

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO. 16/113/2016
CA. NO.

PRESENT: SMT. INA MALHOTRA
Hon'ble Member (J)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NEW DELHI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 30.09.2016**

NAME OF THE COMPANY: M/s. Pernod Recard India Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 621A

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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ORDER

Pursuant to the order dated 15.09.2016 of this Bench, the RoC has submitted a report dated 28.09.2016. The petitioners have filed for compounding of the offence u/s 211 (3A) of the Companies Act, 1956. As per averments, the office of the RoC, on a technical scrutiny, had observed from the petitioner's Balance Sheet for the financial year ending 31.03.2010, that though the information of the ongoing dispute with the Custom Department was given, the company did not make any provision for the interest component on the amount of demand raised by the Custom Department for the period upto 13.07.2006. The petitioners were therefore accused of contravening the provisions of 211(3A) r.w AS-29.

2. The petitioners on the other hand have submitted that the notification in respect of the interest was issued on 14.07.2006 and did not have any retrospective effect. Therefore no provision for the interest component on the disputed customs duty was

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made. To fortify their arguments, they have also relied upon some judgments of the Superior Courts in their favour. However, as prosecution is stated to have been initiated against them, without a demur, they have filed the present petition for compounding the offence, in order to escape facing court prosecution or a protracted litigation. This Bench had observed that if prima facie a liability did not arise in law, not making a provision for the same would not tantamount to an offence. In the explanation offered by the RoC, it is stated that the petitioner company itself did not refer to any court judgment and that the prosecution was launched pursuant to the instructions from the Directorate dated 23.06.2014.

3. I am unable to appreciate or accept such an argument that the law on the point was not brought to their notice. This Bench finds it inequitable to compound an offence when there is none. Merely because prosecution has been initiated against them, the petitioners prefer to plead guilty and pray for compounding. This if allowed, would in itself be a travesty of justice. What is incomprehensible is the fact that even after the judgment of the Hon'ble Apex Court was brought to the notice, the RoC has perhaps not taken steps to admit their error and to withdraw the prosecution. Under such circumstances, the RoC is directed to report whether or not the prosecution has been withdrawn in the light of the judgment of the Apex Court i.e in the matter of *Jaswal Neco Ltd. V. Commissioner of Customs, Visakhapatnam (2015 (8) SCJ 422)* and *A. Sivasailam v. RoC (1995) 83 Com Cases 151* whether they have any intention to do so. This is being viewed strictly as the Government Departments cannot prosecute people by pleading ignorance of law specially when clarified and settled for us by the Hon'ble Supreme Court.

4. This Bench is informed that the case is to come up on 05.10.2016 before the concerned court at Tis Hazari. The RoC may either withdraw the prosecution or give an explanation to this Bench in respect of their insistence to prosecute the petitioners.

5. Till then, the prosecution in the concerned court of the CMM/ACMM at Tis Hazari shall not proceed.
6. Copy of the order be given dasti to the petitioners and emailed to the RoC.
7. To come up on 25.10.2016.


(Ina Malhotra)
Member Judicial