

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**C.P. No. 33/441/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: Sandeep Vinodchandra Dave.  
Hitesh Chinubhai Shah  
(Pranatpal Tradelink Pvt Ltd.)

Section of the Companies Act: Section 441 r/w 271(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

*Manor*  
**MANORAMA KUMARI  
(MEMBER JUDICIAL)**

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*SPD*  
**HARIHAR PRAKASH CHATURVEDI  
(MEMBER JUDICIAL)**

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

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**C.P. No. 33/441/NCLT/AHM/2018**

**In the matter of:**

M/s. Pranatpal Tradelink Private Limited  
Block No.304, 3639, G.S.C.B.  
Gota, Tal. Daskroi  
Ahmedabad-382 481

1. Sandeep Vinodchandra Dave  
C/9, Morpichchh Apartment  
Ellisbridge  
Ahmedabad-380 007 ..... Applicant-1

2. Hitesh Chinubhai Shah  
309-3639, Jain Block  
Gota, Ta. Daskroi  
Ahmedabad-380 060 ..... Applicant - 2

**Order delivered on 12<sup>th</sup> September, 2018.**

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

**Appearance:**

Mr. Jaymeen Trivedi, PCS, for the Petitioners.  
None for the ROC.

**ORDER**

**[Per: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)]**

1. Present Applicants, being Directors of the Company, viz., M/s. Pranatpal Tradelink Private Ltd., have filed an Application before the Registrar of Companies, Gujarat, Dadra and Nagar Haveli, for compounding of alleged offences against them for violation of Section 217(1) of the Companies Act, 1956 (Act 1956).
2. The Registrar of Companies, Gujarat, has forwarded the said Application along with its comments before this Tribunal to be decided on its merits. Thereafter, the present application is

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registered in this Tribunal as Company Petition No. 33/441/NCLT/AHM/2018.

3. The averments made in the present Company Application for compounding the offence alleged are stated as under;

(1) M/s. Pranatpal Tradelink Private Limited, is a company, and its registered office is situated at Block No.304, 3639, G.S.C.B., Gota, Ta. Daskroi, Ahmedabad-382 481. Mr. Sandeep Vindonchandra Dave, i.e. the Applicant No.1, Director of the above said Company, and he resigned from office of director on February 1, 2016. It is further stated that Mr. Hitesh Chinubhai Shah i.e. the Applicant No.2, Director of the aforesaid company from June 7, 2010.

(2) Both applicants received Show Cause Notices dated 10<sup>th</sup> November 2017, from the Dy. Registrar of Companies, Gujarat, Dadra & Nagar Haveli, for alleged contravention of the provision of Section 217(1) of the Companies Act, 1956, stating therein as under;

*WHEREAS M/s. Pranatpal Tradelink Private Limited is a company registered under the provisions of the Companies Act, 1956 (hereinafter referred to as the "Act") in the state of Gujarat and having its registered office situated at Block No.304, 3639, G.S.C.B, Gota, Tal. Dakroi, Ahmedabad-382 481.*

*AND WHEREAS, during the course of technical scrutiny of Balance Sheet as at 31.03.2012 under section 206(1) of the Companies Act, 2013, it was observed that inter-alia pointed out by this office vide Point No.6 of this office letter dated 16.01.2017 that the provisions of Section 217(1) of the Companies Act, 1956 has been contravened as under:-*

*"It is noticed from the Board's report attached with the Balance Sheet of the company as at 31.03.2012 that the affairs of the company i.e. financial results does not give true and fair views required under section 217(1) of the Companies Act, 1956. Therefore, every officers of the company, have violated the provisions of section 217(1) of the Companies Act, 1956.*

*AND WHEREAS, in view of the above observation, the provision of Section 217(1) of the Companies Act, 1956 has been contravened and every officer of the company, in default, have rendered themselves liable to be prosecuted under Section **217(5)** of the Companies Act, 1956.*

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*NOW IN VIEW OF what is stated herein above, you are hereby called upon to show cause as to why legal action under Section 217(5) of the Companies Act, 1956 should not be initiated against every officers of the company, in default.*

