

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

CA/74(441)/CB/2017

Under Section 441r/w under Section 211 of the Companies Act,
1956

In the matter of

**M/s. SHRIWIN AGRO REACH INDIA PRIVATE
LIMITED**

Order delivered on: 18.09.2017

Coram:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Petitioner(s) : Shri A.M. Sridharan, Advocate

ORDER

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

1. Under consideration is an application which has been filed by Applicant 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 211 of the Companies Act, 1956. The Deputy Registrar of Companies, along with his report dated 06.06.2017, has forwarded the Application to the

Registry of this Bench which has been numbered as CA/74/441/CB/2017.

2. The Company's Managing Director viz., Mr. Ramasamy Surulimani, is the Applicant. The applicant made prayers which are as follows:

The applicants humbly pray that the offence under Section 129 of the Companies Act, 2013 (read with Rule 5 and 6 of the companies (Accounts) 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. Shriwin Agro Reach India Private Limited is a company incorporated on 12.04.2011[CIN: U01400TN2011PTC080138] with its registered office at No: 7, Suresh Street Nataraj Nagar, Fenner Opposite, Kochadai, Madurai-623016.

4. The authorised capital of the company is Rs. 5,00,000/-(Five Lakhs Only) divided into 50,000/-(Fifty Thousand Only) equity shares of Rs.10/- each. The subscribed and paid up capital of the company is Rs. 5,00,000/-(Five Lakhs Only) divided into 50,000/-(Fifty Thousand Only) equity shares of Rs.10/- each.

5. The company was inspected under section 209 A of the Act, 1956 by an officer authorized by the Central Government wherein it was observed by the Inspecting Officer that in the main objects clause of Memorandum of Association one of the object of the company is to purchase, take on lease or otherwise acquire any land to sell, lease out or otherwise dispose of any land. Accordingly, in the statement of financial position, the value of land purchased by the company which are meant for resale were clubbed along with inventories and the same were shown under the heading “inventories”. The details of inventories as disclosed by the company in the statement of financial position furnished during the inspection are as under:

Particulars	For the year ended 31.03.2012	For the year ended 31.03.2013	For the year ended 31.03.2014
Inventories	Rs.1.05 Lakhs	Rs. 13.08 Lakhs	Rs. 71.66 Lakhs

It was observed from the balance sheet and profit and loss account as at 31.03.2012, 31.3.2013 & 31.03.2014, that the company has wrongly disclosed the details of “land meant for resale” under the heading “inventories” instead of “fixed asset”. Hence the provisions of section 211 of the companies Act, 1956 have been violated as the Balance Sheet & Profit and loss Account for the year ended 31.03.2012, 31.3.2013 &

31.03.2014, do not reflect true and fair view of the state of affairs of the company.

6. The commission of offence relates to the financial years 2011-2012, 2012-2013 and 2013-2014. The maximum amount of fine under the charging section as calculated by the ROC, Tamil Nadu, Chennai in his report dated 06.06.2017 is as follows:-

Penalty u/s211(7) of the Companies Act, 1956

Defaulter	Violation Section	Period of violation	Maximum fine
Shri. Ramasamy Surulimani, Managing Director	211(7)	01.04.2011-31.03.2012 and 01.04.2012-31.03.2013 and 01.04.2013-31.03.2014	Punishable with Imprisonment for a term which may extend to 6 Months or with fine which may extend to Rs.10000/- or with both. Hence fine amount will be Rs.30000/- or Imprisonment or with both.

The Registrar of companies in his report made it clear that the offence cannot be made good as the Annual Reports for the Financial Year 2011-2012, 2012-2013 and 2013-2014 were already filed.

7. The company received a show cause notice (SCN) (No.F.No.ROC/CHN/80138/Inspn/STA(T)/S 211/P.9/2016 dated 03.01.2017, from Ministry of Corporate Affairs, office of Registrar of Companies, Chennai. The Company's Managing Director has filed this application on his own volition with prayer to compound the offence committed under Section 211 of the Companies Act, 1956 in relation to the balance sheets and profit and loss Accounts for the year ended 31.03.2014, 31.03.2015 & 31.03.2016 as it did not reflect true and fair view of the state of affairs of the company.

8. However, ROC in its report refers to the violation of Section 211 of the Companies Act, 1956 for the years, 31.03.2012, 31.03.2013 & 31.03.2014. Therefore, we shall take into consideration the violation as recorded in the report of the ROC for the purpose of compounding the offences.

9. The ROC further 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.

10. The Registrar of Companies has recorded the financial position of the company latest audited balance sheet as at 31st March, 2015 and 2016 follows:-

Description	Amount in Rupees 2016	Amount in Rupees 2015
Current Assets Loans & Advances (Short term & Long Term)	12,122,740.61	10,623,541.00
Less Current Liabilities and provisions	24,433,449.34	20,497,549.00
Net Current Assets	(12,310,708.73)	(9,874,008.00)
Add Investments	-	-
Add Fixed Assets	8,721,559	8,704,259.00
Add Deferred Tax Assets	-	-
Net Worth	(3,589,149.73)	(1,169,749.00)

11. Considering the submissions made by the Counsel (viz.) Mr. A.M. Sridharan, we are 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 211 which is punishable under section 211(7) of the Companies Act, 1956 by imposing the fine on the applicant as follows:


Penalty u/s 211(7) of the Companies Act, 1956

Defaulter	Violation of section	Period of violation	Fine imposed
Shri. Ramasamy Surulimani, Managing Director	211	01.04.2011-31.03.2012 and 01.04.2012-31.03.2013	Rs.15000/- for all the three years.

		and 01.04.2013- 31.03.2014	
--	--	----------------------------------	--

12. The applicant (Managing Director) who is in default is directed to pay the penalty from his own resources. The Applicant 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 imposed.

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


S. VIJAYARAGHVAN
MEMBER (T)


CH. MOHD SHARIEF TARIQ
MEMBER (J)

TJS