

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

COMPOUNDING APPLICATION NO. 52/621A/441/NCLT/MB/2016

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 185(2) of the Companies Act, 2013.

In the matter of **M/s. Brainbees Solutions Private Limited**, having its Registered Office at Rajashree Business Park, Plot No.114, Survey No.338, Tadiwala Road, Near Sohrab Hall, Pune 411 001, Maharashtra, India.

PRESENT FOR APPLICANT:

Mr. Navin Maheshwari, Practising Company Secretary for the Applicant.

Date of Hearing: 20th January, 2017.

ORDER

Reserved on: 20.01.2017

Pronounced on: 14.02.2017

Applicants in Default:

(1) M/s. Brainbees Solutions Private Limited, (Company), (2) Mr. Amitava Saha (Director).

Section Violated:

Section 185(2) of the Companies Act, 2013 r/w Section 441 of the Companies Act, 2013.

1. This Compounding Application has been forwarded to NCLT Mumbai Bench by Registrar of Companies, Maharashtra, Pune, through a forwarding letter bearing No. ROCP/STA/621-A/2016/5890

along with RoC report on 25th October, 2016. The Ld. Registrar of Companies intimated that the Applicant (Lending Company) has committed a default by not intimating the Registrar of Companies, Pune, in respect of advancing loans / deposits amounting to ₹4,50,00,000/- granted to M/s. BusyBees Logistics Solutions Private Limited i.e. borrower. Moreover, as per RoC, the Directors in the lending company and borrower company are related. Therefore, the aforesaid violation is punishable u/s 185(2) of the Companies Act, 2013 r/w Section 441 of the Companies Act, 2013. The Ld. RoC has also reported that later on the borrower Company had repaid the amount to the lending Company (Applicant Company) with interest amounting to ₹2,01,644/-; however, default is punishable as per the RoC Report.

Nature of Violation:

2. As per the Applicant's own submissions made in the Compounding Application filed suo motu by them for violation of Section 185(2) of the Companies Act, 2013 r/w Section 441 of the Companies Act, 2013, the Applicant has committed default as follows:-

"1. That the above named Company, the Applicant No. 1 (hereinafter called as lending Company) was registered on 17/05/2010 as Brainbees Solutions Private Limited under the provisions of the Companies Act, 1956, a Company limited by shares and is having its registered office at B/402, 1 Modi Baug, Cts 2254 To 2260, G.K. Road, Shivajinagar, Pune-411005.

5. BRAINBEES SOLUTIONS PRIVATE LIMITED on suo-motto basis for contravention under Section 185(2) related to Loan to Company in which the Directors are interested read with Section 441 of the Companies Act, 2013 or any other applicable law still in force has granted loan to the BusyBees Logistics Solutions Private Limited.

The Directors in lending company and borrower company are related. However the lending company BrainBee Solutions Private Limited has granted the loan to BusyBees Logistics Solutions Private Limited (borrowing company) a sum total of Rs.45,000,000/-

However the Company has repaid the amount to the lending Company along with Interest amount of Rupees 2,01,644/- (Two

Lakhs One Thousand Six Hundred and Forty Four Only). Details are provided below.

S. No.	Amount	Date	Repayment Date
1	2,00,00,000/- (Rupees Two Crores Only)	30 th September, 2015	28 th October, 2015
2	2,00,00,000/- (Rupees Two Crores Only)	13 th October, 2015	28 th October, 2015
3	50,00,000/- (Rupees Fifty lakhs Only)	16 th October, 2015	28 th October, 2015

3. Accordingly, the Applicant has violated the provision under Section 185(2) of the Companies Act, 2013 r/w Section 441 of the Companies Act, 2013. The Registrar of Companies, Pune forwarded the Compounding Application vide his letter No. ROCP/STA/621A/2016/5890 dated 25th October, 2016 and the same has been treated as Company Application No. 52/621A/441/NCLT/ MB/2016. Prima facie, according to him, this is a fit case to be forwarded to the Tribunal as prescribed u/s 441(3)(a) of the Act.

