

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
COMPOUNDING APPLICATION NO. 311/621A/441/NCLT/MB/2015

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Section 621A of the Companies Act, 1956 for violation of Section 210 of the Companies Act, 1956.

In the matter of **M/s. R and G Advani Impex Private Limited**, having its Registered Office at Advani Chambers, 9th Floor, A.K. Marg, Mumbai 400 036, Maharashtra, India.

PRESENT FOR APPLICANT:

Ms. Ashvini Kandalgaonkar, Advocate for the Applicant.

Date of Hearing: 24th January, 2017.

ORDER

Reserved on: 24.01.2017
Pronounced on: 27.01.2017

Applicants in Default:

M/s. R and G Advani Impex Private Limited, (Company), (1) Mr. Sajan Jawaharmal Advani, (Managing Director).

Section Violated:

Section 210 of the Companies Act, 1956 corresponding to Section 129 of the Companies Act, 2013 r/w Section 441 of the Companies Act, 2013

1. This Compounding Application has been filed before the Company Law Board, Western Region Bench, Mumbai, which was forwarded to NCLT Mumbai Bench by Registrar of Companies, Maharashtra, Mumbai, along with RoC Report. The Ld. Registrar of Companies intimated that the Applicant has committed a default of not holding Annual General Meeting within the prescribed time i.e. on or

before 30th September, 2014 for the year ended on 31st March, 2014. Therefore, committed the default under the provisions of Section 210 of the Companies Act, 1956; hence punishable for the said default u/s 210 of the Companies Act, 1956. The Ld. RoC has also reported that later on the Annual General Meeting was held on 29th December, 2014 for the accounting period ended 31st March, 2014. According to the Ld. RoC, although the Applicant had made good of the default by holding the AGM, due to the delay in holding the AGM and approval of accounts, the default is punishable for the period for which the delay had happened.

Nature of Violation:

2. As per the Applicant's own submissions made in the Compounding Application filed suo motu by them on 4th February, 2015 for violation of Section 210 of the Companies Act, 1956, the Applicant has committed default as follows:-

"3. As per the provisions of Section 210 of the Companies Act, 1956, Audited Balance Sheet and Profit and Loss Account for the year ended 31st March, 2014 was to be approved by the members in the Annual General Meeting on or before 30th September, 2014, however, the same was approved by the members at the Annual General Meeting held on 29th December, 2014. The default is due to the reasons mentioned in para 7 herein below.

7. That the default under Section 210 of the Companies Act, 1956 for the Financial year 2013-14 has been committed by the Petitioners. That the default mentioned in para 3 was committed due to following reasons:

1. For 2013-14, the default mentioned in para 3 was committed due to non-finalization of accounts due to transfer pricing account system of the company. The due date for filing accounts with Income Tax for IT Return is extended to 30.11.2014 for companies who come under the provisions of transfer pricing. Hence Annual General Meeting could not be held for the financial year ended 31st March, 2014 on or before 30.09.2014 and was held on 29.12.2014.

8. That the violation mentioned in para 3 was unintentional and without any wilful or malafide intention.

9. As and when the Balance Sheet for the year ended 31st March, 2014 were audited by Chartered Accountant and signed by the Directors i.e. on 29th November, 2014 the Annual General Meeting was held on 29th December, 2014 in which Balance Sheet was approved by the Members of the Company and same was filed with the Registrar of Companies, Mumbai on 10th January, 2015.

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10. That in terms of the provisions of Section 210 of the Companies Act, 1956, Company ought to have held the Annual General Meeting for the financial year ended 31st March 2014 on or before 30th September 2014 including any Accounts must be laid before such meeting or adjourned meeting. Annual General Meeting for the financial year ended 31st march 2014 was held on 29th December, 2014. This has resulted into violation of provisions of Section 210 of the Companies Act, 1956.

11. Maximum penalty that may be imposed according to the provisions of section 210(5) of the Companies Act, 1956 is, if any person, being Director of the 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 Rs.10,000/- or with both."

3. Accordingly, the applicant has violated the provision under Section 210 of the Companies Act, 1956. The Registrar of Companies, Maharashtra, Mumbai forwarded the Compounding Application vide his letter No. ROC/STA/621A/94 dated 14th September, 2015 to NCLT Mumbai Bench and the same has been treated as Company Application No. 311/621A/441/NCLT/MB/2015.

4. From the side of the Applicant, Ld. Advocate Ms. Ashvini Kandalgaonkar appeared and explained that due to certain unavoidable circumstances the Annual General Meeting could not be held although the Applicant was willing to comply with the provisions of the Companies Act, 1956 *bona fidely*. She has also explained that the default was committed due to non-finalization of accounts due to transfer pricing account system of the company. Ld. Representative of the Applicant also stated that the aforesated violation was unintentional and without any wilful or *mala fide intention*. However, she has pleaded that the Applicant has committed the default inadvertently and voluntarily filed the Petition for compounding of the

said offence without waiting for orders from the Registrar of Companies, Mumbai and, therefore, humbly pleaded to compound the offences by imposing a minimum fine.

5. This Bench has gone through the Application of the Applicant 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 merits consideration.

6. Under the old provisions of the Act, as applicable when this Compounding Application was filed in the year 2015, the relevant provision was Section 210 of the Companies Act, 1956, which is reproduced below:

"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."

7. Undisputed fact is that on 29th December, 2014 the AGM was held and the accounts were approved for the accounting period ended on 31st march, 2014. The Petitioner has also placed on record a copy of G.A.R. 7 dated 10th January, 2015 intimating the submission of Form 23 AC after making a payment of ₹500/- and additional fees of ₹3,000/-. As a result, the Applicant had made good the default by complying with the provisions of the Act, although belatedly.

8. Having regard to the facts and circumstances of the case, the offence committed under Section 210 of the Companies Act, 1956, as stated and explained in the above paragraphs, is compounded against

the Applicant Company and its Managing Director on payment of ₹5,000/- by Mr. Sajan Jawaharmal Advani (Managing Director). The remittance shall be made by way of Demand Draft drawn in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai".

9. This Compounding Application No. 311/621A/441/NCLT/MB/2015 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: 27th January, 2017

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