IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV

C.P.-82/ND/2021

Indian Durobuild Private Limited

... Petitioner

Versus

Central Government,

through Regional Director

... Respondent

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (J)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)

Order dated: 27.09.2022

CLARIFICATION

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER- TECHNICAL

The instant petition is filed by the petitioner i.e., M/s. Indian Durobuild Private Limited having CIN: U70200DL1994PTC058543 and registered office situated at k-21/55b, Dhonda New Delhi, East-110053 under Section 131 of the Companies Act, 2013 read with Rule 77 of the National Company Law Tribunal Rules, 2016, inter alia, seeking relief of voluntary revision of audited Financial Statements for the year ending 31st March, 2018. The instant petition was filed on 10.05.2020. The prayer(s)/relief(s) sought by the petitioner company are as follow:-

a. *"The Board may be allowed to rectify note 2.5 in the financial statement for the year ending 31st March, 2018 by mentioning the names and details of the companies wherein the investments have been made in respect of equity shares i.e., Non-Trade unquoted Investments in Equity Shares.*
b. *The company may be allowed to file its revised financial statement for the year ending 31st March, 2018 with the Registrar of Companies, NCLT of Delhi & Haryana, New Delhi.*

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c. *The Registrar of Companies, NCT of Delhi & Haryana may be directed to mark the e-Form AOC-4(XBRL) filed by the petitioner company for the financial year ending March, 2018 vide SRN:H37033693 dated 28.12.2018 as defective and be treated as null and void.*

d. *The Registrar of Companies, NCT of Delhi & Haryana be restrained from issuing any show cause notice or taking any punitive action against the Board of Directors and Company due to the error reported in the financial statements for the financial year ending March, 2018."*

2. The Petitioner i.e., M/s. Indian Durobuild Private Limited stands amalgamated with M/s. Empire Fincap Private Limited vide order of Hon'ble NCLT, Principal Bench vide order dated 04.12.2020. The petitioner company vide affidavit dated 26.05.2021 had placed on record the order dated 04.12.2020 of the Hon'ble NCLT, Principal Bench approving the scheme of amalgamation.

3. Brief facts of the case, as mentioned in the instant petition, which are relevant to the issue in question, are as follows:-

a) The petitioner company submits that the petitioner company was incorporated on 22.04.1994 and is currently engaged in the business of share and stock broking, finance brokerage, underwriters, su-underwriters, agents and brokers, lead managers, issue managers, portfolio managers for taking, holding, dealing in converting stock shares and securities of all kinds and to carry any business in India or abroad.

b) The petitioner company submits that the Board of Directors of the petitioner company in their meeting held on 22.08.2018 had approved the financial statement and Board Report for the financial year ending March, 2018. The petitioner company submits that as per provision of Section 129 of the Companies Act, 2013, the petitioner company was required to give the details of the names of the companies wherein the investment is made and also to disclose whether those companies are associate, subsidiary of or joint venture.

c) The petitioner company submits that in the financial statements for the year ending March, 2018, on the assets side Non-Currents Assets were shown as Rs.4,09,93,750/- and in Note 2.5 it was only mentioned Non Trade Unquoted Investments in equity shares. The petitioner company further submits that neither the names of the companies wherein the investment has been made or their relation with the petitioner company had not been disclosed as per Section 139

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of the Companies Act, 2013 read with Schedule III of the Companies Act.

d) The petitioner submits that the Board of Directors of the Petitioner Company came to know this mistake only when the petition under Section 230 read with Section 232 was filed and the said fact was pointed out by the Regional Director in its representation. The petitioner company further submits that the said mistake was inadvertently occurred as the present Companies Act, 2013 was a new one and the accountant who had prepared and finalized the financial statement was not well versed with the provisions of the Companies Act, 2013. The petitioner company adds that the petitioner company is a closely held company wherein no public in interest is involved.

e) The petitioner company submits that the Board of Directors in their meeting held on 30.06.2020 had suo-moto decided to rectify the error occurred in reporting the figure of Non-Current Assets and in Notes 2.5 of the financial statements for the year ending 31.03.2018 except that the details of the investments in companies in whose shares, the petitioner company have invested would appear.

f) The petitioner company further submits that the details of the Non-Current Assets in Notes 2.5 of the financial statement for the year ending 31.03.2018 would appear as follow:-

   i. Rs.3,59,93,750/- divided into 3,42,80 nos. of equity shares of HAL Offshore Limited.

   ii. Rs.50,00,000/- divided into 5,00,000 nos. of Equity Shares of Indian Probuild Private Limited.

4. Heard and record perused. This Tribunal vide order dated 11.05.2021 directed the petitioner company to issue notice to the Regional Director, Northern Region and observed that the Ld. Counsel for the income tax department had accepted the notice. The petitioner company in compliance of the order dated 11.05.2021 had served the notice to the Regional Director, Northern region and the Registrar of Companies, NCT of Delhi and Haryana on 25.05.2021 through email and filed the details of those emails before this Tribunal.

5. On the basis of averments made, this Tribunal had reserved the order on 12.09.2022. However, on examination of records, this Tribunal observed that the petitioner company had not advertised the date of hearing of the petition as envisaged under Rule 77(4) of the National Company Law Tribunal Rules,

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2016. The Rule 77(4) of the National Company Law Tribunal Rules, 2016 is reproduced herein below:-

> "Rule 77 - Application under section 131:-
> (4) The company shall at least fourteen days before the date of hearing advertise the application in accordance with rule 35."

6. Accordingly, the petitioner company is directed to advertise the date of hearing in the newspapers namely, "The Business Standard" (English and Hindi Delhi edition) not less than 14 days before the next date fixed for hearing.

7. In addition to the above public notice, the Petitioner Company is further directed to serve the notice of the Petition on the following Authorities namely, (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies, NCT of Delhi & Haryana, Ministry of Corporate Affairs; (c) the concerned Income Tax Department; and to such other Sectoral Regulatory Authorities who may govern the working of the petitioner company. In the interest of justice, one last opportunity is granted to the regulatory authorities to file their reply on or before the next date of hearing, failing which the right to reply shall stand closed.

8. Further, the petitioner company is directed to file affidavit of service and publication at least 10 clear days before the next date of hearing of this petition.

Post the matter on 02.11.2022 for further consideration.

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(BINOD KUMAR SINHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)