

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. 8/441/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: Priti J Christian & Anr.

Section of the Companies Act: Section 441 r/w 217(3) of the Companies Act, 2013

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

None present for the petitioner

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


**MANORAMA KUMARI
(MEMBER JUDICIAL)**


**HARIHAR PRAKASH CHATURVEDI
(MEMBER JUDICIAL)**

Dated this the 12th day of September, 2018

**BEFORE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

CP No. 8/441/NCLT/AHM/2018

In the matter of:

1. Priti J. Christian,
31-6, Girnar Society,
B/h P.T. College,
Paldi,
Ahmedabad 380 007
2. Michael J. Christian,
C-1, Hiran Chambers,
Bapunagar,
Ahmedabad - 380 024

.....Applicants

And

In the matter of:

Taru Pallav Projects Private Limited.,
[CIN: U45201GJ2010PTC061023]
304-3639, Jain Block, Gota,
Ta. Daskroi,
Ahmedabad - 380060

Order delivered on 12th September, 2018.

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

Appearance:

PCS Mr. Jaymeen Trivedi is present for the Applicant

ORDER

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

1. M/s. Taru Pallav Projects 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 2nd January, 2018 along with the Report bearing No.

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ROC/Guj/Compounding/Section 441/7876 (hereinafter as **RoC Report**).

- 2.1 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). It is stated by the ROC in his report that at the time of scrutiny of the Balance Sheet of the Company as at 31.03.2013, it was observed from the auditors' report attached with the Balance Sheet as at 31.03.2013 that the auditors of the Company have qualified the report and given adverse remarks which are as under and therefore, the officers of the company, in default, have violated the provisions of Section 217(3) of the Companies Act, 1956.

"The entity has availed the services of the manpower of which statutory liability arisen on the entity and for which we have not received any reliable proofs and thus we are unable to comment upon it"

- 2.2 The ROC has further stated in their report that the Board of Directors have not commented on the adverse remarks contained in the auditors' report. Thus, there is a violation of 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 10th November, 2017 in the name of the applicants for alleged violation of Section 217(3) of the Companies Act, 1956. However, the applicants submit that the remarks mentioned by the auditor of the company were not so much relevant to the financials of the Company as there were no statutory dues of any employee and that was the reason of not

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[Signature]

furnishing any documents relating to the statutory liability of availed manpower services and the lapse by not mentioning the clarification of auditors' report in Directors Report was not deliberate attempt to hide any information. The applicants have further stated that non-compliance of provisions of Section 217(3) of the Companies Act, 1956 was unintentional and was bona fide and there was no fraudulent intention or improper motive of the petitioner behind the non-compliance of provisions of Section 217(3) of the Companies Act, 1956.

4. It is further submitted by the applicants that on coming to know about such violation, the applicant immediately made good such default as the default occurred due to mere oversight.
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 for the Financial year 2012-13 ended on 31.03.2013 under Section 441 of the Companies Act, 2013 read with the provisions of Section 621A of the Companies Act, 1956.
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,

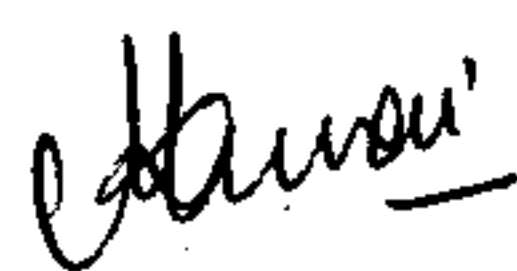
On payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorized by the Central Government, as the case may be, may specify.

9. In the result, this petition is allowed by permitting the petitioners to compound the violation of Section 217(1) 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)

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