

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
COMPOUNDING APPLICATION NO. 35/621A/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 217(4) of the Companies Act, 1956 (Section 134 of the Companies Act, 2013).

In the matter of **M/s. Vidya Buildcon Private Limited**, having its Registered Office at 6-6-10, Vijay Nagar Sangh, Shaikh Misree Road, Antop Hill, Mumbai 400 037, Maharashtra, India.

PRESENT FOR APPLICANT:

Mr. Arjun Pitti, Practising Chartered Accountant for the Applicant.

Date of Hearing: 9th February, 2017

ORDER

Reserved on: 09.02.2017

Pronounced on: 13.02.2017

Applicants in Default:

(1) M/s. Vidya Buildcon Private Limited, (Company), (2) Mr. Prakash Kumar Jain (Ex-Director) (3) Mr. Pankaj Kandoi (Director) and (4) Ms. Sulochana Devi Kandoi (Director).

Section Violated:

Section 217(4) of the Companies Act, 1956 read with Section 441 of the Companies Act, 2013 (Section 134 of the Companies Act, 2013).

1. This Compounding Application was filed before the erstwhile Company Law Board, Mumbai Bench on 10th October, 2013 which was

forwarded to NCLT Mumbai Bench by Registrar of Companies, Maharashtra, Mumbai along with RoC Report. The Ld. Registrar of Companies intimated that on a technical scrutiny of the Directors' Report of the Applicant Company as at 2009-10, 2010-11 and 2011-12, it was found that the Applicant has committed a default by not signing the Annual Reports by the Chairman of the Board or by the Board of Directors in terms of Section 215 of the Companies Act, 1956. Reproduced below is extract from the report dated 6th November, 2012 by the RoC, Maharashtra, Mumbai:-

"2. It is observed that the Annual return forms appended to the eforms 20B filed by the company for the years 2010, 2011 and 2012 have not been signed in accordance with the provisions of Section 159. Please explain the non-compliance.

4. It is observed that the Published Annual Reports for 2009-10, 2010-11 and 2011-12 uploaded on MCA 21 portal, were not authenticated in terms of section 215 of the Companies Act, 1956. Hence, please explain Alternatively, please also explain improper compliance of Section 220.

5. Also explain as to non-compliance of section 217(4) of the Companies Act, 1956 since the Directors' Report for 2009-10, 2010-11 and 2011-12 uploaded onto the MCA 21 portal were purportedly not signed by the Chairman of the Board or by the Board of Directors in terms of Section 215, as the case may be. Alternatively, explain the improper compliance of Section 220.

6. The Auditors' Report on the Audited Accounts of your company for the years 2009-10, 2010-11 and 2011-12 which were purportedly issued by Sri. Mahesh Saboo, proprietor of M. Saboo & Co. Chartered Accountants, Mumbai, bearing membership No.35914, were not signed in terms of Section 229 of the Companies Act, 156. Please explain."

2. Therefore, it is evident that the Applicant Company committed the default under the provisions of Section 217(4) of the Companies Act, 1956 punishable u/s 217(4) of the Companies Act, 1956. The Ld. RoC has also reported that the Applicant Company has claimed that the Director's Report was signed and authenticated by two Directors of the Company and there is no violation of Section 217(4) r/w Section

215 of the Companies Act, 1956. However, they claimed that they have filed the Compounding Application 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 217(4) of the Companies Act, 1956, the Applicant has committed default as follows:-

"5. In terms of sub-section (4) of Section 217 of the Companies Act 1956, the Board Report and any addendum thereto shall be signed by its chairman if he is authorised in that behalf by the Board; and where he is not so authorised, shall be signed by such number of directors as are required to sign the balance sheet and the profit and loss account by virtue of sub-sections (1) and (2) of section 215.

6. On scrutiny of Balance Sheet of the company as at 31.03.2010, 31.03.2011 and 31.03.2012 as well as Profit And Loss Account for the year ended said dates under section 234 of the Act, the Registrar Of Companies, Maharashtra vide letter No. ROC/STA(M)/194247/3874 dated 6th November, 2012 alleged that the Auditor's Report on the audited accounts of the company for the year 2009-10, 2010-11 and 2011-12 were not signed by the chairman of the Board or by the Board of Directors in terms of section 215 of the Act. Thus, the directors of the Company have contravened the provisions of sections 217(4) of the Act.

7. The Company on its behalf and on behalf of your Applicants has replied to the aforesaid stating the reasons and justifications vide its letter dated 27th November, 2012 addressed to the Registrar of Companies, Maharashtra.

