

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, SINGLE BENCH
NEW DELHI

Company Petition No.16/139/ (ND)/2017

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

In the matter of:

SECTION 441 OF THE COMPANIES ACT, 2013 (SECTION 621A OF THE COMPANIES ACT, 1956) FOR VIOLATION OF SECTION 96 OF THE COMPANIES ACT, 2013.

AMONGST

INVERNESS MEDICAL SHIMLA PRIVATE LIMITED
HAVING REGISTERED OFFICE AT:
D-SM-221, DSM-222, DLF TOWERS, SHIVAJI MARG
NAZAFGARH ROAD, NEW DELHI-110015

.....Petitioner No.1

MR. LALIT KUMAR SAINI
DIRECTOR OF PETITIONER NO.1
S/O MR. SAMAY SINGH
R/O A-2, TOWER, FLAT NO.804 UNIWORLD CITY, SECTOR 30
GURGAON-122001

.....Petitioner No.2

MR. SUSHIL KUMAR SRINIVAS RAO
DIRECTOR OF PETITIONER NO.1
S/O MR. ADYAPADY SRINIVAS RAO
R/O F-1101, PURVA VENEZIA, MAJOR UNNIKRISHAN ROAD, NEAR MOTHER
DAIRY, YELAHANKYA NEW TOWN, YELAHANKYA,
BENGALURU-560064

.....Petitioner No.3

Page 1 of 7



AND

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

.....RESPONDENT

ADVOCATE/ AUTHORIZED REPRESENTATIVE
FOR THE PETITIONERS: Mr. Deepak Bansal, Company Secretary



ORDER

ORDER DELIVERED ON: 28.09.2017

1. In relation to the offence arising out of non-convening of the Annual General Meetings (AGMs) for the financial year 2014-2015 the Petitioners above named have filed the above Petition for compounding the offence under Section 96/99 of the Companies Act, 2013, with the Registrar of Companies, NCT of Delhi & Haryana (RoC) and the same has been put up before us as required under the provisions of Companies Act 2013 for compounding the offence.
2. The Petitioner claims that the delay in holding the AGM were inter-alia caused because company was undergoing losses. It is further pleaded in the Petition that the violation committed for not convening the AGM 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, 2013. It is also averred that they have put an end to the offence by convening the AGM for the relevant year on 30.09.2015.
3. The Registrar of Companies has filed a detailed report dated 02.08.2017 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 02.08.2017 that no complaint has been received against the Company and that there is no inspection or investigation proceedings pending against the Company. As per the report of the Registrar, it is seen that the Company being the 1st Petitioner has made good the default by holding the AGM for the year ended 31.03.2015 on 23.12.2016.

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 **M/s Viavi Solutions Private Limited & Ors vs Registrar of Companies, NCT Delhi and Haryana** in relation to imposing of fine and compounding of an offence. In relation to the date on which the petitioner company had made good the default, even though in the petition it is stated as 30.09.2015 when the AGM is said to have been held and thereby contending that there is no default, however in the annual return filed in the form No. MGT-7 AOC-4 enclosed as Annexure-3 to the Petition, the date

given therein by the petitioner itself for the year 2014-2015 is 23.12.2106 and in the circumstances we proceed accordingly in ascertaining the period of default and quantum of fine.

5. Applying the above yardstick it is seen that the Petitioner Company is a private Limited Company. The plea of the Petitioners in the Petition that in view of the pre-existing losses for the relevant year 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. 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 to convene AGM is attendant only with fine as reproduced below:

“99. Punishment for default in complying with provisions of sections 96 to 98.—If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.”



6. However, the non-compliance with the non-holding of AGM is for a period of one year and has been made good only recently.

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 fixed payable as well as for continuing default on the defaulters for the period of default, thus aggregating in all to Rs.7,35,000/- for the year 2014-2015 the break- up of which is given as follows:


Name of the Applicants	Fixed fine payable	No of Days Delay & Per day fine imposed	Amount of fine payable (Rs)
		2014-2015	2014-2015
INVERNESS MEDICAL SHIMLA PRIVATE LIMITED	20,000	450x500	2,25,000
MR. LALIT KUMAR SAINI	20,000	450x500	2,25,000



MR. SUSHIL KUMAR SRINIVAS	20,000	450x500	2,25,000
Total	60,000		6,75,000

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

Petition stands disposed off in terms of the above.


(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.MEHTA