

In the National Company Law Tribunal
Single Bench, Chennai

CA/45(441)/CB/2017

Under Section 621A r/w section 233B of the Companies Act, 1956

In the matter of

M/s. LLM Appliances Private Limited

V/s

Registrar of companies, Southern Region

Order delivered on: 30.06.2017

For the Petitioners: Mr. Balu Sridhar, PCS

Per: ANANTHA PADMANABHA SWAMY, 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 621A, for violation of the provisions of Section 233B of the Companies Act, 1956 r/w section 233(11) of the said Act.. The Deputy Registrar of Companies, along with his report dated 18.04.2017, has forwarded the Application to the Registry of this Bench which has been numbered as CA/45/CAA/2017.

2. The Company and Mr. V.M. Balasubramaniam, Managing Director of the company are the Applicants. They have filed e-form No.GNL-1 under SRN: G395232204 dated 30.03.2017. The offence is with regard to non-filing of Cost Audit Reports to the Central Government as required under Section 233B of the

Companies Act 1956 for the financial years 2012-13 and 2013-14. The applicants made prayers which are as follows :

The applicants humbly pray that the offence under Section 233B(11) of the Companies Act, 1956 (read with sub section 8 of Section 148 of the Companies Act, 2013), may be compounded by levy of minimum compounding fee and suitable orders as may be passed for compounding the offence committed under the aforementioned sections and render justice.

3. M/s.LLM Appliances Private Limited is a company incorporated on 02.08.1994 [CIN : U28991TN1994PTC028237] with its registered office at E-34, Second floor, Rajiv Gandhi Salai, Egattur village, Navalur, Chennai-600130 (Kancheepuram district).

4. The authorised capital of the company is Rs.15,00,00,000/- divided into 1,50,00,000 equity shares of Rs.10/- each. The subscribed and paid up capital of the company is Rs.13,59,20,440/- divided into 1,35,92,044 Equity shares of Rs.10/- each.

5. The committal of offence relates to the period 01.04.2012 to 31.03.2013 & 01.04.2013 to 31.03.2014. The maximum amount of fine under the charging section as calculated by the ROC, Tamilnadu, Chennai in his report dated 18.04.2017 are as follows:-

Penalty u/s 233(11) of the Companies Act, 1956

Defaulters	Violation Section	Period of violation	Maximum fine
M/s. LLM Appliances Pvt. Ltd.	233B	01.04.2012 to 31.03.2013 & 01.04.2013 to 31.03.2014	Rs.5000 x 2 = Rs.10000
Shri.V.M.Balasubramaniam, Managing Director	233B	01.04.2012 to 31.03.2013 & 01.04.2013 to 31.03.2014	Rs.50000 x 2 = Rs.100000

6. 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. The Applicants have stated that the Board of Directors in its meeting held on 04.04.2016 have approved and taken on record the cost audit report for both the financial years. However, in view of the non-availability of online forms for a period of six to seven months, the company could not file the cost audit report. Accordingly, the company had filed hard copy of the same for the financial years 2013 and 2014 by registered post on 18.04.2016. The applicants also stated that even after the availability of form, the company could not file the cost audit report for a period of more than two months on account of some technical issues encountered in the MCA portal. Finally, the required Cost Audit Report was filed on 23.03.2017 after raising several tickets with the MCA service desk. Since the form has been filed and continuance of offence has been stopped, the company and its Managing Director has filed this application in e-form No.GNL-1 under SRN: G395232204 dated 30.03.2017 with a request to compound the offence committed under Section 233 B of the Companies Act, 1956. As per the report of

RoC, it is also submitted that a prosecution case has been filed before the Additional Chief Judicial Magistrate, EO-1, Chennai vide case no. EOCC/23/2017

7. 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 compounding 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 year 2015 and 2016 as follows :-

Description	Amount in Rupees 2016	Amount in Rupees 2016
Current Assets, Loans and Advance	193352000	169303000
Less: Current Liabilities & provisions	70642000	48733000
Net assets	122710000	120570000
Add: Investments	44275000	44275000
Add: Fixed Assets	295733000	291646000
Add : Deferred Tax Assets	-	-
Total	462718000	456491000
Less: Other long-term liabilities	3565000	4565000
Less: Deferred tax liabilities	7809000	2099000
Net Worth	451344000	449827000

9. Heard PCS for Applicants. It is submitted that the defaulters who are the applicant company and its Managing Director Shri V.M. Balasubramaniam 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 delay in compliance with the requirement of provisions of section 233B of the Act for the aforesaid financial years is neither wilful nor wanton and the above said events are not under the control of the company and management. It was further

submitted that no prejudice will be caused to any person if the said offence is compounded.

10. Considering these submissions, this Bench is inclined to take a lenient view and allow the compounding of the offences committed under section 441 of the Companies Act, 2013 for the offence committed under section 233B(11) of the Companies Act, 1956 r/w section 148(8) of the Companies Act, 2013 by imposing the fine on the applicants as follows:

Penalty u/s 233(11) of the Companies Act, 1956

Defaulters	Violation section	Period of violation	Fine imposed
M/s. LLM Appliances Pvt. Ltd.	233B	01.04.2012 to 31.03.2013 & 01.04.2013 to 31.03.2014	Rs. 5000x 2 = Rs. 10,000
Shri.V.M.Balasubramaniam	233B	01.04.2012 to 31.03.2013 & 01.04.2013 to 31.03.2014	Rs. 30000 x 2 = Rs. 60,000

11. The applicant company is directed to pay the penalty from the accounts of the company and the applicant-officer (Managing Director) in default is directed to pay the penalty from his own resources. The Applicant Company as well as Managing Director 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.

12. 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)