

In Re: Otto Burlingtons Mail

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Court : Company Law Board CLB

Decided On : Jul-15-1998

Reported in : (1999)96CompCas525

Judge : A Ramanathan

Appellant : In Re: Otto Burlingtons Mail

Judgement :

1. This is an application under Section 621A of the Companies Act, 1956, made by Otto Burlingtons Mail Orders Pvt. Ltd., which was duly forwarded by the Registrar of Companies, NCT of Delhi and Haryana for compounding of offences under Section 297 of the Act. The application for compounding covers offences committed by the company and its six directors, namely, (1) Shri Peter Muller, (2) Shri Heiko Rees, (3) Shri R. K. A. Kapoor, (4) Dr. Michael Crusemann, (5) Shri Nakul Kapur, (6) Mrs. Guna Nayar. The offences relate to non-seeking of prior approval of the Central Government under Section 297(1) of the Companies Act, 1956.

2. The company in its application has stated that the above-named company, the applicant, was incorporated as a private limited company on December 19, 1994, under the provisions of the Companies Act, 1956, as a company limited by shares. The company has stated in its application that the transactions were urgent and could not be delayed for reasons of business consideration and further there was no time to seek prior approval of the Central Government and as such the said prior approval could not be obtained. The company made applications to the

Regional Director at earliest available opportunity and infraction on the part of the company is only technical.

3. At the hearing held on May 8, 1998, U. K. Singal, advocate of the company, reiterated the contents of the application. Section 297 of the Companies Act contemplates that in the case of contracts between the company and any other party who may be a director or his relative or a firm in which such director or relative is a partner or any other partner in such firm or a private company of which the director is a member or director, such contracts shall not be entered into without the consent of the board of directors and in the case of a company having a paid-up share capital of not less than Rs. 1 crore no such contract shall be entered into except with the previous approval of the Central Government. The contracts contemplated in this section relate to sale, purchase, supply of any goods, materials or services or for underwriting the subscription of any shares or debentures of the company. The two distinctive features of this section are (a) a positive prohibition as reflected by the words "shall not enter into any contract"; and (b) the requirements of prior approval of the Central Government in case the paid-up share capital is not less than Rs. 1 crore. These two distinctive features reflect the rigour of these provisions. Such rigorous provision, however, is not supported by appropriate penal provisions in order to sustain its rigour.

4. Even though a default or an offence may be rigorous in nature unless it is reinforced by penal provisions like imprisonment but is punishable with any monetary penalty, the facility of compounding of such offences is not available under Section 621A of the Act. In case of default in compliance under Section 297, in the absence of specific penalty the provisions of Section 629A shall be applicable and consequently the monetary penalty for each defaulter in respect of default to the maximum extent of Rs. 500 along with a fine of Rs. 50 per day for continuing offence can be imposed. In this case the company and its officers have committed default under Section 297 of not getting the approval of the Central Government in respect of a number of contracts during the period from April, 1996, to February, 1997, as set out in the annexures to the application. As such default in respect of each such contract for various number of days aggregate to huge sums of penalty. While compounding the offences the nature of the offence and

the financial position of the company as well as the continuance default should be taken into account in quantifying the sum to be determined as the compounding fees. It is also to be ensured in view of the prohibition contained in Section 297 it may have to be ensured that having compounded the offence the same violations have not continued further. This has been verified from the contract register of the company and has also been confirmed by the company that such default is not continued. It is also to be kept in mind as to whether the application for compounding is consequent to the launching of the prosecution or has been sought for voluntarily. In this case the compounding has been sought voluntarily without the pressure of a prosecution behind it.

5. Keeping in view all of the above, it is appropriate that the company should remit a fee of Rs. 2 lakhs and each director a sum of Rs. 20,000 which shall be remitted by them individually. This was determined at the hearing on May 8, 1998. Subsequently, the company and the directors have remitted the compounding fee and as such the offences stand compounded. A copy of this order shall be forwarded to the Registrar of Companies of Delhi and Haryana for his information and necessary record.

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