

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**


C.P. No. 38/441/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 14.09.2018**

Name of the Company: Astron Paper and Board Mill Ltd.
Kirit Ganshyambhai Patel

Section of the Companies Act: Section 441 of the Companies Act, 2013

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	ISHAN P. SHAH	ADV.	Petitioner	
2.				

ORDER

Advocate Mr. Ishan Shah is 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 14th day of September, 2018

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. 38/441/NCLT/AHM/2018

In the matter of:

1. Astron Paper and Board Mill Limited
D-702, Seventh Floor
Ganesh Meriden
Opp. High Court
S.G. Highway
Ahmedabad-380 060
.... Applicant 1
2. Shri Kirit Ghanshyambhai Patel
Chairman & Managing Director
D-702, Seventh Floor
Ganesh Meriden
Opp. High Court
S.G. Highway
Ahmedabad-380 060
.... Applicant 2

Order delivered on 14th September, 2018.

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

Appearance:

Mr. Ishan Shah, Advocate, for the Applicants.
None for the ROC.

ORDER

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

1. The Applicant Company and its Chairman and Managing Director *suo-moto* filed an Application before the Registrar of Companies, Gujarat, Dadra and Nagar Haveli, by admitting the alleged violation of Section 192 (1) of the Companies Act, 1956, and thus prayed for compounding of such offence for alleged violation of Section 192 (5) of the Companies Act, 1956.
2. It is alleged that the applicant company and its officers were required to get registered its Special Resolution dated 21.04.2011 passed under Section 81(A) of the Companies Act, 1956, with the office of

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Registrar of Companies, within stipulated period of 30 days, latest by 20th May 2011, which was not done and resulted in the violation of Section 192(1) and is punishable under Section 192(5) of the Companies Act.

3. In response thereof, the Registrar of Companies, Gujarat, has forward the present application along with its comments before this Tribunal for its disposal on its merits. Thereafter, the present application got registered in this Tribunal as Company Petition No.38/441/NCTL/AHM/2018.
4. The averments made in the company application for compounding of alleged offence are stated in brief as under;

M/s.Astron Paper and Board Mill Limited (CIN U21090GJ2010PLC063428), is a Company, registered under the Companies Act, 1956, [date of incorporation 29.12.2010] and its registered office is situated at D-702, Seventh floor, Ganesh Meriden, Opp. High Court, S.G. Highway, Ahmedabad-380 060. Shri Kirit Ghanshyambhai Patel is the Chairman and Managing Director of the applicant company, which is engaged in the business of manufacturing of paper for corrugated boxes.

The Share capital of the Company;

- a) The authorized share capital of the Applicant as on the date is Rs.50,00,00,000/- (Rupees Fifty Crore only) divided into 5,00,00,000 (five crore) equity shares of Rs.10/- and
 - b) Paid up share capital of the Applicant as on the date is Rs.32,50,00,000/- (Rupees Thirty Two Crore Fifty Lac only) divided into 3,25,00,000/- (Three Crore Twenty Five Lac only) equity shares of Rs.10/- each
5. The Applicants have made following submission for compounding the offence alleged against them.

(a) That the Board of Directors of the Applicant in their meeting held on Tuesday, 15th March 2011, has approved issue of

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25,86,600 equity shares of Rs.10 each at a premium of Rs.20 per equity shares out of the unissued capital of the company by private placement.

(b) The Shareholders in their Extra Ordinary General Meeting held on Thursday, 21st April, 2011, approved a Special Resolution stated as under;

“RESOLVED that, in accordance with the provisions of section 81(1A) of the Companies Act, 1956 the Board of Directors of the Company be and are hereby authorised to issue 25,86,600 equity shares of Rs.10 each at a premium of Rs.20/- per equity share out of the unissued capital of the company by private placement and such shares shall rank pari passu with the existing equity shares of the company and that such shares be offered, issued and allotted to any person, whether or not he is a member of the company”.

(c) As provided under Section 192(1) and Section 192(4) (A) of the Companies Act, 1956, the Applicant company was required to **register special resolution passed on 21st April 2011 under Section 81(1A) of the Companies Act**, with the office of Registrar of Companies, within 30 days from the date of its passing i.e. by 20th May 2011. Such omission in filing the form has resulted into the violation of section 192(1). It is stated that the said omission has occurred inadvertently, without any malafide intention on the part of the Applicant or any of its officers and not committed wilfully and this is fit and proper case for consolations under provisions of the Act.

(d) The fine provided under Sections 192(5) of the Act is reproduced below:

If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to two hundred rupees for every day during which the default continues.”

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6. Thus, the applicants have prayed for the following relief;

(a) the offence committed under section 192(1) and 192(5) of the Companies Act 1956, to be compounded on such terms and conditions as this court may deem fit.

7. The Registrar of Companies, Gujarat, Dadra and Nagar Haveli, has submitted its report along with comments in respect of the present matter which may be reproduced hereinbelow;

Comments

It is submitted that the company M/s. Astron Paper and Board Mill Ltd. and its officer in default have filed compounding application for violation of section 192 of the Companies Act, 1956 (Corresponding section 117 of the Companies Act, 2013).

As per para No.7 (b) of the compounding application, the applicants have stated that the Shareholders of the company in their Extra Ordinary General Meeting (EOGM) held on 21th April, 2011 had passed a Special Resolution under section 81(1A) of the Companies Act, 1956. As per provisions under section 192(1) of the Companies Act, 1956, the applicant was required to register the said special resolution passed on 21th April, 2011 within 30 day from the date of passing i.e. by 20th May, 2011. The applicant company could not be filed the aforesaid Special Resolution dated 21.04.2011 with the Registrar of Companies so far. Hence, there is violation of section 192(1) of the Companies Act, 1956 (Correspondence section 117 of the Companies Act, 2013).

