

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

CA/65(441)/CB/2017

Under Section 441 of the Companies Act, 2013

In the matter of

**M/s. BOHLER-UDDEHOLM INDIA PRIVATE
LIMITED**

And

ALOK JHAMB, MD

V/s

Registrar of companies, Chennai, Tamil Nadu

Order delivered on: 30.08.2017

Coram:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Petitioner(s) : MONOHARAN, PCS

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 178 of the Companies Act, 2013. The Deputy Registrar of Companies, along with his report dated 03.06.2017, has forwarded

the Application to the Registry of this Bench which has been numbered as CA/65/441/CB/2017.

2. The Company and Mr. Alok Jhamb, Managing Director of the company are the Applicants. The applicants made prayed as follows:

The applicants humbly pray that the offence under Section 178 of the Companies Act, 2013 (read with Rule 6 and 7 of the companies (Meetings of Board and its powers) Rules, 2014, may be compounded by levy of minimum composition fee and suitable orders as may be passed for compounding the offence committed under the aforementioned sections and render justice.

3. M/s. Bohler-Uddeholm India Private Limited is a company incorporated on 05.04.1994 [CIN : U51909TN1994PTC027211] with its registered office at No.3, Easwaran Salai, Off Thangavelu Engineering College Road, Karapakkam, Chennai, Tamil Nadu - 600097.
4. The authorised capital of the company is Rs. 419,500,000/- 4,035,000,000/- divided into 4,195,000/- equity shares of Rs.100/- each. The subscribed and paid up capital of the company is Rs.9,68,95,500/- divided into 9,68,955/- Equity shares of Rs.100/- each.

5. The commission of offence relates to the period 30th October, 2015 to 22.04.2016. The maximum amount of fine under the charging section as calculated by the ROC, Tamil Nadu, Chennai in his report dated 03.06.2017 are as follows:-

Penalty u/s178(1) of the Companies Act, 2013

Defaulters	Violation Section	Period of violation	Maximum fine
M/s. Bohler-Uddeholm India Private Limited	178(1)	30.10.2015 to 31.03.2016	Rs.500000
Shri. Alok Jhamb, Managing Director	178(1)	30.10.2015 to 31.03.2016	Imprisonment up to one year(or) Rs.1,00,000/- (or) with both

6. The Registrar of companies in his report made it clear that the offence is made good and the company had gone for the scheme of amalgamation with Bohloer High Performance Metals Pvt Ltd and it was duly approved by Hon'bel High Court of, Bombay in July, 2015. As per the terms of amalgamation Scheme, the appointed date was 1st April, 2014 and the effective date of Amalgamation was 30.10.2015. After amalgamation the petitioner Company, the turnover was Rs. 143.7 Cores and the petitioner company had started process of conversion to private company by obtaining members approval in December, 2015 and converted into private company on 23.04.2016. The applicants themselves have filed the

application for compounding of the offence, because the company failed to constitute the Nomination and Remuneration Committee and Stakeholders Relationship Committee for the period starting from 30th October, 2015 to 22.04.2016 i.e 172 days, when it was a Public Limited Company. The Company and its Managing Director has filed this application with prayer to compound the offence committed under Section 178(1) of the Companies Act, 2013.

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 latest audited balance sheet as at 31st March, 2016 follows:-

Description	Amount in Rupees 2016
Current Assets Loans & Advances (Short term & Long Term)	1,113,996,440
Less Current Liabilities and provisions	788,959,445
Net Current Assets	325, 036,995
Add Non-Current Liabilities	103,681,058
Add Fixed Assets	461,772,436
Add Other Assets	108,346,035
Net Worth	791,474,408

9. Heard PCS for Applicants. It is submitted that the defaulters who is the applicant company and its Managing Director Shri Alok

Jhamb 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 commission of offence under section 178 of the Act for the aforesaid period is neither wilful nor wanton and the above said events were 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 office 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 178(1) which is punishable under section 178(8) of the Companies Act, 2013 by imposing the fine on the applicants as follows:

Penalty u/s 178(8) of the Companies Act, 2013

Defaulters	Violation section	Period of violation	Fine imposed
M/s. Bohler- Uddeholm India Private Limited	178(1)	30.10.2015 to 31.03.2016	Rs.100000

Shri. Alok Jhamb, Managing Director	178(1)	30.10.2015 to 31.03.2016	Rs.50000
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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 fine impressed.

12.Accordingly, the application is disposed of. The Registry is directed to inform the applicants for depositing the amount of fine, and after payment of the fine a copy this order shall be provided to the applicant for informing the ROC.


S. VIJAYARAGHVAN
MEMBER (T)

TJS


CH. MOHD SHARIEF TARIQ
MEMBER (J)