

In the National Company Law Tribunal
New Delhi Bench

C.P No- 16/237/2017

In the Matter of
M/s Zetasoft Technologies Private Limited

Order Delivered on -08.01.2017

CORAM:

Ms. INA MALHOTRA, MEMBER (JUDICIAL)

Mr. S.K. MOHAPATRA, MEMBER (TECHNICAL)

ORDER

PER MS. INA MALHOTRA, MEMBER (J)

This petition has been filed on behalf of the company and its Directors u/s 441 of the Companies Act, 2013/ 621A of the 1956 Act praying for compounding of the offence u/s 96 of the Companies Act 2013. The said petition, which has been routed through the office of the RoC along with their comments, prays for compounding the offence of not holding its first AGM(i.e for 2013-2014) as well for the next Financial year i.e 2014-2015 within the period as mandated under the Statute.

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2. As per the provision of Section 96(1) of the Companies Act, 2013:

“Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.

Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year.

Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:

Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months”.

3. As per averments, the First AGM which should have been held by 31st December 2014 and the second one by 30th September 2015, could only be held on 25.09.2016, i.e with a delay of 634 days and 361 days respectively, thus violating the provisions of



Section 96 of the Companies Act, 2013. The default has since been made good.

4. The aforesaid offence is punishable u/s 99 of the Companies Act 2013 respectively, whereby the Company and every officer who is in default is punishable with a fine which may extend to Rs. 1,00,000/- and in the case of continuing default with a further fine which may extend to Rs. 5000/- for every day during which the default continues. Accordingly, RoC has recommended the imposition of a compounding fee as under:-

S.No	Name of the Applicant	Fine U/s 168 for the F.Y 2013-2014	Fine u/s 99 for the F.Y 2014-2015	Total
1.	Zetasoft Technologies Private Limited	13,35,000/-	19,00,000/-	32,35,000/-
2.	Mr. Anthony Onyemaobi Nwachukwu	5,85,000/-	3,80,000/-	9,65,000/-
3.	Ms. Theresa Marie Mahoney	13,35,000/-	19,00,000/-	32,35,000/-

5. The applicants have submitted that the delay in holding the AGM was due to disputes between the Shareholders i.e Mr. Anthony Onyemaobi Nwachukwu and Mr. Vivek Mahajan, as the company had only two shareholders.

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6. Given the facts of the case that no prosecution has been initiated and the applicants have suo moto prayed for compounding, the delay occurred in carrying out the Statutory Compliance on account of disputes between the shareholders can be compounded. Keeping in view the submissions made and the guidelines set out by 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**, to consider various parameters, it would be just and equitable to impose the fine on the company and on each of its applicant Directors as under:-

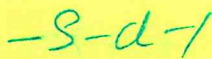
For	Amount (Rs.)
M/s Zetasoft Technologies Private Limited	Rs. 6.5 lakhs
Mr. Anthony Onyemaobi Nwachukwu	Rs. 2 Lakhs
Ms. Theresa Marie Mahoney	Rs. 6.5 lakhs

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

Fine levied on the directors shall be paid out of their personal accounts.

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


- S-d-1
(S. K. Mohapatra)
Member Technical


- S-d-1
(Ina Malhotra)
Member Judicial