

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

Arguments heard on 7.03.2017
Orders passed on ~~17~~03.2017

C.A.No.19 of 2017

Applicants : M/s. CDK Global India Private Limited, Chennai
& 6 Others

Represented by : PCS Shri Soy Joseph

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ANANTHA PADMANABHA SWAMY & CH MOHD SHARIEF TARIQ
MEMBERS (JUDICIAL)

ORDER

ANANTHA PADMANABHA SWAMY, MEMBER (JUDICIAL)(ORAL):

1. Under consideration is an application filed Under Section 621A of the Companies Act, 1956, now Section 441 has been enforced on 01.06.2016 for compounding certain offences, before the Registrar of Companies, Tamil Nadu and Andaman & Nichobar Islands, Chennai, stood forwarded to NCLT, Chennai Bench along with his comments.

2. The 1st Applicant is the Company, Applicants No.2 to 6 are the Directors of the 1st Applicant company and Applicant No.7 is the Practising Company Secretary.

3. The brief note of the case is that M/s.CDK Global India Private Ltd. (hereinafter referred to as “Company”) was incorporated on 08.08.2014 having CIN : U72900TN2014PTC096861. The authorised share capital of the Company is Rs.2,75,00,00,000/- divided into 27,50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.2,52,65,65,410/- divided into 25,26,56,541 equity shares of Rs.10/- each.

4. The Company was incorporated on 8/8/2014. As per the requirement of Section 139 of the Companies Act, 2013, the Board of Directors ought to have appointed the Auditor within 30 days from the date of incorporation and in case of failure, the Board should have informed the members of the company, who shall within 60 days, at an EGM, appoint such auditor and such auditor shall hold the office till the conclusion of the sixth AGM.

5. The company has convened an EGM on 20.08.2015 in which a resolution appointing the First Statutory Auditors of the company has been passed and on the said date the offence was made good. Thus the company has violated the provisions of Section 139 of the Companies Act, 2013.

6. The Deputy Registrar of Companies, Tamilnadu, Chennai, vide his report 16.12.2016, made it clear that the offence is made good

by appointing the Auditor in the EGM dated 20.08.2015. At Para 8D of the report, the ROC pointed out that the period of violation in respect of all the Applicants is from 05.11.2014 to 20.05.2015. He also stated that he refrained from issuing any show cause notice for prosecution in view of the application filed. The report discloses that the applicants themselves have filed the Compounding Application. ROC has stated that he has no objection for compounding the offence and the Company may be directed to file e-form INC 28 along with the Compounding Order by NCLT, Chennai, if passed. The ROC has also recorded the financial position of the company as per the latest financial statement.

7. We have heard the Practising Company Secretary representing the Applicants. During the hearing, he stated that the 1st Applicant company is the subsidiary of CDK Global Group BV, registered with the trade register of the Dutch Chamber of Commerce under Number 61370398 having its office at Prins Bernhardplein, 200 1097 JB, Amsterdam, Netherlands; that the 1st Applicant Company was formed as a result of business transfer of dealer services of ADP Private Ltd. which is 100% subsidiary of ADP Inc. He has also stated that the said business transfer in India was completed only in April 2015 and full-fledged operation started only from May 2015

and since the process of identifying the auditors commenced during the transition phase, delay occurred due to change in the management and control. The PCS pleaded that the committal of offence was neither wilful nor wanton but only due to the above said bona fide reasons and prayed that the offence may be compounded by taking a lenient view.

8. The offence committed by Applicants is the violation of Section 139 which is punishable under Section 147 of the Companies Act, 2013 and both of the provisions came into force on 01.04.2014. The violation is committed thereafter, for which the 1st Applicant Company is liable to pay minimum amount of Rs.25,000/- and every officer in default has to pay minimum amount of fine of Rs.10,000/.

9. Taking into consideration the arguments made by the counsel for Applicants, we are inclined to compound the offence committed under Section 139 of the Companies Act, 2013, by imposing the fine on the applicants as follows :-

Defaulter	Sections violated	Minimum fine
M/s.CDK Global (India) Pvt. Ltd. – Company	139	Rs.25,000
Mr.Veera Venkata S Reddy Malledi - Director	139	Rs.10,000
Mr.Alfred Anthony Nietzel Director	139	Rs.10,000
Mr.William Joseph Naughton - Director	139	Rs.10,000

Mr.Lee James Brunz - Director	139	Rs.10,000
Mr.Poovannan Sivalingam - Director	139	Rs.10,000
Mr.Nithin Kumar Bohra - Company Secretary	139	Rs.10,000
Total		Rs.85,000

However, Applicants No.2 to 7 shall pay the amount of the fine from their own resources. All the applicants shall comply with the order within three weeks from the date of passing of the Order and the company shall file the required Form along with this Compounding Order with the Registrar of Companies, Chennai. Accordingly, this application is disposed of.


(CH MOHD SHARIEF TARIQ)
MEMBER(JUDICIAL)


(K.ANANTHA PADMANABHA SWAMY)
MEMBER(JUDICIAL)