8. Thereafter the Applicant received a show cause notice no. ROC/STA(DG)/TS/BS/194247/2725 dated 2nd July, 2013 in respect of Para 6 above.

9. The applicant humbly submits that the provisions of section 217(4) reads as:

The Board Report and any addendum thereto shall be signed by its chairman if he is authorised in that behalf by the Board; and where he is not so authorised, shall be signed by such number of directors as are required to sign the balance sheet and the profit and loss account by virtue of sub-sections (1) and (2) of section 215.

From the perusal of the Auditor's Report attached to the Balance Sheet as at 31.03.2010, 31.03.2011 and 31.03.2012, it can be seen that the same has been signed and authenticated by two directors of the Company, namely, Sulochana Devi Kandoi and Pankaj Kandoi

under the rubber stamp of the Company in due compliance with the provisions of section 217(4) read with 215 of the Act.

10. Thus, the Applicants were under a bonafide belief that they had sufficiently complied with the provisions of Section 217(4) of the Act. The applicants explained their stance in the reply submitted by them on 27.11.2012. However, the view of the Department seems to be otherwise and hence a Show Cause Notice has been issued in this respect. To put the matter to rest, the applicants have preferred this compounding application.

11. The aforesaid lapses are innocuous that have occurred out of inadvertence and does not prejudice the interest of any person. The Applicant submits that there was no mala fide intention and the mistake was purely unintentional.

12. The offence is compoundable under section 621A of the Companies Act, 1956 and therefore the Applicant is approaching the Regional Director through this Application."

4. It was alleged that the Applicant has violated the provision under Section 217(4) of the Companies Act, 1956. The Registrar of Companies, Maharashtra, Mumbai forwarded the Compounding Application vide his letter No. ROC/STA/441/220 dated 28th September, 2016 to NCLT Mumbai Bench and the same has been treated as Compounding Application No. 37/621A/441/NCLT/MB/2016. Section 217(4), which is relevant in this Case, is as follows:-

"Section 217(4)

The Board's report and any addendum thereto shall be signed by its chairman if he is authorised in that behalf by the Board; and where he is not so authorised, shall be signed by such number of directors as are required to sign the balance sheet and the profit and loss account of the company by virtue of sub-sections (1) and (2) of section 215."

5. From the side of the Applicant, Ld. Practising Chartered Accountant Mr. Arjun Pitti appeared and explained that inadvertently the Applicant Company could not fulfil the conditions laid down under Section 217(4) of the Companies Act, 1956 although the Applicant was willing to comply with the provisions of the Companies Act, 1956 *bona fide*ly. Ld. Representative of the Applicant also stated that the

aforestated violation was unintentional and without any wilful or *mala fide* intention. However, he has pleaded that one of the conditions was complied with by getting the Annual Accounts signed by two Directors. Hence, according to him, this is not a case of total non-compliance of the said provision of the Act.

6. 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. Practising Chartered Account for the Applicant at the time of hearing and noted that Application made by the Applicant for compounding of offence committed under Section 217(4) of the Companies Act, 1956 merits consideration.

7. Under the provisions of the Act, the relevant provision was Section 218 of the Companies Act, 1956 for violation under Section 217(4) of the Companies Act, 1956, which is reproduced below:

"218 of the Companies Act, 1956 (for violation of Section 217 (4) of Companies Act, 1956)

(a) If any copy of a balance sheet or profit and loss account which has not been signed as required by section 215 is issued, circulated or published; or

(b) If any copy of a balance sheet is issued, circulated or published without there being annexed or attached thereto, as the case may be, a copy of each of (i) the profit and loss account, (ii) any accounts, reports or statements which, by virtue of section 212, are required to be attached to the balance-sheet, (iii) the auditors' report, and (iv) the Board's report referred to in section 217; the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees."

8. Because of the above discussed factual position, the compounding of this default under the category of default is defined u/s 217(4) r/w Section 218 of the Companies Act, 1956, already reproduced supra, 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 thousand rupees. On examination of the circumstances as discussed above, especially since the Annual Accounts have already been signed by the two Directors, I hereby hold that a fine of ₹1,000/- (Rupees one thousand only) each by the Applicant Company and every officer of the company who is in default shall be sufficient to be paid by the Company (the Applicant) 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".

9. This Compounding Application No. 35/621-A/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: 13th February, 2017

M.K. SHRAWAT
Member (Judicial)