

Company Petition No.16/105/ (ND)/2017

SECTION 441 OF THE COMPANIES ACT, 2013 (SECTION 621A OF THE COMPANIES ACT, 1956) FOR VIOLATION OF SECTION 159/161/162 OF THE COMPANIES ACT, 1956 AND SECTION 92 OF THE COMPANIES ACT, 2013.

AMONGST

PAHUJA TAKII SEED LIMITED (Applicant No.1)
HAVING REGISTERED OFFICE AT:
D-246, STREET NO.10, BALAJI CHAMBERS, OFFICE NO.303
LAXMI NAGAR, New Delhi-110092

MR. OSAMU SUGIMURA (Applicant No.2)
ERSTWHILE DIRECTOR OF APPLICANT NO.1
S/O MR. TAKESHI SUGIMURA
R/O 794, KIDERA-CHO, NARA, JAPAN

MR. MASAKI KASHIWAGI (Applicant No.3)
 ERSTWHILE DIRECTOR OF APPLICANT NO.1
 S/O MR. MITUSUTERU KASHIWAGI
 R/O 564-9, KITAMACHI, NISHIURA-KAMINOSHIMODACHURI
 OMMAE-DORI, KAMIGYO, KYOTO, JAPAN

MR. KAZUO HATSUDA (Applicant No.4)
ERSTWHILE DIRECTOR OF APPLICANT NO.1
S/O MR. SAICHIRO HATSUDA
R/o 1-1-53-505, TOHEI, CHUO-KU, OSAKA, JAPAN

..... APPLICANTS

AND

Registrar of Companies
NCT of Delhi & Haryana
4th floor, IFCI Tower,
Nehru Place
New Delhi-110019.

.....RESPONDENT

ADVOCATE FOR THE PETITIONERS: Mr. Cicu Mukhopadhyay, Senior Advocate
Mr. Anirudh Das, Advocate
Mr. Aditya Mukherjee, Advocate

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ORDER

ORDER DELIVERED ON: 18.08.2017

1. In relation to the offence arising out of non-filing of annual return with the Registrar of Companies, NCT of Delhi and Haryana (RoC) in FORM 20B for the financial years 2011-12 and 2012-13, the Petitioners above named have filed the above Petition for compounding the offence under Section 159/161/162 of the erstwhile Companies Act, 1956, with the Registrar of Companies, NCT of Delhi & Haryana and the same has been put up before us as required under the provisions of Companies Act 1956/ 2013 for compounding the offence.
2. The Petitioner claims that the delay in filing of Annual return during the financial years were inter-alia caused by the then subsisting dispute between the shareholders interse of the 1st Applicant, the delay in the valuation exercise subsequent to arrival of settlement, the delays with respect to transfer of shares to Takii on account of the requirement of RBI approval and related compliances, the change in management of the Applicant Company and subsequent corporate actions required to be undertaken by the new management of the Applicant company. It is further pleaded in the Petition that the violation committed for



non-filing of annual return is not willful and that in the circumstances as they have voluntarily reported the non-compliance on their own, the same may be duly considered while taking into consideration the imposition of fine, as prescribed under the relevant provisions of the Companies Act be it 1956 or 2013. It is also averred that they have put an end to the offence by filing the annual return for the relevant years as tabulated in the Petition and which is extracted below:

Financial Year	Last date on which the Annual Return to be filed	Actual Date on which Annual Return filed
01.04.2011 to 31.03.2012	29.11.2012	15.02.2017
01.04.2012 to 31.03.2013	29.11.2013	27.02.2017

3. The Registrar of Companies has filed a detailed report and a perusal of which shows that no prosecution in relation to the offence has been filed or launched and that similar offence has also not been compounded during the last 3 years. It is further reported that the default has been made good as per details furnished by RoC which is in accordance with the compilation, as extracted in paragraph 2 above. Further, it is also represented by the RoC in the report dated 01.06.2017



that no complaint has been received against the Company and that there is no inspection or investigation proceedings pending against the Company.

4. The plea made by the Petitioner in the above Company Petition and the documents annexed therewith and the report of the RoC have been taken into consideration. Further, in passing this order, this Tribunal is also guided by the judgements of the Hon'ble NCLAT passed in relation to imposing of fine and compounding of an offence in which it has been laid that the following factors are required to be considered:

- i) The gravity of offence.
- ii) The act is intentional or unintentional.
- iii) The maximum punishment prescribed for such offence, such as fine or imprisonment or both fine and imprisonment.
- iv) The report of the Registrar of Companies.
- v) The period of default.
- vi) Whether petition for compounding is suo-moto before or after notice from, Registrar of Companies or after imposition of the punishment or during the pendency of a proceeding.
- vii) The defaulter has made good of the default.
- viii) Financial condition of the company and other defaulters.
- ix) Offence is continuous or one-time.
- x) Similar offence earlier committed or not.



- xi) The act of defaulters is prejudicial to the interest of the member(s) or company or public interest or not.
- xii) Share value of the company, etc.

5. Applying the above yardstick it is seen that the Petitioner Company is a Public Limited Company. The plea of the Petitioners in the Petition that in view of the pre-existing dispute for the relevant years for which they have not been able to comply may not be a valid ground under law for their exoneration, but however to an extent is a mitigating factor in relation to determining the quantum of fine. Further the existing financial position of Petitioner Company seems to be also not on a sound footing. Moreover, it is also seen that defaulter has made good the default on its own. Further both under the provisions of Companies Act, 1956 as well as under the 2013 Act, the punishment for default in complying with the relevant provisions requiring the filing of annual return is attendant only with fine as reproduced below:

"162. Penalty and interpretation.

(1) If a company fails to comply with any of the provisions contained in section 159, 160 or 161. The company, and every officer of the company who is in default, shall be punishable with fine which may extend to [five hundred] rupees for every day during which the default continues.

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(2) For the purposes of this section and sections 159, 160 and 161, the expressions "officer" and "director" shall include any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act.

6. However, the non-compliance with the non-filing of annual return is for a continuous period of two years and has been made good after a period of more than three years from the date of default as evidenced from the report of RoC.
7. Hence, in the circumstances of the case, this Tribunal is of the view that it will be fit and proper to impose the following fine on the defaulters for each of the years, thus aggregating in all to Rs.9,51,000/- for the two years i.e.2011-2012 and 2012-2013 the break- up of which is given as follows:

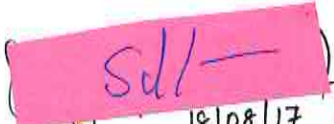
Name of Applicants	No of Days Delay & Per day fine imposed	Amount of fine payable (Rs)	No of days delay & Fine imposed/ day	Amount of fine payable (Rs)
	2011-2012	2011-2012	2012-2013	2012-2013
PAHUJA TAKII SEED LIMITED	1535x100	1,53,500	1182x100	1,18,200
MR. OSAMU SUGIMURA	1477x100	1,47,700	1117x100	1,11,700

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MR. MASAKI KASHIWAGI	1477x100	1,47,700	1117x100	1,11,700
MR. KAZUO HATSUDA	986x100	98,600	619x100	61,900
	TOTAL	5,47,500		4,03,500

9. Subject to the remittance of the aforesaid fine, the offence shall stand compounded. For compliance within three weeks. Fine levied on the Directors shall be paid out of their personal accounts.

Petition stands disposed off in terms of the above.


18/08/17
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.MEHTA