

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
CP NO. 125/441/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 173 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. 173, punishable under S. 450 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 did not held first Board meeting of the Company as per the provisions of the Act.

2. Therefore, it is evident that the Applicant Company committed the default under the provisions of Section 173 of the Companies Act, 2013 for not holding the First Board Meeting of the Company within 30 days from the date of its Registration.

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Facts of the Case:

3. As per the Applicant's own submissions made in the Compounding Application filed by them for violation of Section 173 of the Companies Act, 2013, the Applicant has committed default as follows:-

"4.2. The Petitioner 1 was incorporated on 23rd March, 2015 and was required to hold the first Board Meeting on or before 21st April, 2015 and thereafter to hold on meeting in every calendar quarter.

4.3 The first Board meeting of the Petitioner was held on 6th September, 2016 and thereby leading to a delay of 504 days in holding the first Board Meeting.

4.4 Further, the Petitioners failed to hold the Board meeting in quarter II, Quarter III and Quarter IV for the financial year 2015-2016 and Quarter I for the FY 2016-2017.

4.5 Considering the aforesaid, the petitioners failed to comply with the provisions of S. 173 of the Companies Act, 2013.

4.6 The Petitioners submit that the Directors of the Company were not well versed with the provisions of the Indian Companies Act, 2013."

4. Accordingly, the Applicant has violated the provision under 173 of the Companies Act, 2013. Section 450 of Companies Act, 2013 for violation of Section 173 of Companies Act, 2013, which is relevant in this Case, is as follows:-

Section 450 of the Companies Act, 2013 : *"If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made there under, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues."*

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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. 173 of the 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 First Board Meeting on 6th September, 2016. Ld. Representative of the Applicant also stated that the aforestated violation was unintentional and without any wilful or *malafide 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 173 of the Companies Act, 2013 merits consideration.

7. On examination of the circumstances as discussed above a fine of ₹ 5, 000/- (₹ Five Thousand only) on the Company and of ₹ 2,500/- (₹ Two Thousand Five Hundred 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. 125/441/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)