

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI  
COMPOUNDING APPLICATION NO. 38/621A/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 229 of the Companies Act, 1956.

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:** 9<sup>th</sup> February, 2017

**ORDER**

**Reserved on: 09.02.2017**  
**Pronounced on: 13.02.2017**

**Applicants in Default:**

(1) M/s. Vidya Buildcon Private Limited (Applicant Company) and (2) Mr. Mahesh Saboo (Chartered Accountant)

**Section Violated:**

Section 229 of the Companies Act, 1956 read with Section 441 of the Companies Act, 2013.

1. This Compounding Application was filed before the Regional Director, Western Region on 10<sup>th</sup> 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 Balance Sheets and Profit & Loss Accounts of the Applicant Company as at 31.03.2010,

31.03.2011 and 31.03.2012 it was found that the Applicant has committed a default by not signing the said Balance Sheets and Profit & Loss Accounts for the Financial Years 2009-10, 2010-11 and 2011-12 by the Auditor in terms of Section 229 of the Companies Act, 1956. Reproduced below is extract from the report from 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, 1956. Please explain."

2. Therefore, it is evident that the Applicant Company committed the default under the provisions of Section 229 of the Companies Act, 1956 punishable u/s 229 of the Companies Act, 1956. The Ld. RoC has also reported that the Applicant Company has claimed that the Director's Report was signed by two Directors of the Company and there is no violation of Section 215 of the Companies Act.

**Facts of the Case:**

3. As per the Applicant's own submissions made in the Compounding Application filed by them for violation of Section 229 of

the Companies Act, 1956, the Applicant has committed default as follows:-

5. In terms of Section 229 read with section 233 of the Companies Act 1956, only the person appointed as auditor of the Company or where a firm is so appointed in pursuance of the proviso to sub-section (1) of section 226, only a partner in the firm practicing in India, may sign the auditor's report, or sign or authenticate any other document of the company required to be signed or authenticated by the Auditor.

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 date under section 234 of the Act, the Registrar Of Companies, Maharashtra vide letter No. ROC/STA(M)/194247/3874 dated 6<sup>th</sup> 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 which was 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, 1956. ....

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

8. Thereafter the Applicant received a show cause notice no. ROC/STA(DG)/TS/BS/194247/2729 dated 2<sup>nd</sup> July, 2013 in respect of Para 6 above. ....

9. The applicant humbly submits that in connection with the allegation we would like to draw your attention to the provisions of section 229 of the Act which states as under:

**229. Signature of Audit Report. Etc.**  
**Only the person appointed as auditor of the Company or where a firm is so appointed in pursuance of the proviso to sub-section (1) of section 226, only a partner in the firm practising in India, may sign the auditor's report, or sign or authenticate any other document of the company required to be signed or authenticated by the Auditor.**

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 and the Annexure annexed thereto, it can be seen that the same has been signed by Mr. Mahesh Saboo, the proprietor of M. Saboo & Co. Chartered Accountant by stating his membership number and putting his seal in due compliance with the provisions of section 229 of the Act.

10. The applicant further submits that the Company has noted the observation made by the Registrar of Companies and steps have

been initiated to upload the duly signed copies of Annual Report with the Registrar of Companies.

11. The Applicant further submits that the aforesaid lapses are innocuous that have occurred out of inadvertence and does not prejudice the interest of any person.

12. The Applicant submits that there was no mala fide intention and the mistake was purely unintentional.

13. 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. Accordingly, the Applicant has violated the provision under Section 229 of the Companies Act, 1956. The Registrar of Companies, Maharashtra, Mumbai forwarded the Compounding Application vide his letter No. ROC/STA/441/220 dated 28<sup>th</sup> September, 2016 to NCLT Mumbai Bench and the same has been treated as Compounding Application No. 38/621A/441/NCLT/MB/2016. Section 229, which is relevant in this Case, is as follows:-

**"Signature of audit report, etc.**

**Section 229**

Only one person appointed as auditor of the company, or where a firm is so appointed in pursuance of the proviso to sub-section (1) of section 226, only a partner in the firm practising in India, may sign the auditor's report, or sign or authenticate any other document of the company required by law to be signed or authenticated by the auditor."

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 229 of the Companies Act, 1956 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.



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 229 of the Companies Act, 1956 merits consideration.

7. Under the provisions of the Act, the relevant provision was Section 233 of the Companies Act, 1956 for violation under Section 229 of the Companies Act, 1956, which is reproduced below:

**"Penalty for non-compliance by auditor with Sections 227 and 229 of the Companies Act, 1956**

**233.** If any auditor's report is made, or any document of the company is signed or authenticated, otherwise than in conformity with the requirements of sections 227 and 229, the auditor concerned, and the person, if any, other than the auditor who signs the report or signs or authenticates the document, shall, if the default is wilful, be punishable with fine which may extend to ten thousand rupees."

8. Because of the above discussed factual position, the compounding of this default under the category of default is defined u/s 233 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 a fine of ₹1,000/- (Rupees one thousand only) by the officers of the company and the auditors who are 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. 38/621-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.

Dated: 13<sup>th</sup> February, 2017

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