

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

CA No. 71/621A/HDB/2016

Date of Order: 23.03.2017

Between:

1. Piolax India Private Limited
No.200, North Belarica Road,
Post Box No.1, Sri City DTZ,
Chittoor- 517588, Andhra Pradesh



2. Mr. Shigeo Hoshino
5-5-30-810 Onna, Atsughi – Shi,
Kanagawa 2430801, Japan

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

Currently residing at
B-06-1, Navins Dayton Heights,
Block A, Door No.52/New No.76, Nelson Manickam Road,
Aminjikarai, Chennai – 600029

3. Masayuki Abe
5-20-11, Kikuna – Kohoku – Ku,
Yokohama, 2220011, Japan



4. Mr. Yukihiro Shimazu
1917, Park Square, Yokohama,
1-2-Yoshihama-cho, Naka-ku,
Yokohama, 2310024, Japan

Currently residing at
B-06-1, Navins Dayton Heights,
Block A, Door No.52/New No.76, Nelson Manickam Road,
Aminjikarai, Chennai – 600029

... Applicants

AND

The Registrar of Companies,
For the states of Telangana and Andhra Pradesh
2nd Floor, Corporate Bhawan, GSI Post,
Tattiannaram, Nagole, Bandlaguda,
Hyderabad – 500068

.... Respondent

Counsel for the Applicants:

Mr. Ajay Naga Chowdary Vemuri, PCS

CORAM:

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Hon'ble Mr. Rajeswara Rao Vittalana, Member (Judicial)

ORDER

(As per Ravikumar Duraisamy, Member (T))

1. This application was initially filed before the Hon'ble Company Law Board Chennai Bench, Chennai. Since the NCLT Hyderabad Bench has been constituted for the cases pertaining to the States of Andhra Pradesh and Telangana, the case is transferred to Hyderabad Bench, hence, we have taken the case on records of NCLT, Hyderabad Bench and deciding the case.



2. The case was listed before the Bench on 18.08.2016, 31.8.2016, 5.9.2016 and 8.9.2016. However none appeared during these four hearings. The Bench directed the Registry of NCLT to issue notice to the Applicants/authorized representatives to appear before this Bench. Again on 19.9.2016, none appeared and RoC report was also awaited. On 4.10.2016, Mr. Ajay Naga Chowdary Vemuri appeared on behalf of the Applicants. Subsequently, the case was posted on 6.10.2016 and 20.10.2016 since the RoC report was awaited. During the hearing held on 9.11.2016, RoC report was available. The case was again posted to 20.01.2017 and finally on 07.02.2017, the case was reserved for orders.

3. The present Company Application No.69 of 2016 has been filed by the Applicant Company and its three Directors (hereinafter referred to as "Applicants").under Section 621A read with Section 220 of the Companies Act, 1956 by praying the Tribunal to take lenient view while imposing penalty for the alleged violation of the provisions of the Companies Act, 1956.

4. The brief facts of the case as averred in the Application are:

a. Piolax India Private Limited (hereinafter referred to as "Applicant Company") is a company incorporated under the provisions of the Companies Act, 1956 on 8th December, 2009 with CIN U25200AP2009FTC083280. Applicants No. 2 to 4 are the Directors of the Applicant Company.

b. The Authorized Share Capital and the Paid-up Capital of the Applicant Company is Rs.8,20,000,000, comprising of Rs.82,00,000 equity shares of Rs.1000/- each.

c. The main objects of the Applicant Company are to engage in the business of manufacturing, supplying, distributing, dealing, trading on whole-sale cash and carry basis of plastics and industrial fasteners, spring washers, etc.

d. The provisions of the Companies Act, 1956 state that every Company has to hold its Annual General Meeting within a period of 15 months from the date of its previous AGM or within 6 months from the end of financial year, whichever is earlier. The Company is also required to file its annual returns with the RoC



within a period of 60 days from the date on which the AGM of the Company should have been held.

In the instant case, the Applicant Company had held its previous AGM on 29th June, 2012 and the financial year for the period 1st January, 2012 to 31st December, 2012 closes on 31st December, 2012. As such, the due date to hold the AGM for the financial year 2012 was on 30th June, 2013 but the AGM of the Company was held on 23rd November, 2013 and the Annual Return of the Company was filed with the RoC on 7th March, 2014.

