

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
COMPOUNDING APPLICATION NO. 213/621A/441/NCLT/MB/2015

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Section 621A of the Companies Act, 1956 corresponding to Section 441 of the Companies Act, 2013 for violation of Section 166(1) of the Companies Act, 1956 corresponding to Section 96(1) of the Companies Act, 2013.

In the matter of **M/s. Narangs International Hotels Private Limited**, having its Registered Office at Ambassador Hotel, Churchgate, Mumbai - 400020, Maharashtra, India.

PRESENT FOR APPLICANT:

Ms. Kala Agarwal – Practicing Company Secretary for the Applicant.

Date of Hearing: 16th March, 2017

Date of Order : 19.06.2017

Applicants in Default:

- (1) M/s. Narangs International Hotels Pvt. Ltd. - Company
- (2) Mr. Rajesh Rama Narang – Whole Time Director
- (3)** Mr. Ramesh Rama Narang – Joint Managing Director

Section Violated:

Section 150 of the Companies Act, 1956.

1. This Compounding Application was filed before the Registrar of Companies, Mumbai, on 4th February, 2014 and the RoC, Mumbai, has forwarded the same to Company Law Board, Mumbai Bench on 8th July, 2015 RoC Report. And subsequently after establishment of NCLT, Mumbai Bench, the same has been transferred to the NCLT, Mumbai Bench, through CLB, Mumbai Bench. The Applicants stated in their application that they have committed a default by not keeping the Register of Members as per the

mks

provisions of Section 150 of the Companies Act, 1956. Therefore, committed the default under the provisions of S. 150 of the Companies Act, 1956, and hence, punishable for the said default under the said section. They have also submitted that on 10th Sep. 2009 they had appended the Order passed by the Hon'ble Supreme Court of India, dated 31st Aug. 2009 to the Register of Members maintained as per S. 150 of the Companies Act, 1956. According to the Ld. RoC, although the Applicants had made good of the default by appending on 10th September, 2009, the said order, due to the delay in doing so, the default is punishable for the period of delay i.e. 11days in this case.

2. Therefore, it is evident that the Applicant Company committed the default under the provisions of Section 150 of the Companies Act, 1956.

The Ld. RoC has also reported that the Applicant Company has claimed that they had complied with the provisions of Section 150 of the Companies Act, 1956. 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 150 of the Companies Act, 1956, the Applicant has committed default as follows:-

"2. That the Company's Register of Members was not updated only to the extent that a copy of order of Hon'ble Supreme Court of India, dated 31st August, 2009 was not recorded in the Register of Members.

3. That due to the reason of continuous dispute amongst the Directors and Shareholders of the Company and due to the proceedings before the Hon'ble Supreme Court of India, the Company could not comply with the provisions of Section 150 of the Companies Act, 1956 to the extent that the order passed by the Apex Court could not be recorded in the Register of Members.

MS

4. That the company has recorded the Order dated 31st August, 2009 passed by the Hon'ble Supreme Court in the meeting of the Board of Directors of the Company held on 10th September, 2009 and the order is also recorded, appended, inserted in the Financial Statements. Annual Returns filed with the RoC, Mumbai and in the Statutory Registers of the Company. The Order dated 31st August, 2009 of the Apex Court is also appended to the Register of Members maintained as per Section 150 of the Companies Act, 1956.

4. Accordingly, the Applicant has violated the provision under Section 150 of the Companies Act, 1956. The Registrar of Companies, Maharashtra, Mumbai forwarded the Compounding Application vide his letter No. ROCP/STA/621A/165 dated 6th July, 2015 to Company Law Board, Western Region, Mumbai Bench and the same has been treated as Compounding Application No. 213/621A/441/NCLT/MB/2015. Section 150 (2) of Companies Act, 1956 for violation of Section 150 (1) of Companies Act, 1956, which is relevant in this Case, is as follows:-

"If default is made in complying with sub- section (1), 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."

5. From the side of the Applicant, Ld. Practicing Company Secretary Ms. Kala Agarwal had appeared and explained that inadvertently the Applicant Company could not fulfil the conditions laid down under Section 150 (1) of the Companies Act, 1956 although the Applicants were willing to comply with the provisions of the Companies Act, 1956 *bona fidely*. Ld. Representative of the Applicant also stated that the aforestated violation was unintentional and without any wilful or *mala fide intention*. Attention was drawn on the evidences to demonstrate that the due compliance was made in the prescribed Register by incorporating the directions of the Hon'ble Supreme Court. She has also informed that in the past on several occasions, the Learned CLB had imposed the fine in respect of the connected defaults, details annexed, to the tune of ₹.16,49,000/-. Hence pleaded for a lenient view.

6. This Bench has gone through the Application of the Applicant and the Report submitted by the Registrar of Companies, Maharashtra, Mumbai and

me

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 150 (1) of the Companies Act, 1956, merits consideration.

7. Because of the above discussed factual position, i.e. the delay was not deliberate but occurred due to long litigation, the compounding of this default under the category of default as defined under Section 150 (2) of the Companies Act, 1956 already reproduced supra can be compounded which says that, 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. On examination of the circumstances as discussed above a fine of ₹10,000/- (Rupees Ten Thousand only) on the Company and ₹5,000/- each on the Directors, 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. 213/621-A/CLB/MB/2016 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 take the consequential action. Ordered accordingly.

Dated: 19th June 2017

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