*PLEASE NOTE that if no satisfactory reply is received within 10 days from the date of this notice, it will be presumed that you have nothing to say in the matter and there after this office shall have no other alternative but to take legal action as afore sated.*

*The every officers of the company, in default are however at liberty to approach the compounding authority for compounding of the offences so committed, if they so desire, by filing appropriate compounding application in accordance with the provisions of the Companies Act, 2013.*

- (3) They have further stated that the Board of Director of the company had prepared a Director's Report for the Financial Year 2011-12 as per the provisions of Section 217(1) of the Companies Act, 1956, which was approved by the Board of Directors of the company in their Board Meeting dated 16<sup>th</sup> August 2012, and the same had been circulated to the shareholders of the company in its Annual General Meeting which was held on 8<sup>th</sup> September, 2012. It is further submitted that as per Section 217 (1) of the Companies Act, 1956, a report of its Board of Directors is in respect of
- a) the state of the company's affairs;
  - b) the amounts, if any, which it proposes to carry to any reserves
  - c) the amount, if any, which it recommends should be paid by way of dividend;
  - d) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance sheet relates and the date of the report;
  - e) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as be prescribed.
- (4) They further stated that the inspecting Officer pointed out at the time of scrutiny of balance sheet for the financial year 2011-12,

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the affairs of the company i.e. financial results does not give true and fair views required under Section 217(1) of the Companies Act, 1956. Further stated that the board had discussed the affairs of the company, but the same had not mentioned in the Director's report of the Company.

- (5) Applicants submitted that inadvertently the Director's Report did not disclose the affairs of financial result of the Company for the Financial Year 2011-12 as prescribed under Section 217(1) of the Companies Act, 1956, as it was unintentional and with no malafide intention to hide such information.
- (6) Therefore, applicants have prayed for the following relief to be granted;

***(a) that every officer of the company who is in default mentioned herein as Applicant 1 and Applicant 2 may be discharged as if no offence has been committed or allow composition of offence by imposing minimum possible compounding fees under the provisions of the Companies Act, 1956 as indicated in the show cause notice.***

4. In the present matter, the Registrar of Companies, Gujarat, Dadra and Nagar Haveli, has submitted a report dated 6<sup>th</sup> April 2018, by making his observations and comments, which are stated as under;

**comments**

*It is submitted that during the course of technical scrutiny of the balance sheet of the company as at 31.03.2012, it was observed from the Boards Report attached with the Balance sheet of the company as at 31.03.2012 that the affairs of the company i.e. financial results does not give true and fair views required under section 217(1) of the Companies Act, 1956. Therefore, the officers of the company, in default have violated the provisions of section 217(1) of the Companies Act, 1956.*

*The applicants in para no.4.8 of the Compounding application submitted that the violation of section 217(1) of the Companies Act, 1956 was totally erroneously and there was no such wrongful intention of the directors as the directors were only the shareholders of the company, so there is no question about hiding information to the shareholders of the company.*

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*The applicants have admitted the default and filed this compounding application for compounding of offence committed under section 217(1) of the Companies Act, 1956, which may be considered by this Tribunal on merits.*

**Fine provided in section**

*As per Section 217 (5) of the Companies Act, 1956, if any person, being a director of a company, fails to take all responsible 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.*

5. Considering the default period for the violation of Section-217(1) of the Companies Act, 1956, this Tribunal has to follow the procedure laid down for compounding of offences in Section 621A of the Companies Act, 1956, which provides that this Tribunal is empowered to compound the offence punishable with imprisonment or with fine or with both. Therefore, this Tribunal took into consideration the period of default, as the alleged violation pertains to the Financial Year of 2011-2012 and is against the provisions of Section 217(1) of the Companies Act, 1956. The Central Government through Ministry of Corporate Affairs, vide its Notification No. SO 1936-E, dated 1<sup>st</sup> June 2016, has declared such the matters transferred from the Company Law Board to National Company Law Tribunal to be disposed of by this Tribunal in accordance with the provisions of the Companies Act 2013 or the Companies Act, 1956.
6. Hence, this court is expected to consider the relevant provisions of Companies Act, 1956, read with the corresponding provisions made in Section 129 and Section 441 of the Companies Act, 2013
7. The provisions of Section 441 of the Companies Act, 2013, confers necessary power to the Tribunal, for compounding of certain offences. The Section 441 of the Companies Act, 2013 came into force w.e.f 01.06.2016, while the alleged breach of the provisions of Section 217(1) of the Companies Act, 1956 was detected by Registrar of Companies, Gujarat, Dadra and Nagar Haveli, during the course

