

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
COMPOUNDING APPLICATION NO. 39/621A/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 159 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: 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 159 of the Companies Act, 1956 read with Section 441 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 Balance Sheets

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 Annual Reports in accordance with the provisions of Section 159 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, 1956. Please explain."

2. Therefore, it is evident that the Applicant Company committed the default under the provisions of Section 159 of the Companies Act, 1956 punishable u/s 162 of the Companies Act, 1956 (for violation of Sections 159, 160 or 161 of Companies Act, 1956). The Ld. RoC has also reported that the Applicant Company has claimed that they had complied with the provisions of relevant 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 159 of the Companies Act, 1956, the Applicant has committed default as follows:-

"5. In terms of sub-section (1) of Section 161(1) of the Companies Act 1956,

Every Company having a share capital shall, within sixty days from the day on which each of the annual general meetings referred to in section 166 is held, prepare and file with the Registrar a return containing the particulars specified in Part I of Schedule V, as they stood on that day regarding –

- a) Its registered office,
- b) The register of its member,
- c) The register of its debenture holders,
- d) Its shares and debentures,
- e) Its indebtedness,
- f) Its members and debenture holders, past and present, and
- g) Its directors, managing directors, managers and secretaries, past and present.

Provided that if any of the five immediately preceding returns has given as at the date of the annual general meeting with reference to which it was submitted, the full particulars required as to past and present members and the shares held and transferred by them, the return in question may contain only such of the particulars as relate to persons ceasing to be or becoming members since that date and to shares transferred since that date or to changes as compared with that date in the number of shares held by a member.

In terms of section 161(1) of the Act, the copy of the annual return filed with the registrar under section 159 or 160 as the case may be, shall be signed both by a director and by the manager or secretary of the company, or where there is no manager or secretary of the company, or where there is no manager or secretary, by two directors of the company, one of whom shall be the managing director where there is one;

Provided that where the annual return is filed by the company whose shares are listed on recognized stock exchange, the copy of such annual return shall also be signed by a secretary in whole-time practice.

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 6th November, 2012 alleged that Annual Return forms appended to e-forms 20B filed by the company

for the years 2010, 2011 and 2012 have not been signed in accordance with the provisions of section 159.

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 Applicants further submit 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 Return with the Registrar of Companies.

10. The Applicants further submit 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 Return with the registrar of Companies.

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

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

4. Accordingly, the Applicant has violated the provision under Section 159 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. 39/621A/441/NCLT/MB/2016. Section 159, which is relevant in this Case, is as follows:-

"162 of the Companies Act, 1956 (for violation of Sections 159, 160 or 161 of Companies Act, 1956)

(1) if a company fails to comply with any of the provisions contained in section 159, 160 or 161, 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.

"(2) For the purpose of this section and sections 159, 160 and 161, the expressions "officer" and "director" shall include any person

in accordance with whose directions or instructions the Board of directors of the company is accustomed to act.”

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 159 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 aforestated 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 159 of the Companies Act, 1956 merits consideration.

7. Under the provisions of the Act, the relevant provision was Section 162 of the Companies Act, 1956 for violation under Section 159 of the Companies Act, 1956, which is reproduced below:

“Section 162 of the Companies Act, 1956

(1) If a company fails to comply with any of the provisions contained in section 159, 160 or 161, 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.”

8. Because of the above discussed factual position, the compounding of this default under the category of default is defined u/s 159 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 hundred rupees for every day during which the default continues. On examination of the circumstances as discussed above a fine of ₹1,000/- (Rupees Rupees one thousand only) each by the Applicant Company and every officer of the company i.e. its two Directors 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. 39/621-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)