

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

CP No.168/Chd/Hry/2017

**Under Section 621A of
Companies Act, 1956.**

In the matter of:

A2Z Infra Engineering Limited
Having its registered office at
O-116 1st floor, DLF Shopping Mall,
Arjun Marg, DLF Phase-1, Gurgaon-122002

.Petitioner/Applicant No.1

And

Amit Mittal
Managing Director
TG-2B/4 Garden Estate Mehrauli
Gurgaon Road, Gurgaon-122002

...Petitioner/Applicant No.2

Order delivered on: 21.07.2017

Coram: Hon'ble Mr. Justice R.P. Nagrath, Member(Judicial)

For the petitioner : Mr. Pankaj Jain, Advocate for petitioners

For Registrar of Companies NCT of Delhi and Haryana : Dr. Raj Singh, Registrar of Companies, Punjab & Chandigarh and Himachal Pradesh

Order (Oral)

This is a *suo moto* petition filed by the Petitioner No.1 company and its Managing Director Mr. Amit Mittal [Anil Mittal (*sic*)] for composition of the offences for which the Dy. Registrar of Companies, NCT of Delhi and Haryana issued a show cause notice dated 08.07.2016 (Annexure A-2) which is re produced as under:-

"WHEREAS, during the course of inspection it was observed from the books of accounts that the company has violated following provisions of Schedule VI R/W Section 211(1) of the Companies Act, 1956:-

- i. It has been observed from Profit and Loss Account for the F.Y. 31.03.2011, 31.03.2012, 31.03.2013 and 31.03.2014 that the aggregate amount of company's unquoted and quoted investments and also the market value thereof has been disclosed separately as per requirements of Section 211(1) of the Companies Act, 1956. Hence the company and the officers in default are liable for penal action.
- ii. It has been observed from Profit and Loss Account as on 31.03.2011, 31.03.2012, 31.03.2013 and 31.03.2014 that the company has shown other income in Profit and Loss, but the nature of the miscellaneous income has not been disclosed. Hence there is violation of Section 211 read with Schedule VI of the Act for which the company and officers in default are liable for penal action.
- iii. It has been observed from Profit and Loss Account as on 31.03.2011, 31.03.2012, 31.03.2013 and 31.03.2014 that the company has made investments in various companies, but has failed to disclose the nature and mode of valuation of investments as per requirements of Section 211(1) r/w Schedule VI and AS-13 of the Companies Act, 1956 for which the company and directors are liable for penal action.
- iv. It is observed from the Notes on Accounts attached with the Balance Sheet as at 31.03.2011, 31.03.2012, 31.03.2013 and 31.03.2014 that the same of the balances of the sundry debtors, sundry creditors are subject to confirmation in which include certain old balances and thus books of accounts of the company are not showing true and fair view of the affairs of the company as per requirements of Section 211 of the Act inter alia company has admitted the default and thus the company and officers in default are liable for penal action for violation of section 211 of the Act.
- v. It is observed from the Balance Sheet that the company has not given details of managerial remuneration separately as required pursuant to clause (i), (vi), (vii) of the note 4 part II of Schedule VI of the Act.
- vi. During the course of inspection, it is observed from Profit and Loss Accounts attached with the Balance Sheet as at 31.03.2011, 31.03.2012 and 31.03.2013 that exchange rate Fluctuation(net) amount has been shown under the Head "Other Income", hence netting is against the basic spirit of the provisions of schedule VI of the Act. However, as per the provisions of the Companies act, 1956 Schedule-VI requires that if income is stated gross then the amount of TDS should be disclosed separately whereas there is no such disclosure

- in the said P7L as per requirements of Section 211(1) r/w Sch. VI Part II to the Act and liable for the penal action.*
- vii. *It is observed the Balance Sheet as at 31.03.2011, 31.03.2012, 31.03.2013 and 31.03.2014 that Legal and Professional charges has not been classified separately as per Part II of the Schedule VI of the Act, hence there is a violation of section 211 r/w Schedule VI of the Act.*
 - viii. *It is observed the Balance Sheet as at 31.03.2011, 31.03.2012, 31.03.2013 and 31.03.2014 that Repairs & Maintenance has been shown together, which has to be shown separately as per requirement of Para 3(x)(d) of Part II of Schedule VI of Section 211 of the Act. Thus, the provisions of Section 211 r/w Schedule VI of the Act have been contravened.*
 - ix. *It is seen from the Balance Sheet as at 31.03.2012 that the Financial Statements regarding outstanding recoverable of Rs.64,381,729 and Rs.60,639,340 behind deductions proposed/made by the respective customers on invoice raised by the company for the services rendered, price escalations on certain supply item and certain other items. There exists however material uncertainty in respect of the collectability of the above receivables. Pending the final outcome of the matter, no adjustments have been made in these financial statements. Hence the books of accounts does not show true and fair view of the affairs of the company and has violated the provisions of the Section 211(1) of the Companies Act, 1956.*
- AND WHEREAS, the matter was taken up with the company by inspecting officer but the reply of the company on the said issues were not satisfactory.*
- NOW THEREFORE, you are hereby called upon to show cause within 15 days from the date hereof as to why penal action as provided under Section 211(7) of the Companies Act, 1956 should not be initiated against you."*

