

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

CA/72/441/CB/2017

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

M/S. PARA ENTERPRISES PRIVATE LIMITED.

-Vs-

Registrar of Companies, Chennai

Order delivered on: 27.10.2017

For the Applicant: Mr. S.Rajendran, PCS

Per: ANANTHA PADMANABHASWAMY, MEMBER (J)

ORDER

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 13.06.2017, has forwarded the Application to the Registry of this Bench which has been numbered as CA/72/441/CB/2017.
2. The Company and Mr. Pradeepsankar Maheswaran, Whole-time Director of the company are the Applicants. They have filed e- form No.GNL-1 under SRN: G38829925 dated 22.03.2017. 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. Para Enterprises Private Limited is a company incorporated on 13.12.1996 [CIN: U22130TN1996PTC037121] with its Registered office at Boopathy Buildings 17-A, Virudhunagar Road, Sivakasi Virudhunagar, Chennai-626123.
4. The authorised capital of the company is Rs. 11,50,00,000/- (Rupees Eleven Crores Fifty Lakhs Only) divided into 11,50,000 equity shares of Rs.100/- each. The subscribed and paid up capital of the company is Rs.11,07,40,000/-(Rupees Eleven Crores Seven Lakhs Forty Thousands Only) divided into 11,07,400 Equity Shares of Rs.100/- each.
5. The commission of offence relates to the period 01.04.2012 to 31.03.2014. 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.Para Enterprises Private Limited	233B of Companies Act, 1956	01.04.2012 to 31.03.2013 & 01.04.2013 to 31.03.2014	2*5000 Rs.10,000/-
Mr. Pradeepsankar Maheswaran, Whole-time Director	233B of Companies Act, 1956	01.04.2012 to 31.03.2013 & 01.04.2013 to 31.03.2014	2*50000 Rs.1,00,000/-

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 20.03.2017 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 31.03.2013 and 31.03.2014, within the prescribed time limit. Finally, the required Cost Audit Report was filed Form 1-XBRL on 06.01.2016 and 11.01.2016 after raising several tickets with the MCA service desk. The company has filed e-form no. GNL-1 under SRN: S44786754 dated 06.01.2016 and SRN: S4486744 dated 11.01.2016. 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/25/2017 dated 04.03.2017.
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 2014-2015 and 2015-2016 as follows:

Sl No.	Particulars	Amount in INR 2014-2015	Amount in INR 2016-2016
A	Assets		
1	Non-Current Assets		
	(a) Fixed Asset		
	(i) Tangible Assets	6,27,49,886	14,36,56,382
	(ii) Intangible Assets	28,54,59,223	29,34,22,510
	(b) Long term loans and advances	77,40,000	5,40,000
	(c) Non-current investments	8,64,21,606	8,64,21,606
	(d) Deferred Tax Assets	13,85,23,803	13,38,09,791
2	Current Assets:		
	(a) Inventories	63,98,60,631	52,33,44,725
	(b) Trade Receivables	11,54,18,442	22,27,78,289
	(c) Cash and Cash Equivalents	2,65,91,850	756,43,658
	(d) Short-term Loans Advances	11,65,02,643	15,68,58,946
	TOAL(A)	147,32,68,084	163,64,75,907
B	Liabilities		
2	Non-current Liabilities		
	(a) Long-term borrowings	94,58,40,343	70,96,97,929
3	Current liabilities		
	(a) Trade Payables	11,33,29,953	18,47,21,826
	(b) Other current liabilities	12,29,22,780	15,49,91,391
	(c) Short-term borrowings	32,94,47,575	61,24,40,463
	(d) Short-term Provisions	77,94,809	69,09,935
	TOTAL (B)	151,93,35,460	166,87,61,544
	Net worth (A-B)	(4,60,67,370)	(3,22,85,637)

9. Heard PCS for Applicants. It is submitted that the defaulters who are the applicant company and its Whole-time Director Shri Pradeepsankar Maheswaran, 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 office has been made good and is not a continuing one.

10. In the Application it is prayed that they have violated the provisions under section 233B which has to be r/w section 148(8) of the Companies Act, 2013, for the period of violation 01.04.2012 to 31.03.2013 and 1.04.2013 to 31.03.2014. Considering the period of violation, I feel it is proper to compound the offence by imposing penalty under section 148(8) of the Companies Act, 2013.
11. 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 r/w section 148(8) of the Companies Act, 2013 by imposing the fine on the applicants as follows:

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

Defaulters	Violation Section	Period of violation	Maximum fine
M/s.Para Enterprises Private Limited	233B r/w Section 148(8) of CA, 2013	01.04.2012 to 31.03.2013 & 01.04.2013 to 31.03.2014	2*25,000 Rs.50,000/-
Mr. Pradeepsankar Maheswaran, Whole-time Director	233B r/w Section 148(8) of CA, 2013	01.04.2012 to 31.03.2013 & 01.04.2013 to 31.03.2014	2*10,000 Rs. 20,000/-

12. The applicant company is directed to pay the penalty from the accounts of the company and the applicant-officer (Whole-time 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.

13. 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 of 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



K. ANANTHA PADMANABHA SWAMY,
MEMBER (J)

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