

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

CP NO. 231/Chd/Hry/2017

**Under 211 (3A) of the Companies
Act, 1956 read with Section 621-A of
the Companies Act, 1956 and
Section 441 of the Companies Act,
2013.**

In the matter of:

Frick India Limited having
Its registered office at 21.5 KM,
Mathura Road,
Faridabad-121003(Haryana)

1. Mr. Jasmohan Singh s/o Shri Man
Mohan Singh, R/o 5, Friends Colony
(West), New Delhi-110065,
Managing Director ...Petitioner No. 1
2. Mr. Sharad Bhatnagar, s/o Mr. Mahesh
Chand Bhatnagar, R/o B-108, Vivek
Vihar, Sector 82, Noida-201301,
Uttar Pradesh,
CFO & Director (Finance & Taxation). ...Petitioner No. 2

Order delivered on: 27.10.2017

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

For the petitioner:	<ol style="list-style-type: none"> 1. Mr. P. Nagesh, Advocate 2. Mr. Ashutosh Gupta, Advocate 3. Mr. Mohit Chaurasia, Advocate.
For the Registrar of Companies NCT of Delhi & Haryana:	Dr. Raj Singh, Registrar of Companies, Punjab, Chandigarh & Himachal Pradesh.

ORDER (ORAL)

This is a *suo motu* joint petition under Section 441 of the Companies Act, 2013 read with Section 621-A of the Companies Act, 1956 for compounding of offence under Section 211 (3A) of the Companies Act, 1956

for violation of Accounting Standard-2 (AS-2). The petitioner-company was incorporated on 04.08.1962. Certificate of incorporation is at Annexure A-1 with which copy of the Memorandum and Articles of Association of the company have also been enclosed. The issued, subscribed and share paid up capital of the company is ₹59,99,750/-. As per the Balance Sheet ending for the Financial Year 31.03.2015, the turnover of the company was approx. ₹15,190.98 lacs.

2. The petitioner No.1 - Managing Director of the company and petitioner No. 2 - Chief Financial Officer of the company have filed the petition for composition of the offence committed by the company being the officers liable as provided in Section 5 of the Companies Act, 1956.

3. The Registrar of Companies, NCT of Delhi and Haryana issued show cause notice dated 04.04.2016 (Annexure A-2) to both the petitioners under Section 211 (7) of the Companies Act, 1956 for violation of sub-section (3A) of Section 211 of the said Act read with the Accounting Standard-2 (AS-2) in respect of the profit and loss in the balance sheet for the years ending 2009-10 to 2013-14.

4. The show cause notice dated 04.04.2016 is reproduced as under:-

“WHEREAS Frick India Limited (herein refer as the Company) is a registered company with this office having CIN L74899HR1962PLC002618 and registered office address 21.5 Km Main Mathura Road, Faridabad, Haryana, India and the company has filed its balance sheets as at 31.03.2012 with this office pursuant to Section 220 of the Companies Act, 1956 AND WHEREAS technical scrutiny of the balance sheet as at 31.03.2011, profit and loss account and other documents/statements for the aforesaid period of the company was conducted by this office during which it was

observed that the company has valued Contract Job-in-process at “estimated cost”, not on “actual cost”. Therefore, there exist violation of the provisions of Section 211 (3A) of the Companies Act, 1956 r/w Account Standard-2 issued by the Institute of Chartered Accountants of India.

AND WHEREAS the provisions of Section 211 (3A) & (3B) of the Companies Act, 1956 inter alia provides that every profit and loss account and balance sheet of the company shall comply with the accounting standards and where the profit and loss account and the balance sheet of the company do not comply with the accounting standards such companies shall disclose in its profit and loss account and balance sheet, the deviation from the accounting standards, the reasons for such deviations and the financial effect, if any, arising due to such deviation.

AND WHEREAS as per the provisions of Section 211 (7), 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 account 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.

Now, therefore, every person of the company, who is in default is called upon to show cause within 10 days hereof as to why penal action as contemplated under Section 211 (7) shall not be initiated against them for contravention of sub-section (3A)/(3B) of section 211 of the Companies Act, 1956 r/w AS-2.”

5. Notice was issued to the Registrar of Companies, NCT of Delhi and Haryana and report sent by the Assistant Registrar of Companies dated 12.07.2017 has been received.

6. I have heard the learned counsel for the petitioners and Dr. Raj Singh, Registrar of Companies, Punjab & Chandigarh and Himachal Pradesh representing the Registrar of Companies, NCT of Delhi and Haryana.

7. Though show cause notice has been issued for default of two years but the petitioners have *suo motu* filed this petition for the default committed for five years from 2009-10 to 2013-14. In the report of Registrar of NCT of Delhi and Haryana, there is also mention of the default having been committed for five years. It is also admitted proposition that the petitioners have since made good the default in the annual return and the balance sheet for the year ending 31.03.2015 and the company has also filed the balance sheet for the year ending 31.03.2016.

8. The default committed by the company with regard to the accounting standards for those years was violation of Accounting Standard, which require the company to give the costs of the inventory of the articles but in the balance sheet, the same was mentioned as estimated cost. There is no issue with regard to the other compliances.

9. This offence is punishable under sub-section (7) of Section 211 of the Companies Act, 1956 which 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.”

10. The persons 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) ***”*

11. 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.

12. The maximum amount of penalty referred to by the Registrar of Companies in his report is ₹ 50,000/- in respect of each of the petitioner which is calculated @ ₹ 10,000/- per annum for the default of five years. This petition has been filed under Section 621A of the Companies Act, 1956, read with Section 441 of the Companies Act, 2013 because of repeal of the Companies Act, 1956. However, violation relates to the period when the Companies Act

1956 was in force. The amount of penalty is thus to be calculated on the basis of penalty provided in sub-section (7) of Section 211 of the Companies Act, 1956.

13. Keeping in view the report of the Registrar of Companies and this being a *suo motu* petition, and there being no prosecution launched so far, the offence is compounded on deposit of ₹ 25,000/- by each of the petitioners as composition fee. 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).

14. The petition is therefore disposed of on these terms.

Sd/-
(Justice R P Nagrath)
Member (Judicial)

October 27, 2017
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