

IN THE NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH, CHENNAI

CA/37/2017

In the matter of Section 441 of the Companies Act, 2013

M/s. Stanley Engineered Fastening India Pvt. Ltd.

-Vs-

Registrar of Companies, Chennai

Order delivered on: 30.06.2017

For the Applicant: Mr. K.V. Omprakash and Mr.S.Yasar Arafath, Advocates

Per: ANANTHA PADMANABHASWAMY, MEMBER (J)

ORDER

1. Under consideration is an application which has been filed by Applicants before the Registrar of Companies, Tamil Nadu and Andaman & Nicobar Islands, Chennai, for compounding of the offences u/s 441 of the Companies Act, 2013, for violation of the provisions of Section 383(A)(1) of the Companies Act, 1956 and Section 203(5) of the Companies Act, 2013. The Deputy Registrar of Companies, along with his report dated 11.01.2017, has forwarded the Application to the Registry of this Bench which has been numbered as C.A.No.37/2017.

2. The Applicants are the Company and its two officers who have filed e-form No.GNL-1 under SRN : G04786257 dated 06.06.2016 for violation of the provisions of Section 383(A) of the Companies Act, 1956 and Section 203 of the Companies Act, 2013 in not appointing a whole time company secretary.

3. M/s.Stanley Engineered Fastening India Private Limited is a company incorporated on 09.09.2008 [CIN : U72900TN2008FTC101445] with its registered office at No.55, Thandalam village, Sriperumpudur, Kancheepuram district-602 105 Tamilnadu.

4. The company is a closely held private limited company having two shareholders. The objects of the company are to carry on the business of manufacturing, marketing distribution, sale, export and import of all types of fastening assembly solutions including installation tools, components of industrial fasteners and in particular rivets, screws, metal clips, metal inserts, nuts, bolts, studs, plastic clips, plastic fasteners, other specialty easterners, stud welders and welding systems and to carry on the business of manufacturing, marketing, distribution, export, import and sale of equipments and allied products.

5. One perusal of report of the ROC, Chennai, the facts of the case are as follows:

The Company has filed e-form No.GNL-1 under SRN : G04786257 dated 06.06.2016 for violation of the provisions of Section 383(A) of the Companies Act, 1956 and Section 203 of the Companies Act, 2013.

As per Section 383A of the Companies Act, 1956 every company having paid up capital of rupees two crore and above and as per section 203 of the Companies Act, 2013 read with Rule 8A Companies (Appointment & Remuneration of Managerial Personnel) Amendment Rules, 2014 every company having paid up capital of Rs.5 crore should have a whole time Company Secretary.

The above said violation of Section 383A of the Companies Act, 1956 and Section 203 of the Companies Act, 2013 are punishable under the said section. The

company and officers in default had filed the application for compounding the offence under section 621A of the Act.

The Company had suo moto filed the application under Section 621A for compounding of offence under the provisions of Section 383A of the Companies Act, 1956 and Section 203 of the Companies Act, 2013.

The paid up share capital of the petitioner company was increased from Rs.150,00,000 to Rs.300,00,000/- on 25.01.2010. The company again increased its paid up capital on 13.05.2010 to Rs.68,45,45,400/- And as on 17.12.2013 it had further increased to Rs.77,19,05,400/-. During this period, the Company had not appointed Whole time Company Secretary in terms of provisions of Section 383A of the Companies Act, 1956 and Section 203 of the Companies Act, 2013. Hence, the company has violated the provisions of Section 383A of the Companies Act, 1956 and Section 203 of the Companies Act, 2013.

Subsequent to increase in the paid up capital, the petitioner company has not complied with the provisions of Section 383A of the Companies Act, 1956 and Section 203 of the Companies Act, 2013. The petitioner company appointed a Whole-time Company Secretary on 25.09.2015 (with a total delay of 2069 days – 1527 days under the Companies Act, 1956 and 542 days under the Companies Act, 2013). The violation was during the period from 25.01.2010 to 24.09.2015.

6. The committal of offence relates to the period between 25.01.2010 and 24.09.2015. The offence arose when the company appointed a whole time Company Secretary with a total delay of 2069 days, i.e. 1527 days under the companies Act, 1956 and 542 days under the Companies Act, 2013. The maximum amount of fine under the charging sections is calculated as Rs.45,16,500/- by the ROC, Tamilnadu, Chennai, in his report dated 11.01.2017.

