

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. 9/441/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: Tanmay Trivedi

Section of the Companies Act: Section 441 r/w 244(1A) 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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1.

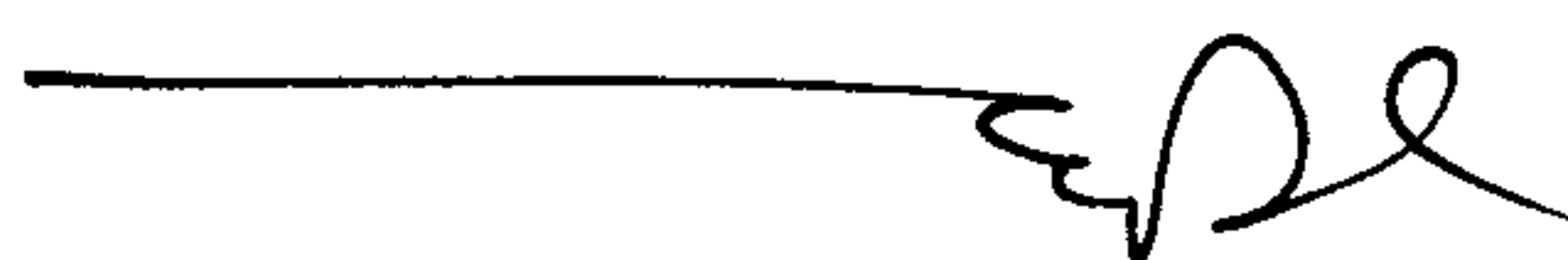
2.

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. 9/441/NCLT/AHM/2018

In the matter of:

Tanmay Trivedi,
Chartered Accountant,
D-4, Komal Enclave,
P.T. College Road,
Shantivan,
Paldi,
Ahmedabad 380 007

.....Applicant

Order delivered on 12th September, 2018.

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

Appearance:

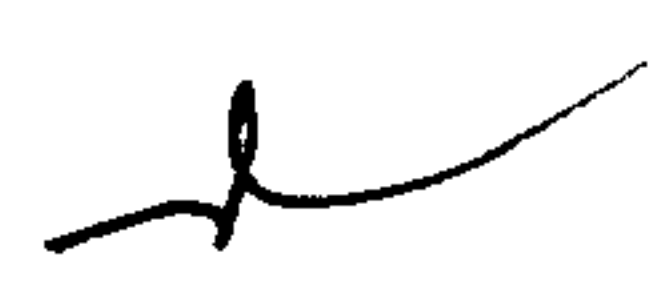
PCS Mr. Jaymeen Trivedi is present for the Applicant

ORDER

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

1. The applicant Mr. Tanmay Trivedi has filed this Compounding Application before the Registrar of Companies, Gujarat, Dadra and Nagar Haveli (hereinafter as **RoC**) and the same has been forwarded to the NCLT, Ahmedabad on 4th January, 2018 along with the Report bearing No. ROC/Guj/Compounding/Section 441/7905 (hereinafter as **RoC Report**).
2. The Learned RoC has informed that, this application was filed because the applicant has violated the provision of S. 224(1A) of the Companies Act, 19563 (hereinafter referred to as Act). RoC vide their letter referred above informed the period of default 1203 days. It is stated by the ROC in his report that the





applicant, the auditor of Parin Infrastructure Private Limited was appointed as statutory auditor in the AGM held on 30.09.2013 for Financial Year 2013-14 by the Company vide letter dated 25.06.2013 and the applicant was informed of his appointment vide letter dated 02.10.2013 of Parin Infrastructure Private Limited. As per the report of the RoC, the said auditor was appointed u/s 224(1A) of the Companies Act, 1956 and was required to file Form 23B by 31.10.2013. Section 224(1A) provides as under:

"an intimation of appointment as an auditor of the company, shall be submitted within thirty days from the date of receipt of intimation by the company, in writing to the Registrar of Companies in form No. 23B by the auditors."

3. It is submitted by the applicant that show cause notice was received from the Registrar of Companies, Gujarat, Dadra and Nagar Haveli vide No. ROC/GUJ/UP/STA-N/Parin/6597 dated 30th October, 2017 in the name of the applicant for alleged violation of Section 224(1A) of the Companies Act, 1956. However, the Applicant submits that applicant did not file the said intimation with the ROC in the prescribed time due to oversight and without any malafide intention for late filing of Form No. 23B and as and when he came to know about the ignorance of law, he immediately filed the Form No. 23B for the Financial year 2013-14 with Registrar of Companies.
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.

Chavhan

[Signature]

5. Heard the PCS at length and also gone through the application filed by the applicant, 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 629A of the Companies Act, 1956, this Tribunal is of the considered view that said offence u/s 224(1A) of the Companies Act, 1956 for the Financial year 2013-14 can be compounded under Section 621A of the Companies Act, 1956 read with Section 441 of the Companies Act, 2013.
7. The section which does not provide any penalty for non-compliance, the penalty would therefore, be as per the provisions of section 629A. Section 629A indicates penalty for such sections of the Companies Act, 1956 for which no penalty has been specifically provided. According to Section 629A of the Companies Act, 1956:

"If a company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act or any condition, limitation or restriction subject to which any approval, sanction,

consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to [five thousand rupees], and where the contravention is a continuing one, with a further fine which may extend to [five hundred rupees] for every day after the first during which the contravention continues."

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

Abhinav

[Signature]

(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 petitioner/applicant to compound the violation of Section 224(1A) of the Companies Act, 1956 on payment of fine as per provisions of Section 629A of the Companies Act, as under:

Compulsory fine of Rs. 5,000/- + Rs.50/- x 1202 days = Rs. 65,100/-

The petitioner/applicant to pay the fine 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. The petitioner/applicant 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

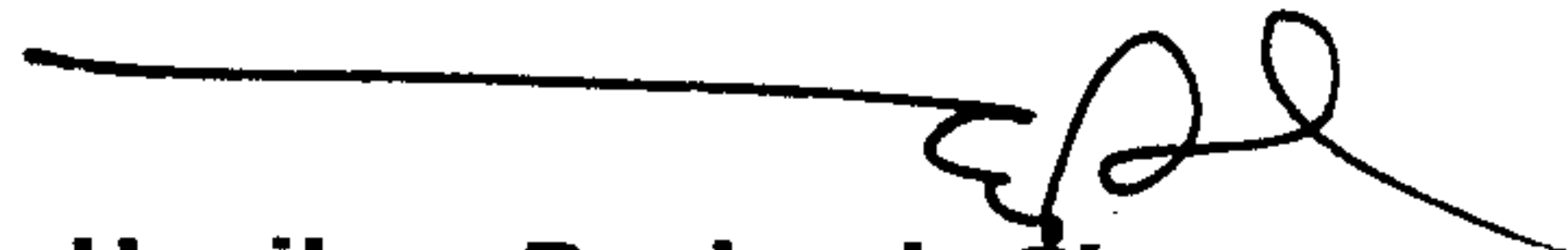


petitioner/applicant as per applicable law under intimation to this Tribunal.

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)

LCT