 2016.

4.4 Considering the aforesaid, the Petitioners failed to appoint the first Auditors within the due date and hence, failed to comply with the provisions of S. 139 (6) of the Companies Act, 2013."

4. Accordingly, the Applicant has violated the provision under 139 (6) of the Companies Act, 2013. Section 147 (1) of Companies Act, 2013 for violation of Section 139 (6) of Companies Act, 2013, which is relevant in this Case, is as follows:-

Section 147 (1) of the Companies Act, 2013 : *"If any of the provisions of Sec 139 to Sec 146 is contravened then the company shall be punishable with a fine which shall not be less than Rs. 25,000.00 but which may extend to Rs. 5,00,000.00 as provided in section 147 of Companies Act, 2013. Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 1 year or fine which shall not be less than Rs. 10,000.00 but which may extend to Rs. 1,00,000.00 or with both."*

5. From the side of the Applicant, Ld. representatives Mr. Siddharth Samantaray and Ms. Nidhi Sharma appeared and explained that, there was an inadvertent contravention by the petitioners in complying with the provisions of S. 139 (6) of the

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Companies Act, 2013 and the petitioners have now taken necessary steps to ensure that the Company does not further default with respect to above mentioned provisions of the Act. The Company has made the default good by holding the Extra-Ordinary General Meeting on 21st September, 2016 for appointment of the Auditor of the Company. Ld. Representative of the Applicant also stated that the aforesaid violation was unintentional and without any wilful or *mala fide intention*.

6. This Bench has gone through the Application of the Applicant and the Report submitted by the Registrar of Companies, Maharashtra, Mumbai and also the submissions made by the Ld. representative for the Applicant at the time of hearing and noted that Application made by the Applicant for compounding of offence committed under Section 139 (6) of the Companies Act, 2013 merits consideration.

7. On examination of the circumstances as discussed above a fine of ₹ 25, 000/- (₹ Twenty Five Thousand only) on the Company and of ₹ 10,000/- (₹ Ten Thousand only) by each director who is in default, 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".

8. This Compounding Application No. 124/441/NCLT/MB/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 of this order.

9. Ordered accordingly.

Dated: 10th July, 2017

Sd/-

M. K. SHRAWAT
Member (Judicial)