Notice of this petition was issued to the Registrar of Companies, NCT of Delhi and Haryana and report dated 16.01.2017 has been sent by the Deputy Registrar of Companies, NCT of Delhi and Haryana. I have heard the learned counsel for petitioner, Dr. Raj Singh, Registrar of Companies Punjab, Chandigarh and Himachal Pradesh who is representing Registrar of Companies, NCT of Delhi and Haryana and perused the record.

The petitioner-company was incorporated on 07.01.2002 and with its Registered Office at Gurgaon (now Gurugram) and therefore, the matter falls

within the territorial jurisdiction of this Tribunal. As per report of the Deputy Registrar of Companies, NCT of Delhi and Haryana, the Paid-up Capital of the company is ₹1,29,62,19,800/- and the opening revenue as per the Profit & Loss Account for the year 2015 is ₹45,67,16,44,999/- The petitioner is a listed company.

The petitioner-company did not comply with the provisions of sections 211 read with Schedule VI of the Companies Act, 1956 read with AS-13 issued by ICAI. However, Deputy Registrar of Companies has reported that the company has since filed Balance Sheets and Annual Returns as on 31.03.2015 and the compliance with regard to the defaulting years have been made. Along with this petition, the company has also attached audited Annual Accounts for the years in question i.e. from the years 2010-11 to 2013-14 and this fact is not disputed in the report sent by the Deputy Registrar of Companies.

Section 211(7) of the Companies Act, 1956 (for short hereinafter to be referred to as 'Act') reads as under:-

"If any such person as is referred to in sub-section (6) of section 209 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, 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."

The person who committed default is referred to in section 209(6) of the Act. Sub-section (6) of section 209 prescribes the persons who can be found guilty for non-compliance. They are, -

a) where the company has a managing director or manager, such managing director or manager and all officers and other employees of the company; and

b) ***

c) ***

d) where the company has neither a managing director nor manager, every director of the company.

e)*** "

Deputy Registrar of Companies in his report has mentioned the person who defaulted as Mr. Anil Mittal but the Managing Director of the Company is Mr. Amit Mittal (P-2). The Deputy Registrar of Companies has proposed that for 4 years of default the total amount of penalty would be ₹40,000/- @ ₹10 000/- per year of default. It is not disputed by Dr. Raj Singh, Registrar of Companies that for the offence under section 211(7) of the Act, the company itself may not be liable, but only the Managing Director.

The offence under sub-section (7) of section 211 of the Act is 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. The *suo moto* request has been made by filing this petition for composition of offence in terms of section 621A of the Act which reads as under : -

"(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act (whether committed by a company or any officer thereof), not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by-

(a) the Company Law Board; or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed fifty thousand rupees, by the Regional Director, on payment or credit, by the company or the officer, as the case may be, to the Central Government of such sum as that Board or the Regional Director, as the case may be, may specify

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 611 shall be taken into account."

The Hon'ble National Company Law Appellate Tribunal in **Shri Subhinder Singh Prem Vs. Union of India Through ROC in Company Appeals (AT) No.101 to 105 of 2017** decided on 17.05.2017 has held that such an offence can be lawfully compounded. In the said case, one of the appeals before the Hon'ble Appellate Tribunal was Company Appeal 103(AT)/2017 in which the offence alleged against the company was 211(7) of the Act. The Hon'ble Appellate Tribunal held that such an offence was compoundable.

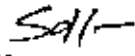
However, a very low amount of composition fee cannot be permitted in this case because the company is a listed company having huge turn over. In any case, the learned counsel for petitioner contended that for all these years there was a net loss to the company as per the audited Balance Sheets filed along with the petition as at Annexure A-3.

Keeping in view the report of the ROC and that this is a *suo moto* petition there being no prosecution launched so far, the offence is compounded on deposit of ₹28,000/- i.e. ₹7,000/- for each year as the Composition Fee against Petitioner No.2. The amount be deposited within a period of 30 days from the date of receipt of certified copy of this order, with the Pay & Accounts Officer of Ministry of Corporate Affairs. It is made clear that the amount shall be deposited from the personal account of the defaulter and not from the Company's account.

Failing to deposit the amount aforesaid within the stipulated period, the Registrar of Companies will be at liberty to launch prosecution against the defaulter(s).

The petition is therefore disposed of on these terms.

July 21, 2017
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(Justice R.P. Nagrath)
Member(Judicial)