

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

CA/73(441)/CB/2017

Under Section 441r/w Section 211 3(A) & 3(B) 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, 3(A)&(B) r/w (AS-2 Schedule-III) 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/73/441/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 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.

6. 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. The company was inspected under section 209 A of the Act by an officer authorized by the Central Government wherein it was observed by the inspecting Officers that as per section 211(A),

every profit and loss account and the balance sheet of the company shall be as per the accounting standards and for the sub clause (3B) where the profit and loss account and the balance sheet of the company do not comply with the accounting Standards, such companies shall disclose in its profit and loss account and balance sheet, the following:

- (a) The deviation from the Accounting Standards
- (b) The reasons for such deviation
- (c) The financial effect, if any arising due to such deviation and

As per the disclosure norms (para 26) of Accounting Standards-2, the financial statements should disclose:

- (a) The Accounting Policies adopted in measuring inventories, including the cost formula used: and
- (b) The total carrying amount of inventories and its classifications appropriate to the enterprise.

Further, with regarding item pertaining to “Inventories” as per clause O-(iii) of General instructions contained for preparation of balance sheet (Schedule III of the Companies Act, 2013), mode of valuation shall be stated. Since, the details of disclosure norms on inventories have not been disclosed in terms of AS-2 and general instructions contained in para O-(iii) of schedule III have not been

followed in the Profit & Loss Account and Balance sheet for the years ended 31.03.2012, 31.03.2013 & 31.03.2014, provisions section 211(3A)&(3B) r/w AS-2 has been violated.

7. The company received a show cause notice (SCN) (No.F.No. ROC/CHN/80138/Inspn/STA(T)/S 2113(A),3(B)/P.10/20 16 dated 03.07.2017, from Ministry of Corporate Affairs, office of Registrar of Companies, Chennai. The Company's Managing Director has filed this application with prayer to compound the offence committed under Section 211(3A) & (3B) of the Companies Act, 1956.
8. However, 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.
9. 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)

10. 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 3(A), (3B) of the Companies Act, 1956 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 (3A), (3B)	01.04.2011-31.03.2012 and 01.04.2012-31.03.2013 and 01.04.2013-31.03.2014	Rs.15000/- for all the three years.

11. 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 as prescribed, along with the receipt of the payment of the fine.

12. 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