

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH-III

C.P.-16/171/ND/17

Coram: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

SHRI V.K.SUBBURAJ, MEMBER (TECHNICAL)

IN THE MATTER OF:

SECTION 441 OF THE COMPANIES ACT, 2013 FOR VIOLATION OF SECTION 96/99 OF THE COMPANIES ACT, 2013

AND IN THE MATTER OF:

MANDAKINI COAL COMPANY LIMITED, A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 AND HAVING ITS REGISTERED OFFICE AT PLOT NO. 12, SECTOR B-1, LOCAL SHOPPING COMPLEX, VASANT KUNJ, NEW DELHI-110070

AND

IN THE MATTER:

MANDAKINI COAL COMPANY

AND

IN THE MATTER OF:

1. MR. PUNIT GUPTA, DIRECTOR
2. MR. CHANDRA PRAKASH BAID, DIRECTOR
3. MR. AMITABH SHARMA MUDGAL, DIRECTOR
4. MR. RAHUL CHANDRAKANT SHAH, DIRECTOR
5. MR. RAJIT HARSHIK DESAI, DIRECTOR
6. MR. CHHAYA RAJENDRA BHONSLAY, DIRECTOR

...PETITIONERS/APPLICANTS

MEMO OF PARTIES:

1. M/S. Mandakini Coal Company Limited (Applicant No.1)

Registered Office: Plot No. 12, Sector B-1, Local Shopping Complex,
Vasant Kunj, New Delhi-110070

Through Its Director & Authorised Signatory, Mr. Punit Gupta R/O.
Block C-4b, House No. 84, Janakpuri, New Dlehi-110058

2. Mr. Punit Gupta, Director (Applicant No. 2)

R/O. Block C-4b, House No. 84, Jamakpuri, New Delhi 110058

3. Mr. Chandra Prakash Baid, Director (Applicant No.3)

R/o. S-17, S/F, Greater Kailash, Part-1, New Delhi-110058

4. Mr. Amitabh Sharma Mudgal, Director (Applicant no.4)

R/o.: B-305 Navin Society, Plot No.13, Sector-5, Dwarka, New Delhi-
110045

5. Mr. Rahul Chandrakant Shah, Director (Appliant no.5)

R/o.: Flat No.3, Building No.1, Prakarsh C.H.S. Relief Road, Daulat
Nagar, Santacruz (West), Mumbai-400054, Maharashtra

6. Mr. Rajit Harshik Desai, Director (Appliant no.6)

R/o.: Sonawala Bldg. No. 8/F, 80-81, 3rd Floor Tardeo, Mumbai-
400007, Maharashtra

7. Ms. Chhhaya Rajendra Bhonslay, Director (Applicant no.7)

R/o. 5/504, Accolade CHS Next LIC Office, Thane West, Thane,
Mumbai-400604, Maharashtra

...PETITIONERS/APPLICANTS

VS.

Registrar of Companies

NCT of Delhi & Haryana

4th Floor, IFCI Tower,

Nehru Place, New Delhi-110019

...Respondent



ORDER

ORDER DELIVERED ON: 20.08.2018

1. The applicant Company along with six of its directors have filed the above application for compounding of default in compliance with the provisions of section 96 of the Companies Act, 2013 in holding its Annual General Meeting for the Financial Year ended 31.03.2016. The penalty in relation to the defaulting company and every officer of the company who is in default as prescribed under section 99 by way of fine is to the extent of one lakh rupees and in the case of a continuing default with a further fine which may extend to five thousand rupees per day of default. In view of a joint application having been filed both in terms of offence committed for the year 2015-16 as well as jointly, stating that the petitioner company was unable to conduct the Annual General Meeting for the financial year 2015-16 within the prescribed time limit under the provisions of the Act.
2. The petitioner claims that the company was pursuing a project in the State of Orissa viz. Mandakini- A Coal Block. The Hon'ble Supreme Court has issued an order dated 24th September, 2014 (order), cancelling the coal block allocated to the company, subsequently, all the employees left the company for the reason being no prospect of business in the Company. Due to the sudden abandonment by the employees of the company , including all the employees of Finance and Accounts Department, the Directors were not able to finalize the accounts of the Company for the Financial Year ending at 31.03.2016



(Financial Year 2015-16). It is further pleaded in the Petition that the violation committed for default in holding the Annual General Meeting for the financial year 2015-16 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 Annual General Meeting on 08.07.2017 for the Financial Year 2015-16.

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 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 that no complaint has been received against the company and that there is no inspection or investigation proceeding pending against the Company and that there is no inspection or investigation proceedings pending against the Company.
4. The plea made by the Applicants 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 Judgement of the Hon'ble NCLAT



passed in *M/S Vivai Solutions Private Limited & Ors Vs. Registrar or Companies, NCT Delhi and Haryana* in relation to imposing of fine and compounding of an offence. Further it is also seen that in relation to the fine imposable on each of the applicants is in excess of Rs. 500,000/- there by giving this Tribunal the pecuniary jurisdiction to entertain this application. The period of default, it is also evident is in relation to one year (i.e) 2015-16 and as such cannot be considered as a repeated default. No prosecution is also pending as per the report of ROC and in any case in the absence of imprisonment as an alternative or only punishment and where the other is pending prosecution leave of special court is also not required. All of the above demonstrating that the application is in consonance with the decision of this tribunal rendered in *Magnon Solutions Pvt. Ltd and others in C.P.16/122/ND/2017*. An application C.A.62/C-III/ND/2018 has also been filed to maintain a joint application under Rule 23A of NCLT Rules, 2016.

5. Taking into consideration the yardstick as laid down in the above judgement it is seen that the defaulter had made good the default. However, as seen under the provisions of the Companies Act, 2013, the punishment for default in complying with the relevant provisions requiring for holding of Annual General Meeting more than the prescribed limit is attendant 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. Hence, in the circumstances of the case, this tribunal is of the view it will be fit and proper to impose the following fine on the defaulters for each of the cases, thus aggregating in all to Rs. 2,667,000/- for the financial year 2015-16 ,the break-up of which is given as follows:


s. no	Name of the Applicants	No. of Delays/Per day fine imposed	Amount of fine payable (Rs)
1.	M/s. Mandakini Coal Company Limited	281 x 1000 + 1,00,000	Rs. 381,000/-
2.	Shri Punit Gupta	281 x 1000 + 1,00,000	Rs. 381,000/-
3.	Shari Chadra Prakash Baid	281 x 1000 + 1,00,000	Rs. 381,000/-
4.	Shri Amitabh Sharma Mudgal	281 x 1000 + 1,00,000	Rs. 381,000/-



5.	Shri Rahul Chandrakam Shah	281 x 1000 + 1,00,000	Rs. 381,000/-
6.	Shri Ranjit Harahik Desai	281 x 1000 + 1,00,000	Rs. 381,000/-
7.	Ms. Chhaya Rajndra Bhnsly	281 x 1000 + 1,00,000	Rs. 381,000/-
	TOTAL		Rs. 2,667,000/-

7. 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.

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


(DR. V. K. SUBBURAJ)
MEMBER (TECHNICAL)

U.D.MEHTA/K


(R.VARADHARAJAN)
MEMBER (JUDICIAL)