

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP No.: 49/441/NCLT/MB/MAH/2017

Under section 441 of the Companies Act, 2013

In the matter of

Inter Equipment (India) Pvt. Ltd., 17,  
1<sup>st</sup>Floor, SadguruSadan Polyclinic, 15,  
Babulnath Road, Mumbai – 400007.  
.... 1<sup>st</sup>Applicant

Dr.NanduChhabria

.... 2<sup>nd</sup> Applicant

Mrs. Bharti Chhabria

.... 3<sup>rd</sup> Applicant

Judgement delivered on: 17.07.2017

Coram:

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

For the Petitioner:

Mr. KarthikSomasundram, Advocate

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

**ORDER**

1. This Compounding Application was filed before the Registrar of Companies Maharashtra, Mumbai on 23<sup>rd</sup> February, 2017 and the same has been forwarded along with the RoC Report to NCLT, Mumbai Bench on 27<sup>th</sup> February, 2017. The Ld. Registrar of Companies intimated that the Applicant Company has filed the aforementioned Compounding Application suo moto for not filing the financial statements within stipulated time as prescribed u/S. 137 (1) by the Companies Act, 2013 from the year 2009 to 2014.
2. Therefore, it is evident that the Applicant Company committed the default under the provisions of Section 210 of the Companies Act, 1956r.w S. 137 of the Companies Act, 2013 and the same is punishable u/S. 137 (3) of the Companies Act, 2013. The Ld. RoC has also reported that the Applicant Company has made the default good by filing the

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financial statements for the said years. However, they claimed that they have filed the Compounding Application so as to put the matter to rest.

**Facts of the Case:**

3. As per the Applicant's own submissions made in the Compounding Application filed by them for violation of Section 210 of the Companies Act, 1956 r.w. Section 137 of the Companies Act, 2013, the Applicant has committed default as follows:-

*"1. The Company has defaulted in convening and conducting AGM for the period from the year 2008-2009 to 2014-2015 and therefore the Financial Statements including the Balance Sheet were not prepared and placed for the Consideration of the Members of the Company. And as the AGM was not convened the Balance Sheet for those years could not be filed within the requisite time period as mentioned in Section 210 of the Companies Act, 1956 r.w. Section 137 of the Companies Act, 2013.*

*2. The Company has defaulted in filing the Financial Statement with Registrar for the period from the year 2008-2009 till 2014-2015, the Company was in violation of the provisions of Section 220 of the Companies Act, 1956 till 31<sup>st</sup> March, 2014 and thereafter has been in violation of Section 137 of the Companies Act, 2013 on account of not filing copy of Financial Statements after the Annual General meeting of the Company.*

*3. At the AGM held on 14<sup>th</sup> June, 2016 the annual accounts for the period 2008-2009 to 2012-2013 and Financial Statements for the period 2013-2014 to 2014-2015 were adopted by the Shareholders of the Company.*

*4. The Default is caused due to the inevitable circumstances, inadvertently and without prejudice to the interest of the members of the Company.*

*5. The AGM for the years 2008-2009 to 2014-2015 could not be held till June 14, 2016 due to disputes between the Applicant Nos. 2 & 3 on the one side and the younger brother of the Applicant no. 2 and his family on the other."*

4. Accordingly, the Applicant has violated the provision under Section 210 of the Companies Act, 1956 r.w. Section 137 of the Companies Act, 2013. The offence is punishable under Section 210 (5) r.w. Section 137 (3) of the Companies Act, 2013. These relevant sections are as follows:

**"Section 210 (5) :** *If any person, being a director of a company, fails to take all reasonable steps to comply with*

*the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both: Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty: Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully."*

**"Section 137 (3) :** *If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified in section 403, the company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both."*

5. From the side of the Applicants, Ld. Advocate, Mr. KarthikSomasundram had appeared and explained that, due to compelling circumstances the Applicant had violated the provisions of S. 210 of the Companies Act, 1956r.w. S. 137 of the Companies Act, 2013.Although, the Applicant was willing to comply with those provisions *bona fidely*. Ld. Representative of the Applicant also stated that the aforestated violation was unintentional and without any wilful or *mala fide intention*. It was further submitted that, there was dispute between the members of the Company and the matter was pending in the High Court of Bombay and therefore there was unavoidable contravention of the provisions of the Acts. Further the Ld. Representative of the Applicants also submitted that, the default has made good by holding the AGM for the period 2008-2015 on 14<sup>th</sup> June, 2016 and subsequently the Financial Statements were also filed with the RoC. The copy is attached as **Exhibit D** to the Petition.
6. 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. Advocate for the Applicant at the time of

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hearing and noted that Application made by the Applicant for compounding of offence committed under Section 210 of the Companies Act, 1956r.w. Section 137 of the Companies Act, 2013, merits consideration. Due date of filing the Financial Statements and the actual date of filing are reproduced below from the report of the RoC as under:

Financial Year	Due Date of Filing Financial Statements	Actual Date of Filing Financial Statements
2008-2009	30/10/2009	06/10/2016
2009-2010	30/10/2010	06/10/2016
2010-2011	30/10/2011	10/10/2016
2011-2012	30/10/2012	10/10/2016
2012-2013	30/10/2013	11/10/2016
2013-2014	30/10/2014	31/12/2014
2014-2015	30/10/2015	20/06/2016

7. On examination of the circumstances as discussed above, a fine of ₹5000/- (₹Five Thousand only) by the applicant company and a fine of ₹ 2500/- (₹ Two Thousand Five Hundred Only) by the each director 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 bearing CP No. 49/441/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 of this order.

9. Ordered accordingly.

**Dated: 17<sup>th</sup> July, 2017**

Sd/-

**M.K. Shrawat**  
**Member (Judicial)**