4. From the side of the Applicant, Ld. Practising Company Secretary Mr. Navin Maheshwari appeared and explained that due to certain unavoidable circumstances and inadvertence, the Applicant (Lending Company) has advanced loan to the Borrower Company i.e. M/s. BusyBees Logistics Solutions Private Limited amounting to ₹4,50,00,000/-; although the Applicant was willing to comply with the provisions of the Companies Act, 1956 *bona fide*. Ld. Representative of the Applicant also stated that the aforesaid violation was unintentional and without any wilful or *mala fide* intention. However, he has pleaded that the Applicant has committed the default inadvertently, so voluntarily filed the Compounding Application in respect of the said offence without waiting for orders from the

Registrar of Companies, Pune and, therefore, humbly pleaded to compound the offences by a word of caution or token fine. He has intimated that as soon as it was noticed, the said loan was received back, that too with interest of ₹2,01,644/-.

5. This Bench has gone through the Application of the Applicant and the Report submitted by the Registrar of Companies, Maharashtra, Pune and also the submissions made by the Practising Company Secretary for Applicant at the time of hearing and noted that Application made by the Applicant for compounding of offence committed under Section 185(2) of the Companies Act, 2013 r/w Section 441 of the Companies Act, 2013 merits consideration.

6. Under the provisions of the Act, as applicable when this Compounding Application was filed in the year 2016, the relevant provision was Section 185(2) of the Companies Act, 2013, which is reproduced below:

"Section 185(2) of the Companies Act, 2013.

If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both."

7. Admitted factual position is that the Borrowing Company viz. M/s. Busybees Logistics Solutions Private Limited had repaid the loan amount totalling ₹4,50,00,000/- with interest amounting to ₹2,01,644/- on 28th October, 2015. The facts of the case have further revealed that the Applicant had filed G.A.R.7 dated 28th September, 2016 intimating the submission of Form GNL-1 after making a payment

of ₹500/-. Therefore, this is not a case of continuation of default as the default had ended when the amount was repaid.

8. Having regard to the facts and circumstances of the case, the offence committed under Section 185(2) of the Companies Act, 2013 r/w Section 441 of the Companies Act, 2013, as stated and explained in the above paragraphs and because of the above discussed factual position, the compounding of this default under the category of default is defined u/s 92(5) of the Companies Act, 2013, already reproduced supra, which says that every officer of the company who is in default shall be punishable with a fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both. In this case, one more admitted factual position is that instead of filing the declaration within stipulated time, the same was furnished on 28th September, 2016. Nevertheless, the default was made good on 28th September, 2016 as discussed above, hence it is not a case of continuance of default. The Act has also specified that while deciding the levy of fine the fact to be taken into consideration is that whether the declaration is filed before the expiry of the period specified in Section 403 of the Act after making a payment prescribed therein. Another admitted factual position is that this is not a case of continuance of default. The Act has also specified that while deciding the levy of fine / penalty, the compliance, if any, should also be taken into account. On examination of the circumstances as discussed above as well as keeping in mind, especially when the default was made good although belatedly, a fine of ₹5,000/- (Rupees five thousand only) shall be sufficient to be paid by each person as prescribed u/s 185(2) of the Companies Act, 2013 and the Company (the Applicant) as a deterrent for not repeating the impugned default in future. The decision is taken on the basis of few basic legal positions that the Tribunal is empowered u/s 441 to compound certain offences if punishable with fine only. In this particular case, the Section imposing

punishment has used the terminology 'or' and not 'with'; therefore, keeping this distinction in mind, decided to proceed with the matter. The second decision of imposing a fine to a minimal amount is on the basis of First Proviso to Section 441 of the Companies Act, 2013 which has placed a rider not to impose more than the prescribed fine. Since there is no such embargo in respect of the minimum amount, considering the financial position, it was deemed to fit to impose a small amount of fine as a deterrence to discourage and prevent the repetition of such default by this Company and its officers. Otherwise also, the imposition of fine is not to be considered as a source of revenue to the exchequer, but prescribed with the intention to discourage the repetition of default. Keeping this position of law in mind, the RoC has to submit in his Report whether similar offence was compounded during the last three years and if the answer is being in negative, it was held that the Applicant deserves the compounding of the offence. The imposed remittance shall be paid by way of Demand Draft drawn in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai".

9. This Compounding Application No. 52/441/NCLT/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.

Sd/-

Dated: 14th February, 2017

M.K. SHRAWAT
MEMBER (JUDICIAL)