

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP No.: 117/441/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, Sadguru Sadan Polyclinic, 15,  
Babu Inath Road, Mumbai – 400007.

.... 1<sup>st</sup> Applicant

Dr. Nandu Chhabria

.... 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. Karthik Somasundram, Advocate

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

**ORDER**

1. This Compounding Application was filed before the NCLT, Mumbai Bench on 25<sup>th</sup> January, 2017. And the Ld. Registrar of Companies have forwarded its report on 27<sup>th</sup> 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 filing the Annual Returns for the years 2008-2009 to 2014-2015 as prescribed u/Section 92 of the Companies Act, 2013.
2. Therefore, it is evident that the Applicant Company committed the default under the provisions of Section 159 of the Companies Act, 1956 r.w S. 92 (4) of the Companies Act, 2013 and the same is Punishable under Section 92 (5) of the Companies Act, 2013. The Ld. RoC has also reported that the Applicant Company has made the default good by filing all its pending Annual Returns during the period of 31<sup>st</sup> December, 2014 to 11<sup>th</sup> October,

*Mes*

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 159 of the Companies Act, 1956 r.w. Section 92 (4) 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 Annual return 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 filing the Annual Returns. Therefore, the Company was in violation of the Provisions of S. 159 of the Companies Act, 1956 till March 31, 2014 and thereafter has been in violation of S. 92 (4) 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 159 of the Companies Act, 1956 r.w. Section 92 (4) of the Companies Act, 2013. The offence is punishable under Section 162 of the Companies Act, 1956 r.w. Section 92 (5) of the Companies Act, 2013. These relevant sections are as follows:

**"Section 162 of the Companies Act, 1956 :** *If a company fails to comply with any of the provisions contained in section 159, 160 or 161, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues."*

**"Section 92 (5) of the Companies Act, 2013 :** *If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fees, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with*

*imprisonment for a term which may extend to six months 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, due to compelling circumstances the Applicant had violated the provisions of S. 159 of the Companies Act, 1956 r.w. S. 92 (5) 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 filing the Annual Returns for the years 2008-2015 as follows:

Financial Year	Due Date of Filing Annual Returns	Actual Date of Filing Annual Returns
2008-2009	30/11/2009	05/10/2016
2009-2010	30/11/2010	06/10/2016
2010-2011	30/11/2011	10/10/2016
2011-2012	30/11/2012	10/10/2016
2012-2013	30/11/2013	11/10/2016
2013-2014	30/11/2014	31/12/2014
2014-2015	30/11/2015	20/06/2016

The copy of these Annual Returns 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 159 of the Companies Act, 1956 r.w. Section 92 (5) of the Companies Act, 2013, merits consideration.
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. 117/441/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)**