

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

CA/75/ (441)/2017

**Under Section 441 read with Section 165 of the
Companies Act, 2013**

In the matter of

Shri. Mekapati Vikram Reddy

Vs

Registrar of Companies, Tamil Nadu, Chennai

Order delivered on: 28.09.2017

Coram:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Petitioner(s) : Shri A.K Mysamy, Sr.Advocate

Shri A.G Sathyanarayana, 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 165 of the Companies Act, 2013. The Deputy Registrar of Companies, along with his report dated 16.06.2017, has forwarded the Application to the Registry of this Bench which has been numbered as CA/75/(441)/2017.

2. Mr. Mekapati Vikram Reddy is an Applicant. The applicant made prayers which are as follows:

The applicant humbly pray that the offence under Section 165 of the Companies Act, 2013, 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. The commission of offence relates to the person who accepts an appointment as a Director in contravention of the provisions of section 165 holding the position of director, more than 20 companies at a time. The maximum amount of fine under the charging section as has been calculated by the ROC, Tamil Nadu, Chennai is as follows:-

Penalty u/s165(6) of the Companies Act, 2013

Defaulter	Violation Section	Period of violation	Maximum fine
Shri. Mekapati Vikram Reddy	165	(Date of resignation 8-9-2014. But the relevant DIR-12 not filed within time prescribed under the Act) 1-4-2015 to 20-4-2016 (Date of filing of DIR-12 is 20.04.2016)	384*25000= 9600000

4. The calculation of the penalty by the ROC is based on the facts that on 31st August, 2014. The applicant was holding the directorship in 20 (Twenty) companies only. On 1st September, 2014, the applicant was appointed as a Director in M/s. Pink City Expressway Private Limited, therefore, had become director of more than 20(Twenty) Companies, but he resigned from two companies on 08.09.2014, thereby his Directorship came down to 19 Companies. It is admitted that the companies from which the applicant has resigned did not file DIR-12 with the Registrar of the Companies. Under proviso to section 168(1) of the Companies Act, 2013, a director shall also forward a copy of his resignation within 30days of his resignation through filing of Form DIR-11 under his Digital Signature. But the resignations were filed on 20.04.2016 after delay of 384 days.
5. Shri. Mekapati Vikram Reddy Director, has not complied with the provisions of section 165 of the companies Act, 2013 and has been holding directorship in 21(Twenty One) Private / Public Limited companies as on date of default and thus violated the provision of Sections 165(1)(3)&(5) of the Companies Act, 2013. Hence the director in default has rendered himself liable for penal action as envisaged under section 165(6) of the Companies Act,2013, the provision is extracted as follows:-

If a person accepts an appointment as a director in contravention of sub-section (1), he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees for every day after the first during which the contravention continues.

6. As per the report of ROC, Chennai, it is also submitted that a prosecution case has been filed before the Additional Chief Judicial Magistrate, EO-II, Chennai-3 vide EOCC No.59/2016 dated 24.06.2016.
7. The applicant himself has filed the application for compounding of the offence with the prayer to compound the offence.
8. However, the ROC stated that he has no objection if the offence is compounded and submitted that the applicant may be directed to file compounding order, if passed by the Adjudication Authority.
9. Heard A.K Mylsamy, Sr.Advocate for Applicant. It has been submitted that a lenient view may be taken while imposing the fine. It is further submitted that no prejudice will be caused to any person if the said offence is compounded.
10. However, Considering the 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 165 which is punishable under section 165(6)

of the Companies Act, 2013 by imposing the fine on the applicant to the tune of Rs. 3,00,000/- (Rupees Three Lakhs Only).

11. 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. Who shall bring the same to the notice of the Hon'ble Judge for the Economic Offence court for withdrawal from the prosecution of the offence compounded.

S. Vijayaraghavan.
S. VIJAYARAGHAVAN
MEMBER (T)
TJS


CH. MOHD SHARIEF TARIQ
MEMBER (J)