

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**C.P. No. 30/441/NCLT/AHM/2018**

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**  
**Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 12.09.2018**

Name of the Company: Hitesh Parikh, Vishal Mistry.  
(Mainak Comtrade Pvt Ltd.)

Section of the Companies Act: Section 441 r/w 271(1) of the Companies Act, 2013

| <u>S.NO.</u> | <u>NAME (CAPITAL LETTERS)</u> | <u>DESIGNATION</u> | <u>REPRESENTATION</u> | <u>SIGNATURE</u> |
|--------------|-------------------------------|--------------------|-----------------------|------------------|
|--------------|-------------------------------|--------------------|-----------------------|------------------|

1.

2.

**ORDER**

None present for the petitioner

The Order is pronounced in the open court, vide separate sheet

*Manora*  
**MANORAMA KUMARI  
(MEMBER JUDICIAL)**

*H.P.*  
**HARIHAR PRAKASH CHATURVEDI  
(MEMBER JUDICIAL)**

Dated this the 12<sup>th</sup> day of September, 2018

**BEFORE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH**

CP No. 30/441/NCLT/AHM/2018

**In the matter of:**

1. Hitesh Parekh,  
2516, Nanobhatwado,  
Halim Ni Khadki  
Shahpur,  
Ahmedabad 380 001
2. Vishal Mistry,  
D-5, Kiran Nagar,  
Govt. Quarters,  
Dudheshwar Road,  
Shahpur Gate,  
Ahmedabad 380 004

.....Applicants

And

In the matter of:

**Mainak Comtrade Private Limited,**  
[CIN:U51109GJ2010PTC060973]  
9-3<sup>rd</sup> Floor, Harsidhh Chambers,  
Income Tax Char Rasta, Ashram Road,  
Ahmedabad-380 009

**Order delivered on 12th September, 2018.**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)  
Hon'ble Ms. Manorama Kumari, Member (J)**

**Appearance:**

PCS Mr. Jaymeen Trivedi is present for the Applicant

**ORDER**

**[Per: Hon'ble Ms. Manorama Kumari, Member (Judicial)]**

1. M/s. Mainak Comtrade Private Limited and its directors have filed this Compounding Application under Section 441 of the Companies Act, 2013 before the Registrar of Companies, Gujarat, Dadra and Nagar Haveli (hereinafter as **RoC**) and the same has been forwarded to the NCLT, Ahmedabad on 12<sup>th</sup> March, 2018 along with the Report bearing No.





ROC/Guj/Compounding/Section 441/9416 (hereinafter as **RoC Report**).

2. As per the report of the RoC, the application was filed by the applicant(s) for violation of Section 217(3) of the Companies Act, 1956 (hereinafter referred to as Act). On perusal of the RoC report, it is found that Directors of the Company have not commented on the qualified and adverse remarks of the auditors on Para No. B of the Notes on Financial Statement of Accounts of the auditors' report as required under Section 217(3) of the Companies Act, 1956.
3. It is submitted by the applicants that show cause notice was received from the Registrar of Companies, Gujarat, Dadra and Nagar Haveli dated 17<sup>th</sup> January, 2018 in the name of the applicants for alleged violation of Section 217(3) of the Companies Act, 1956. The Applicants further submitted that Board of Directors has prepared the Directors Report for the Financial Year 2012-13 as per the provisions of Section 217(1) of the Companies Act, 1956 and the same was approved by the Board of Directors of the Company in their Board Meeting which was held on 1<sup>st</sup> September, 2013 and the same had been circulated to the shareholders of the Company in the Annual General Meeting of the Company which was held on 30<sup>th</sup> September, 2013. The said error was not intentional rather it is caused due to unawareness.
4. It is further submitted by the applicants that on coming to know about such violation, the applicants immediately made good such default as the default occurred due to unawareness.

*Abhishek*

*W*

5. Heard the PCS at length and also gone through the application filed by the applicants, who are directors/shareholders in the Company herein above and the report submitted by the RoC.
6. Considering the above said facts and also considering the optimum amount of fine as provided u/s 217(5) of the Companies Act, 1956, this Tribunal is of the considered view that said offence u/s 217(3) of the Companies Act, 1956 can be compounded.
7. The penal provisions under Section 217(5) of the Companies Act, 1956 provides as under:

**"If any person being a director of a company, fails to take all reasonable steps to comply with the provisions of Sub Section (1) to (3), or being the chairman, signs the Board's Report otherwise than in conformity with the provisions of sub section (4), he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty thousand rupees or with both".**

8. Section 441 of the Companies Act, 2013 governs compounding of offence and stipulates that:

***(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only, may, with before or after the institution of any prosecution be compounded by:***

***(a) The Tribunal; or***


***(b) Where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any officer authorized by the Central Government,***

***On payment or credit, by the company or, as the case may be, the officer, to the Central***

*[Signature]*

**Government of such sum as that Tribunal or the Regional Director or any officer authorized by the Central Government, as the case may be, may specify.**

9. In the result, this petition is allowed by permitting the petitioners to compound the violation of Section 217(3) of the Companies Act, 1956 on payment of Rs. 20,000/- by each director in respect of Financial Year 2012-13 by way of Demand Draft drawn on any Nationalized Bank in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs" payable at Mumbai within a period of 15 days from the receipt of this order. Fine imposed on the Directors/Officers shall be paid out of their personal accounts. The petitioners shall file compliance report before this Tribunal by 28.09.2018.
10. In case the applicants fail to pay the amount as ordered above, the Registrar of Companies, Gujarat, Dadra and Nagar Haveli shall take appropriate action, including prosecution of the petitioner(s)/applicants as per applicable law under intimation to this Tribunal.
11. The petition is disposed of accordingly with above observations and directions. The Registry to send a copy of this order to the petitioner(s)/applicant(s) and the ROC for reporting compliance of the order by the petitioner(s)/applicant(s). **"List the matter on 03.10.2018"**.

  
**Ms. Manorama Kumari**  
**Member (Judicial)**

  
**Harihar Prakash Chaturvedi**  
**Member (Judicial)**