

In the National Company Law Tribunal

New Delhi Bench

C.P No- 16/206/ND/2017

In the Matter of

M/s BLP Wind Project (Amberi) Private Limited

Order Delivered on – 15.11.2017

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SH. S. K. MOHAPATRA, HON'BLE MEMBER (T)

ORDER

The petitioner has filed this application u/s 441 of the Companies Act, 2013 praying for compounding of the offence u/s 231 of the Companies Act, 1956 and u/s 146 of the 2013 Act having defaulted in sending notices of the AGM and EGM to the Statutory Auditors of the Company for the Financial years 2011-2012 to 2016-2017. The default was made good as the company has confirmed that due notice of all upcoming General Meeting was served to all the Statutory Auditors, a fact confirmed by the RoC.

2. **As per Section 231 of the 1956 Act:-**

“All notices of, and other communications relating to, any general meeting of a company which any member of the company is entitled to have sent to him shall also be forwarded to the auditor of the company; and the auditor shall be entitled to attend any general meeting and to be heard at any general meeting which he attends on any part of the business which concerns him as auditor.”

As per provisions of Section 146 of the Companies Act, 2013;

“All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorized representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor”.

3. The aforesaid offence is punishable u/s 232 of the 1956 Act and 147 of the Companies Act 2013. Accordingly, RoC has recommended the fine as **Rs. 5,000/-** on the company for every default during the financial years 2012 to 2013 and **Rs. 5,00,000/-** for defaults in the financial years 2014 to 2016. There are stated to be 4 defaults attracting the fine u/s 232 of the Companies Act 1956 and 7 defaults attracting the fine u/s 147 of the Companies Act 2013.

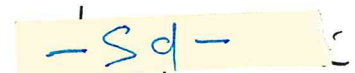
4. As the default has been made good, the petitioners/applicant's prayer can be granted. In terms of the decision of the Hon'ble NCLAT in the matter of M/s Viavi Solutions India Private Limited V. Registrar of Companies reported in (2017) 139 CLA 242 for rationalizing fines, it has been observed that while compounding offences, various parameters be borne in mind. The petition has been filed suo-moto. The default is stated to be inadvertent and did not involve any malafide intentions. Further no prosecution has been initiated by the department. In view of the aforesaid facts, this Bench deems it just and equitable to impose a fine of **Rs. 2 Lakhs** on the company.

5. Subject to the remittance of the aforesaid fine, the offence shall stand compounded. For compliance within two weeks.

6. Petition stands disposed off in terms of the above.



(S. K. Mohapatra)
Member (T)



(Ina Malhotra)
Member (J)