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of the scrutiny of the Balance Sheet of 31.03.2012 and other related documents such violation/offences were made punishable under section 217(5) of the Companies Act, 1956, and also were made compoundable under Section 621A of the Companies Act, 1956. Hence, the issue involved in the present application required to be dealt with above stated provisions specifically Section 217(5) and 621A of the Companies Act, 1956 read with the current corresponding provisions made under Section 129(1), 129(7) and Section 441 of the Companies Act, 2013.

For the sake of convenience, such provisions are being reproduced herein below:

**The Companies Act, 1956**

**Section 217 (1). Board's Report- (1)** *There shall be attached to every balance-sheet laid before a company in general meeting, a report by its Board of directors, with respect to –*

- (a) *the state of the company's affairs;*
- (b) *the amounts, if any, which it proposes to carry to any reserves <sup>2</sup>[\*\*\*] in such balance-sheet <sup>3</sup>[\*\*\*]*
- (c) *the amount, if any, which it recommends should be paid by way of dividend;*
- (d) *material changes and commitments, if any; affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance-sheet relates and the date of report;]*
- (e) *the conversation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed].*

**(5)** *If any person, being a director of the company, fails to take all reasonable steps to comply with the provisions of sub-sections (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;*

**Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.**

**The Companies Act, 2013**

**Section 129 (1)** *The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III,*

**Provided that the items contained in such financial statements shall be in accordance with the accounting standards;**

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**Provided further** that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company;

**Section 129 (7)** - If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

8. We heard the submission of Ld. PCS of the applicants and have gone through the contents of present application.
9. By perusal of the record, it is evident that the alleged contravention of above appears to be technical in nature and seems to be on account of procedural lapses on the part of its directors, because the company is having only two shareholders, having 50% each of its total equity. These shareholders are also the Directors of the same company. Hence, it cannot be said that by not disclosing all financial affairs, i.e. financial results of the company (as it allegedly does not give true and fair picture of the company) to its members/shareholders would seriously prejudice their interest and against the paramount interest of the company. As both applicants possess 100% shareholdings of the company, hence, such cannot be assumed that they have violated the statutory provisions as being director against themselves as shareholders.
10. Hence, by looking to the aforesaid peculiar facts and circumstances of the present case, the present application can be allowed as the alleged offence is compoundable by this Court, because it is made punishable with imprisonment up to six months or with fine alone or with both.
11. In the result, the Company Petition No. 33 of 2018 is allowed by permitting the Petitioners 1 and 2 to compound the offence for the violation of Section 217(1) of the Companies Act, 1956, subject to depositing following compounding fees by each of the applicants;


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*[Signature]*

<b>Sr. No.</b>	<b>Name of Applicant</b>	<b>Amount</b>
1	Sandeep Vinodchandra Dave	Rs. 20,000/-
2	Hitesh Chinubhai Shah	Rs. 20,000/-

by way of separate Demand Drafts drawn on any Nationalised Bank in favour of the **Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai**, within 3 (three) weeks from the date of receipt of an authentic copy this order and file the original Demand Draft before the Registry of this Tribunal, by another two weeks. **The total amount thereby calculates at Rs.20,000x2 = 40,000/- (Rupees Forty Thousand only)**, as indicated above.

12. In case the Petitioners 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 Petitioners, as per applicable law under intimation to this Tribunal.
13. The Petition is disposed of with the aforesaid observation and direction.
14. The Registry is directed to communicate a copy of this order to the Petitioners for necessary compliance, and also to the Registrar of Companies, Gujarat, Dadra and Nagar Haveli, for ensuring such compliance by the applicants.

  
**Manorama Kumari**  
**Member (Judicial)**

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