- e. In view of the delay in holding AGM, the annual accounts comprising of balance sheet and profit and loss account and annual returns were not filed in accordance with the provisions of Section 220 of the Companies Act, 1956. The period of delay in under Section 220 of the Companies Act, 1956, is, therefore, 220 days as the Balance sheet and profit and loss accounts were filed with the RoC on 7th March, 2014.



Therefore, the Applicant admits the contravention of Section 220 of the Companies Act, 1956 and the penal provisions as prescribed under Section 220(3) read with Section 162 of the Companies Act, 1956 shall apply for such offence and thereby seeks to compound the offence under Section 621A of the Companies Act, 1956.

The Applicants further pray the Tribunal to take a lenient view in the present case, since the Company is a private limited

company with only 2 members and 3 Directors and that the non-compliance was unintentional. In addition, the Company submits that it has rectified all the defaults and non-compliances and undertakes to ensure compliance with all applicable provisions of the companies Act, 1956 in the future.

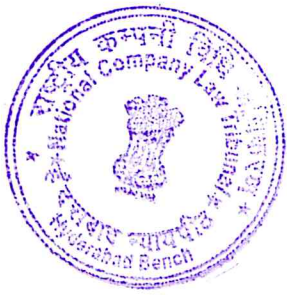
5. We have heard the learned counsel for the Applicants, perused the RoC reports and all the connected case records.

6. The RoC, in its report, vide ROCH/LEGAL/SEC220/621A/83280/PIPL/ STACK/2016 dated 07.11.2016 has stated that “the Company has mentioned the financial year as 01.01.2013 to 31.12.2013 to which this violation relates to but it is actually violation pertains to financial year 01.01.2012 to 31.12.2012, hence needs to be rectified in the Petition.”

During the hearing held on 20.01.2016 before this Bench, the Learned Counsel for the Applicants submitted a Board Resolution dated 05.12.2016 authorizing him to appear on behalf of the Applicants before this Tribunal. As per the directions of this Bench, he made suitable corrections and rectified the Petition.

7. The RoC, while reiterating the facts of the case, has made following submissions:

a. On 16.06.2014, the Applicant Company and its Directors have submitted an application under Section 621A of the companies



Act, 1956 for compounding the offence under Section 220 of the Companies Act, 1956, for themselves and the Company.

- b. The Applicant Company has filed the Annual Return 23AC vide SRN Q29467917 dated 07.03.2014 and paid additional fee of Rs.4500/-.
- c. The Applicant Company was required to file its Balance Sheet and Profit and Loss Account for every Financial Year within 30 days from the date of AGM with the RoC. However, the company failed to hold its AGM on 30.06.2013 and also failed to file its Balance Sheet for the year 2012 within 30 days, therefore, causing a delay of 220 days.
- d. It is a suo-moto application since no show-cause notice was issued to the Applicants.
- e. It is further stated that, if a company fails to comply with the provisions of Section 220, as per Section 220(3), if default is made in complying with the requirements of sub-sections (1) and (2), the company and every officer of the company who is in default, shall be liable to the like punishment as is provided by Section 162 for a default in complying with the provisions of Section 159, 160 or 161 i.e. every company and the officer in default, shall be punishable with fine which may extend to Rs. 500/- for every day during which the default continues.



8. In view of the above facts, submissions of the counsel and in interest of justice we dispose of the present Company Application with following directions:

- a. We direct the Applicant Company and its three directors i.e. Applicants No. 2, 3 and 4 to pay Rs.50,000/- each towards the compounding fee.
- b. We direct the Applicants to pay the compounding fee within a period of three weeks from the date of receipt of copy of the order and report compliance of the same to the Registry of NCLT.
- c. We direct the Applicants to be careful in the future and not to repeat violations with respect to the provisions of the Companies Act, 1956/2013 in future.



Sd/-

RAVIKUMAR DURAISAMY

MEMBER (T)

Sd/-

RAJESWARA RAO VITTANALA

MEMBER (J)

V. Annapoorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68

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CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER... 71/621A/H33 2016
निर्णय का तारीख
DATE OF JUDGEMENT... 23/3/17
प्रति लेखर द्वारा गणित
COPY MADE READY ON... 24/3/17