

In the National Company Law Tribunal

New Delhi Bench

C.P No- 16/93/2017

In the Matter of

Mrs. Achla Dewan

Order Delivered on – 23rd August, 2017

CORAM:

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

ORDER

The petitioner, Mrs. Achla Dewan, was a Director in more than 20 Companies. This being in gross violation of Section 165 of the Companies Act 2013 which limits any individual from being a Director in more than 20 companies, prosecution has been initiated. It was only then that the applicant took steps to resign from the directorship of some companies so as to adhere to the provisions of Section 165. As per the said provision, every any person who was on the Board of directors of more than 20 Companies was required to resign from companies in excess of twenty by 31st March 2015.

2. The period of default is therefore stated to be from 27.10.2015 to 10.12.2015 i.e for 45 days.

3. With a view not to face a protracted criminal prosecution and penal consequences, the applicant who admits this default on account of ignorance, has filed the present petition under section 441 of the Act.



4. The offence is punishable u/s 165(6) of the Companies Act, 2013 which provides for an imposition of a fine which shall not be less than Rs.5,000/- but which may extend to Rs.25,000/- for every day after the first during which the contravention continues. Accordingly the office of the RoC has recommended the imposition of a fine of **Rs. 11,25,000/-**(Max.) and **Rs. 2,25,000 /-**(Min.) on the petitioner.

5. The petitioner submits that the said omission was inadvertent and not on account of any malafide intentions. Though ignorance of law is no excuse, one cannot shy away from the fact that the technicalities of law are complicated and adherence to several statutory provisions very complex. The said restriction of a limit to being a Director of Companies to twenty has been incorporated in the new Act. It would be prudent to accept that no one would deliberately violate this provision so as to attract such a draconian fine, which in the present circumstances may extend upto Rs. Eleven Lakhs twenty five thousand.

6. Since the applicant has prayed for compounding, the fees imposed for the inadvertent default should be of a just and equitable parameter. The petitioner has taken remedial steps by resigning from the directorship in companies in excess of 20. The offence of the petitioner, being one which is punishable with fine only and in view of the guidelines laid down by the Hon'ble NCLAT, it would suffice to impose a cost of **Rs. 2,25,000/-** on the petitioner which is not only the minimum amount of fine, but also 1/5th of the maximum fine attracted for perpetuation of the aforesaid offence for about 45 days.

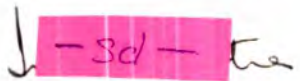
Name of the Applicant	Penalty
Mrs. Achla Dewan	Rs. 2,25,000/-

7. Fine imposed on the applicant shall be paid out of her personal account.



8. Subject to the remittance of the aforesaid fine within two weeks, the offence shall stand compounded. Copy of the order be sent to the office of the RoC. Compliance Report be placed on record.

9. Petition stands disposed off in terms of the above and consigned to Record Room.


(Ina Malhotra)
Member (J)