

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
COMPOUNDING APPLICATION NO. 59/621A/441/NCLT/MB/2016

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Section 441 of the Companies Act, 2013 for violation of Section 173 (1) of the Companies Act, 2013.

In the matter of **M/s. Dhandho India Private Limited**, having its Registered Office at Office No. 302-303, Power Point, Land No. 6, Koregaon Park, Pune – 411001, Maharashtra, India.

PRESENT FOR APPLICANT:

Mr. Pramodkumar Ladda – Practicing Company Secretary for the Applicant.

ORDER

Date of Order : 19.06.2017

Applicants in Default:

- (1) M/s. Dhandho India Pvt. Ltd. - Company
- (2) Mr. Vinay Parikh – Director
- (3) Mr. Mohnih Pabrai – Director

Section Violated:

Section 173 (1) of the Companies Act, 2013.

1. This Compounding Application was filed before the Registrar of Companies, Pune, on 7th October, 2016 and the RoC, Pune, has forwarded the same to NCLT, Mumbai Bench on 25th November, 2016 alongwith the RoC Report. The Applicants stated in their application that they have committed a default by not holding the first Board meeting of the Company as per the provisions of Section 173 (1) of the Companies Act, 2013. Therefore, committed the default under the provisions of S. 173 (1) of the Companies Act, 2013, and hence, punishable for the said default under the Section 450 as under Section 173 there is no specific provisions to levy fine

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has been provided. The Applicants have also submitted that on 17th September, 2015 they have conducted the first Board meeting and made the default good. Otherwise the law prescribed for the First Board Meeting to be held on 16th June, 2015. According to the Ld. RoC, although the Applicants had made good of the default, due to the delay in doing so, the default is punishable for the period of delay i.e. 93 days in this case.

2. Therefore, it is evident that the Applicant Company committed the default under the provisions of Section 173 (1) of the Companies Act, 2013.

The Ld. RoC has also reported that the Applicant Company has claimed that they had complied with rest of the provisions of Section 173 (1) of the Companies Act, 2013. 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 173 (1) of the Companies Act, 2013, the Applicant has committed default as follows:-

"2. That the first Board meeting of the Company was required to be held on or before 16th June, 2015 as the Company was incorporated on 18th May, 2015. But the Company was unable to conduct the same because of unavailability of both directors at one place and comply quorum provisions under the Act.

3. That eventually the first Board Meeting was conducted on 17th September, 2015.

4. Accordingly, the Applicant has violated the provision under Section 173 (1) of the Companies Act, 1956. The Registrar of Companies, Maharashtra, Pune, has forwarded the Compounding Application vide his letter No. ROCP/STA/621A/2016/6111 dated 23rd November, 2016 to National Company Law Tribunal, Mumbai Bench and the same has been treated as Compounding Application No. 59/441/NCLT/MB/2016. Section

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450 of Companies Act, 2013 for violation of Section 173 (1) of Companies Act, 2013, which is relevant in this Case, is as follows:-

"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."

5. From the side of the Applicant, Ld. Practicing Company Secretary Mr. Pramodkumar Ladda had appeared and explained that inadvertently the Applicants could not fulfil the conditions laid down under Section 173 (1) of the Companies Act, 2013 although the Applicants were willing to comply with the provisions of the Companies Act, 2013 *bona fide*. 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 Applicants and the Report submitted by the Registrar of Companies, Maharashtra, Pune and also the submissions made by the Ld. Advocates for the Applicant at the time of hearing and noted that Application made by the Applicant for compounding of offence committed under Section 173 (1) of the Companies Act, 2013, merits consideration.

7. Because of the above discussed factual position, the compounding of this default under the category of default is defined under Section 450 of the Companies Act, 2013, already reproduced supra, which says that, 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,

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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 ₹ 10,000/-, and where the contravention is continuing one, with a further fine which may extend to ₹ 1000/- for every day after the first during which the contravention continues. On examination of the circumstances as discussed above a fine of ₹ 2500/- (₹ Two Thousand Five Hundred only) has been imposed on each applicant who is in default. The imposed fine totalling ₹ 7500/- (₹ Seven Thousand Five Hundred) has been remitted by the applicants through three Demand Drafts vide nos. 15205, 15206, 15207 all dated 12th January, 2017 of ₹ 2500/- each in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai".

8. Since the fine stood paid, as supra, this Compounding Application No. 59/441/NCLT/MB/2016 is, therefore, now compounded. Ld. RoC shall take the consequential steps to incorporate the findings of this order. Application is disposed of. Consigned to records.

Dated: 19th June, 2017

Sd/-
M.K. SHRAWAT
Member (Judicial)