7. The Registrar of companies in his report made it clear that the offence is made good and the applicants themselves have filed the compounding application. However, the ROC stated that he has no objection if the offence is compounded and submitted that the company may be directed to file e-form INC 28 along with compounded order, if passed.

8. The Registrar of Companies has recorded the financial position of the company as per the latest audited balance sheet for the financial year as at 31.03.2015 which is as follows :-

| | |
|---|---------------|
| Current Assets, Loans and Advance | 68,05,30,012 |
| Less : Current Liabilities and provisions | 39,51,21,459 |
| Add : Fixed assets | 910,39,782 |
| Less : Secured and Unsecured Loans | 0 |
| (A) | 37,64,48,335 |
| Net worth of the company represented by | |
| Share Capital | 771,905,400 |
| Reserves and Surplus | 87,62,14,859 |
| Deferred tax liabilities (net) | 0 |
| Less : Misc Exp or Loss | 0 |
| (B) | 164,81,20,259 |

9. The Deputy Registrar of Companies observed that the company has not filed compounding applications u/s 383 (A) of the Companies Act and u/s 203 of the Companies Act for the officers in default, namely, 1. Sanjay Ramakant Buch 2. Giri Venkatesan Chakaravarthi, 3. Natalie Ann Shields and 4. Anand Patni and submitted that appropriate order of compounding the offences may be passed by the NCLT, Chennai and maximum penal amount may be levied.

10. Heard Counsel for Applicants. It is submitted that the defaulters who are the applicant company and its two Directors, i.e. Rajesh Patil and Kathryn Patridge Sherer have approached ROC admitting the violation of the above said provisions with a prayer to compound the aforesaid offences by imposing fine. It is further submitted that a lenient view may be taken while imposing the fine for the reason that the violation is not intentional and the company and its Directors were busy in dealing with the business.

11. Considering these submissions, this Bench is inclined to take a lenient view and allow the compounding of the offences committed under section 383A(1A) of the Companies Act, 1956 and under section 203 of the Companies Act, 2013, r/w Rule 8A of the Companies (Appointment & Remuneration of Managerial Personnel) Amendment Rules, 2014, by imposing the fine on the applicants as follows:

Penalty u/s 383A(1A) of the Companies Act, 1956

| Defaulter | Violation section | Period of violation | Fine imposed |
|--|-------------------|---|-------------------------------------|
| Stanley Engineered Fastening India Pvt Ltd | 383A | 25.01.2010 to 31.04.2014 = 1527 days | 1527 days x Rs.250 = Rs.3,81,750 |
| Rajesh Patil | 383A | 25.01.2010 to 31.04.2014 = 1527 days | 1527 days x Rs.200 = Rs.3,05,400 |
| Kathryn Patridge Sherer | 383A | 25.01.2010 to 31.04.2014 = 1527 days | 1527 days x Rs.200 = Rs.3,05,400 |

Penalty u/s 203 (5) of the Companies Act, 2013

| Defaulter | Violation Section | Period of violation | Fine imposed |
|--|-------------------|--|---|
| Stanley Engineered Fastening India Pvt Ltd | 203 | 01.04.2014 to 24.09.2015 = 542 days | Rs.1,00,000/- + 542 days x Rs.200 = Rs.2,08,400/- |
| Rajesh Patil | 203 | 01.04.2014 to 24.09.2015 = 542 days | Rs.10,000/- + 542 days x Rs.200 = Rs.1,18,400/- |
| Kathryn Patridge Sherer | 203 | 01.04.2014 to 24.09.2015 = 542 days | Rs.10,000/- + 542 days x Rs.200 = Rs.1,18,400/- |

12. The applicant company is directed to pay the penalty from the accounts of the company and the applicant-officers in default are directed to pay the penalty from their own resources. All the three applicants shall comply with the order within three weeks from the date of this order. The company is directed to file e-form INC 28 along with a copy of this order with the Registrar of Companies, Chennai within the time prescribed.

13. Accordingly, the application is disposed of. The copy of the order will be issued to the applicants forthwith for compliance and other necessary action.


ANANTHA PADMANABHA SWAMY, Member (J)