The applicants have admitted the default and filed this compounding application suo moto for compounding of offence committed under section 192 of the Companies Act, 1956 (Correspondence section 117 of the Companies Act, 2013), which may be considered by the NCLT on merits.

Fine provided in section

1. *As per section 192 (5) of the Companies Act, 1956, if default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to two hundred rupees for every day during which the default continues.*
2. *As per section 117(2) of the Companies Act, 2013, if a company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specify under section 403 with additional fees, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default, including liquidator of the company, if any, shall be punishable with*

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fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Period of default

Total delay of 2301 Days till the filing compounding application is as under:-

1. Special Resolution was passed

In EOGM on 21.04.2011

(21.05.2011 To 08.09.2017)

(The applicant filed/submitted the application on 08.09.2017)

Summery of calculation of days:

Section 192(5) of the Companies Act 1956 = 1045 days

Fine for company and MD

(1045 x 200 x 2)

= Rs.4,18,200/-

Section 117(2) of the Companies Act 2013 = 1256 days

Fine for Company

Minimum Rs.5 lac and maximum Rs.25 lacs

Fine for MD

Minimum Rs.1 lac and maximum Rs.5 lacs

Total 2301 Days

8. We heard the submission of Ld. Advocate appearing for applicants and have gone through the contents of present compounding application. The Ld. Advocate for the applicants submits that such contravention as committed by the company/applicants was neither deliberate nor wilful default, hence, a lenient view to be taken by this Court while granting permission for compounding the offence.
9. In order to consider the default period of alleged violation of Section 192(5) of the Companies Act, 1956, this Tribunal is required to follow the procedure prescribed for compounding of such offences in Section 621A of the Companies Act, 1956, which provides *inter-alia* that this Tribunal is empowered and having jurisdiction to compound the offence punishable with imprisonment **or with fine or with both**. Therefore, we took into consideration the period of default, which pertains to the Financial Year of 2011-2012 and is

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violation of the statutory provisions of Section 192(5) of the Companies Act, 1956.

10. Further the Central Government through Ministry of Corporate Affairs, vide its Notification No. SO 1936-E, dated 1st June 2016, has made a declaration to this effect that the matters transferred from the Company Law Board to National Company Law Tribunal can be disposed of by this Tribunal in accordance with the provisions of the Companies Act 2013 or the Companies Act, 1956.
11. In the light of the above, this Tribunal is expected to follow the prescribed procedure and provisions of Companies Act, 1956, read with the corresponding Section 117 (2), Section 403 and Section 441 of the Companies Act, 2013, to deal with the present application for compounding.
12. The provisions of Section 441 of the Companies Act, 2013, confers necessary power to this Tribunal, for compounding of certain offences. The Section 441 of the Companies Act, 2013 came into force w.e.f 01.06.2016, while there is alleged breach of statutory provisions of Section 192(5) of the Companies Act, 1956, which was committed during the year 2011, when a Special Resolution was passed in the Annual General Meeting, dated 21.04.2011, but was not registered with the ROC within 30 days after its passing, i.e. by 20.05.2011, while the present compounding application was filed on 08.09.2017. Hence, the delay occurred of 2301 days, for making good of alleged default committed. The alleged violation/offence is punishable under Section 192(5) of the Companies Act, 1956, but is equally made compoundable under Section 621A of the Companies Act, 1956. Hence, the issue involved in the present application required to be dealt with in accordance of provision made in Section 192(5) read with Section 621A of the Companies Act, 1956 and also with the corresponding provisions made in Section 403 and Section 441 of the Companies Act, 2013.
13. By perusal of the record, it is seen that the applicants have voluntarily admitted this fact that the company inadvertently could not register its Special Resolution, dated 21.04.2011, passed under

Answer

Section 81(A) of the Companies Act, 1956, with the Registrar of Companies, within the stipulated period of 30 days from the date of passing i.e. by 20th May 2011. Hence, the present case does not seem to be a case of wilful default for making statutory compliances. Hence, the offence alleged can be compounded well under the provisions of Section 621A of the Companies Act, 1956.

14. Considering the above stated facts and circumstances of the present case, the present Company Petition is allowed. The Petitioners 1 & 2 are permitted to compound the offence for alleged violation of Section 192(1) of the Companies Act, 1956, subject to payment of fine as described below;

Sr. No.	Name of Applicant	Rate of fine	Days of default	Amount
1	Astron Paper and Board Mill Limited	Rs.200 per day	2301	4,60,200/-
2	Shri Kirit Ghanshyambhai Patel	Rs.200 per day	2301	4,60,200/-


Thus, the total amount thereby calculates at Rs.4,60,200x2=9,20,400/- (Rupees Nine Lac Twenty Thousand Four Hundred only) payable by both applicants.


The ROC, Gujarat, is hereby directed to verify the above stated amount and may recalculate it as per the above rate and may issue a Demand Notice to the applicants for payment of actual amount, such Demand Notice may be issued within three weeks, from the date of receipt of a copy of this order.

The applicants are directed to pay the above amount by way of separate Demand Drafts drawn on any Nationalized Bank in favour of Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai, by 4 (Four) weeks either from the date of receipt of an authentic copy this order and/or receiving of a Demand Notice from the ROC and to deposit the original Demand Draft of the above mentioned amount in the Registry of this Tribunal.

Answer

15. In case the Petitioners fail to pay the amount as directed above, then the Registrar of Companies, Gujarat, Dadra and Nagar Haveli, to initiate consequential action, including prosecution of the Petitioners, in accordance with law under intimation to this Tribunal.
16. With the aforesaid observation and direction, the present application stands disposed of.
17. The Registry is directed to communicate a copy of this order to the Applicants 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)

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