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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
KOLKATA BENCH

Company Petition No.18/2016

In the matter of the Companies Act, 1956 : Section 211;

A N D

In the matter of : M/s. Nandlall & Sons Tea Industries Private Limited,  
having its registered office at 40, Girish Park North, 3rd Floor,  
Kolkata 700 006;

A N D

In the matter of :

- 1) Shri Anil Kumar Agarwal (Director)
- 2) Shri Nirmal Kumar Agarwal (Erstwhile Director)

..... Applicants

Present on behalf of Parties:

Shri A. K. Labh, Practicing C.S.

|..... for Applicants

ORDER

Pursuant to the Order passed by this Bench on 15.02.2017, the applicants have deposited with this Bench 2(two) demand drafts bearing Nos.929330 & 929331, both dated 27.02.2017 drawn on Canara Bank for ₹ 10,000/- & ₹ 5,000/- respectively [Total : ₹ 15,000/-]. As the offence has been compounded and the compounding fees have been paid by the applicants, a copy of this Order be sent to the Registrar of Companies by the company for appropriate action.

2. The Order dated 15.02.2017 shall form a part of this Order.

-Sd/-  
( MANORAMA KUMARI )  
MEMBER (Judicial)

Place : Kolkata

Date : 07/03/2017



COURT-I

For order

NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

C.P. No. 18 / 2016

Present: Hon'ble Member (J) Ms. Manorama Kumari

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 15<sup>th</sup> February, 2017, 10.30 A.M

Name of the Company		Nandlall & Sons Tea Industries Pvt.Ltd.		
Under Section		441/ 621A		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date	

1 ATUL KUMAR LASH, FCI-4848

the applicants

15/02/2017



BEFORE THE  
NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, KOLKATA

CP No. 18/2016

CORAM

Ms. Manorama Kumari  
Hon'ble Member (J)

*In the matter of the Companies Act, 1956 Section 621A*

*And*

*In the matter of M/s. Nandlall & Sons Tea Industries Private Limited*

*And*

*In the matter of*

- 1..Mr. Anil Kumar Agarwal, Director**
- 2. Mr. Nirmal Kumar Agarwal, Erstwhile Director**

Parties on Record :

Mr.AK Labh, Company Secretary | Representing Applicants/Directors

Dates of Hearing : 3<sup>rd</sup> February, 2017

Date of Order : 15<sup>th</sup> February, 2017

O R D E R

Shri AK Labh, Pr.CS, representing the Applicants being the Director and the erstwhile Director of M /s. Nandlall & Sons Tea Industries Private Limited (the Company) pleaded for compounding of offence under sub-section (2) of Section 211 of the Companies Act, 1956 pertaining to the year dated back 1999-2000, as pointed out by the Registrar of Companies, West Bengal ( ROC, WB) in the show cause notice dated 18-08-2008.





As averred in the applications, the Pr.CS has stated that during the course of inspection of books of accounts and other records of the Company carried out by an Inspecting Officer authorised by the Central Government under Section 209A of the Companies Act, 1956 ( the Act, 1956), the following contravention of the provisions of Part-II of Schedule VI read with Section 211 of Act, 1956 was noticed during the year 1999-2000. The value of stores, spare parts and components has been charged to different revenue heads instead of showing the same separately as per Clause 3(x)(a) of Part-II of Schedule VI to the Companies Act, 1956 and thereby the Company has violated Clause 3(x) (a) of Part-II of Schedule VI read with Section 211 of the Companies Act, 1956 for the year 1999-2000.

In regard to the said breach, the Company explained its position in the letter dated 14-05-2001. However, the ROC, West Bengal has filed complaint case, being No. C/ 32810/2008 against the applicants under Section 211(7) of the Companies Act, 1956 before the Ld. Chief Metropolitan Magistrate, Kolkata, which is stated to be pending before the Court.

He further submitted that the disclosure has been made in the Notes on Accounts, Schedule-15 under the head "Consumption of Stores and Spares" (Note 5) which states that :

" In the Profit & Loss Account, there is no separate Account head to show the consumption of stores and spares. The consumption of stores and spares as per consistent accounting practice, are charged to different revenue heads according to their nature of use. Independent identification of those items charged to various revenue accounts has not been made".

He also submitted that necessary disclosure has been made in the notes on accounts of the subsequent Balance Sheet with respect to consumption of stores and spares; the contravention of the provision of Part-II of Schedule VI read with Section 211 is compoundable under Section 621A in the manner as provided in sub-section (7) of Section 211 of the Companies Act, 1956 and that the offence has occurred due to inadvertence without any mala fide intention.





He prayed for compounding the above said offence under Section 211(2) of the Companies Act, 1956 read with Section 621A and the offence relates back to the year 1999-2000.

The Registrar of Companies, West Bengal has observed in his report dated 21-09-2016, that the offence committed is once for all during the year ended 1999-2000 to 2001-2002 and it is observed from the subsequent Balance Sheet for the year ended 31-03-2003 that the company has provided disclosure in the Notes on Accounts under Note No. 5 with respect to consumption of stores and spares and the offence has been made good. He also reported that the prosecution has been launched against the Directors/Officers of the Company.

Heard the submissions of the Ld. Pr. CS and perused the records including the report of the Registrar of Companies, West Bengal.

The offence has occurred during the year ended 1999-2000 and the disclosure has been made in the Notes on accounts of the Balance Sheet as on 31-03-2003 under Note No. 5 with respect to consumption of stores and spares, as observed and reported by ROC, West Bengal. The prosecution is stated to be pending before the Court.

As stated in the applications, Shri Anil Kumar Agarwal is the Director of the Company and Shri Nirmal Kumar Agarwal was the erstwhile Director who resigned from the Directorship on 25-03-2004.

Section 441 of the Companies Act, 2013 confers powers to the Tribunal for compounding of offence and the said Section came into force with effect from 01-06-2016. Section 211 of the Companies Act, 1956 has been repealed and corresponding Section 129 of the Companies Act, 2013 came into force with effect from 01-04-2014. The offence under Section 211(2) of the Companies Act, 1956 pertains to the year ended 1999-2000 and as such the compounding fees will be determined as per the penal provision of Section 211(7) of the Companies Act, 1956.



The petitioner prayed for leniency while imposing compounding amount as one of the Directors has already left the Company. Further, in the petition, the prayer for compounding has been made for the offence accrued/committed in the year 1999-2000 only.

In the facts and circumstances of the case, I am inclined to permit the applicants to compound the offence as aforesaid as per Section 441 of the Companies Act, 2013 read with Section 211(2) of the Companies Act, 1956 and I do hereby compound the aforesaid offence committed by the applicants under Section 211(2) of the Companies Act, 1956 for one year i.e., 1999-2000 as prayed, subject to depositing the compounding amount by each of the applicants as indicated hereinbelow :

Sl. No.	Defaulting Director/Applicant	Compounding amount imposed (Rs.)	Total
1	Director	Rs. 10,000	Rs. 10,000=00
2	Erstwhile Director	Rs. 5,000	Rs. 05,000=00
		Total	Rs. 15,000=00

The Officers in default shall pay the compounding amount from their personal source. The compounding amount is to be deposited by each of the Applicant-Directors within 15 days hereof.

Sd/-  
MANORAMA KUMARI  
MEMBER(J)

