

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

CA/71(441)/CB/2017

**Under Section 441 r/w Section 233B of the Companies
Act, 1956**

In the matter of

**M/s. LEITWIND SHRIRAM MANUFACTURING
PRIVATE LIMITED**

V/s

Registrar of companies, Southern Region

Order delivered on: 28.08.2017

Coram:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Petitioner(s) : Panchapakesan Krishna Kumar, MD

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (J)

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 under section 441, for violation of the provisions of Section 233B of the Companies Act, 1956 r/w section 233(11) of

the said Act, 1956. The Deputy Registrar of Companies, along with his report dated 23.06.2017, has forwarded the Application to the Registry of this Bench which has been numbered as CA/71/441/CB/2017.

2. The Company and Mr. Panchapakesan Krishna Kumar, Managing Director of the company are the Applicants. They have filed e-form No.GNL-1 under SRN: G45030319 dated 01.06.2017. 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 year 2011-12.

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. Leitwind Shriram Manufacturing Private Limited is a company incorporated on 10.04.2007[CIN : U31101TN2007PLC061993] with its registered office at Sigappi Achi Building, 4th Floor, Door No. 18/3, Rukmini Lakshmipathi Road, (Marshalls Road), Egmore, Chennai, Tamil Nadu-600008.

4. The authorised capital of the company is Rs.4,035,000,000/- (Rupees Four Hundred and three Cores and fifty Lakhs Only) divided into 403,500,000 equity shares of Rs.10/- each. The subscribed and paid up capital of the company is Rs.3,915,075,330/-(Three Ninety One Crores Fifty Lakhs Seventy Five Thousand There Hundred And Thirty Only) divided into 391,507,533 Equity shares of Rs.10/- each.
5. The commission of offence relates to the period 01.04.2011 to 31.03.2012. The maximum amount of fine under the charging section as calculated by the ROC, Tamil Nadu, Chennai in his report dated 23.06.2017 are as follows:-

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

Defaulters	Violation Section	Period of violation	Maximum fine
M/s. Leitwind Shriram Manufacturing Private Limited	233B	01.04.2011 to 31.03.2012	Rs.5000
Shri.Panchapakesan Krishna Kumar, Managing Director	233B	01.04.2011 to 31.03.2012	Rs.50000

6. The Registrar of companies in his report made it clear that the offence is made good and the applicants themselves have filed the application for compounding of the offence. The Applicants have stated that the Board of Directors in its meeting held on 25.04.2017

have approved and taken on record the cost audit report for the financial year. 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 and its officer-in-default have received show cause notice dated 9.10.2015 from the cost audit branch of the Ministry of Corporate Affairs, New Delhi, for the non-filing of Cost Audit Report for the financial year ended 31.03.2012, within the prescribed time limit. Finally, the required Cost Audit Report was filed on 02.05.2013 after raising several tickets with the MCA service desk. The company has filed e-form no. GNL-1 under SRN: G45030319 dated 01.06.2017. The Company and its Managing Director has filed this application with prayer 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/27/2017 dated 03.02.2017.

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 2016 as follows :-

Description	Amount in Rupees 2016
Loan & Advances (short term & Long Term)	1,05,97,09,291
Less Deposits	-
Less: Borrowings	7,81,17,92,094
Less Other Liabilities and Provisions	4,44,71,76,002
Add Investments	
Add Balance With Banks	19,97,62,742
Add Fixed Assets	2,23,48,54,712
Add Other Assets	7,11,62,52,281
Net Worth	-1,64,83,89,070

9. Heard MD for Applicants. It is submitted that the defaulters who are the applicant company and its Managing Director Shri Panchapakesan Krishna Kumar 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 is further submitted that no prejudice will be caused to any person if the said

offence is compounded. The offence has been made good and is not a continuing one.

10. Considering these submissions, this Bench is inclined to take a lenient view and allow the compounding of the offences under section 441 of the Companies Act, 2013 for violation of provisions of section 233B which is punishable under section 233B(11) of the Companies Act, 1956 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. Leitwind Shriram Manufacturing Private Limited	233B	01.04.2011 to 31.03.2012	Rs.500
Shri.Panchapakesan Krishna Kumar, Managing Director	233B	01.04.2011 to 31.03.2012	Rs.5000

11. The applicant company is directed to pay the penalty from the accounts of the company and the applicant-officer (Managing Director) who is 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, along with the receipt of the payment of the time.

12. Accordingly, the application is disposed of. The Registry is directed to inform the applicants for depositing the fine imposed, and on the payment of the same a copy this order shall be provided to the applicant for informing the ROC, so that he may take appropriate steps for withdrawal of the prosecution from Additional Chief Metropolitan Magistrate, Chennai.


S. VIJAYARAGHAVAN
MEMBER (T)

TJS


CH. MOHD SHARIEF TARIQ
MEMBER (J)