

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No.: 118/441/NCLT/MB/MAH/2017

Under section 441 of the Companies Act, 2013

In the matter of

Inter Equipment (India) Pvt. Ltd., 17,
1stFloor, SadguruSadan Polyclinic, 15,
Babulnath Road, Mumbai – 400007.

.... 1st Applicant

Dr. NanduChhabria

.... 2nd Applicant

Mrs. Bharti Chhabria

.... 3rd 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 NCLT, Mumbai Bench on 25th January, 2017. And the Ld. Registrar of Companies have forwarded its report on 27th February, 2017 to the NCLT, Mumbai Bench. The Ld. Registrar of Companies intimated that the Applicant Company has filed the aforementioned Compounding Application suo moto for not placing the Financial Statements for the years 2008-2009 to 2014-2015 in the AGM of the Company as prescribed u/S. 129 of the Companies Act, 2013.

2. Therefore, it is evident that the Applicant Company committed the default under the provisions of Section 210 of the Companies Act, 1956 r.w S. 129 (2) of the Companies Act, 2013 and the same is punishable under Section 129 (7) of the Act. The Ld. RoC has also reported that the Applicant Company has made the default good by filing all its pending Financial Statements during the period of 31st December, 2014 to 11th

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October, 2016. 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 129 (2) of the Companies Act, 2013, the Applicant has committed default as follows:-

"...1. That in the present instance, the Company has defaulted in timely filing the Financial Statements from the year 2009 to 2015.

2. The AGM for the years 2008-2015 could not be held till June 14, 2016 due to disputes between the applicant nos. 2 and 3 on the one side and the younger brother of the Applicant No. 2 and his family members on the other.

3. That since the Company has defaulted in timely convening and conducting the AGM for the period from the 2008 till 2015. And subsequently the Company has defaulted in timely placing the Financial Statements in the AGM. Therefore, the Company was in violation of the Provisions of S. 210 of the Companies Act, 1956 till March 31, 2014 and thereafter has been in violation of S. 129 (2) of the Companies Act, 2013.

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

4. Accordingly, the Applicant has violated the provision under Section 210 of the Companies Act, 1956 r.w. Section 129 (2) of the Companies Act, 2013. The offence is punishable under Section 210 (5) of the Companies Act, 1956 r.w. Section 129 (7) of the Companies Act, 2013. These relevant sections are as follows:

"Section 210 (5) of the Companies Act, 1956 :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 ten thousand rupees, or with both."

"Section 129 (7) of the Companies Act, 2013 :If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of

the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both."

5. From the side of the Applicants, Ld. Advocate, Mr. Karthik Somasundram had appeared and explained that, inadvertently the Applicant had violated the provisions of S. 210 of the Companies Act, 1956 r.w. S. 129 (7) of the Companies Act, 2013. Although, the Applicant was willing to comply with those provisions *bona fide*. Ld. Representative of the Applicant also stated that the aforesaid 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 inadvertent contravention of the provisions of the Acts. Further the Ld. Representative of the Applicants also submitted that, the default has made good by placing the Financial Statements for the years 2008-2015 in the AGM which was held on 14th June, 2016 and the copy of those Financial Statements is annexed as **Exhibit D** to the Application.
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 hearing and noted that Application made by the Applicant for compounding of offence committed under Section 210 of the Companies Act, 1956 r.w. Section 129 (7) 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

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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. 118/441/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: 17th July, 2017

Sd/-

M. K. Shrawat
Member (Judicial)