

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, SINGLE BENCH
NEW DELHI**

Company Petition No.16/99/(ND)/2017

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

In the matter of:

SECTION 441 OF THE COMPANIES ACT, 2013 FOR VIOLATION OF SECTION 166 OF THE COMPANAIES ACT, 1956 AND SECTION 96 OF THE COMPANIES ACT, 2013.

AMONGST

PHG Hotels New Delhi Pvt. Ltd.(Applicant No.1)

CIN:U55101DL2012FTC236191

424,Rectangle No.1

**Behind Marriott Hotel Saket, Commercial Complex, D-4,
Saket, New Delhi-110017.**

Through its Director, Mr. Shiv -Mahajan

**R/o: H.No.1235, Main Bazar, Katra Baghain,
Amritsar, Punjab-143001.**

Shiv Mahajan, Director(Applicant No.2)

**R/o: H.No.1235, Main Bazar, Katra Baghain,
Amritsar, Punjab-143001**

JOHN ALAN UEBERROTH, Director (Applicant No.3),

**R/o 1400 Emerald Bay, Laguna Beach,
California, United States -92651.**

KYLE CHRISTOPHER UEBERROTH, Director (Applicant No.4)

**R/o 263,Rochester St Costa Mesa,
California, Unites States -92627**



LINDSEY SUSANNE UEBERROTH, Director (Applicant No.5)
R/o 270 E Pearson St Unit 503 Chicago,
Illinois, United States- 060611

..... APPLICANTS

AND

Registrar of Companies
NCT of Delhi & Haryana
4th floor, IFCI Tower,
Nehru Place
New Delhi-110019.

.....RESPONDENT

ADVOCATE FOR THE PETITIONERS : Mr. Manish Gupta, FCS
Mr.Suresh Gupta, FCS

ADVOCATE FOR OBJECTOR : -

Ms.Chetana Kandpal, Company Prosecutor
for OL, Delhi
Mr.C.Balooni, Company Prosecutor for RD
(NR)

ORDER

In relation to the offence arising out of non convening of the Annual General Meetings (AGMs) for the years 2012-13, 2013-14 and 2015-16 the Petitioners above named has filed the above Petition for compounding the offence under Section 166 of the erstwhile Companies Act, 1956 in relation

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to the period from 2012 to 2014 and subsequently under Section 96 of the Companies Act, 2013 for the year 2014-2015.

2. The Petitioner claims that since all the Directors were foreign Directors and as they were basically not aware of the procedures and formalities which are required to be complied with under the provisions of Indian laws particularly the Companies Act, as may be applicable during the relevant time, they have failed to comply with the formalities which are required to be complied with, under it. It is further pleaded in the Petition that the violation committed for not convening the AGMs is not willful and that in the circumstances as they have voluntarily reported the non-compliance on their own, the same may be duly considered while taking into consideration the imposition of fine, as prescribed under the relevant provisions of the Companies Act be it 1956 or 2013. It is also averred that they have put an end to the offence by convening the AGMs for the relevant years as tabulated in the Petition and which is extracted below:

Financial Year	Last date on which AGM required to be held	Actual AGM Date
21.5.2012 to 31.03.2013	20.11.2013	19.10.2015
01.04.2013 to 31.03.2014	30.09.2014	08.03.2016
01.04.2014 to 31.03.2015	30.09.2015	31.03.2016



3. The Registrar of Companies has filed a detailed report and a perusal of which shows that no prosecution in relation to the offence has been filed or launched and that similar offence has also not been compounded during the last 3 years. It is further reported that the default has been made good as per details furnished by RoC which is in accordance with the compilation, as extracted in paragraph 2 above. Further, it is also represented by the RoC in the report dated 13.07.2017 that no complaint has been received against the Companies in relation to filing of balance sheet and annual reports upto the financial year 31.3.2016 and that there is no inspection or investigation proceedings pending against the Companies.

4. The plea made by the Petitioner in the above Company Petition and the documents annexed therewith and the report of the RoC have been taken into consideration. Further, in passing this order, this Tribunal is also guided by the Judgement of the Hon'ble NCLAT passed in relation to imposing of fine and compounding of an offence in which it has been laid that the following factors are required to be considered:

- i) The gravity of offence.
- ii) The act is intentional or unintentional.
- iii) The maximum punishment prescribed for such offence, such as fine or imprisonment or both fine and imprisonment.



- iv) The report of the Registrar of Companies.
- v) The period of default.
- vi) Whether petition for compounding is suo moto before or after notice from, Registrar of Companies or after imposition of the punishment or during the pendency of a proceeding.
- vii) The defaulter has made good of the default.
- viii) Financial condition of the company and other defaulters.
- ix) Offence is continuous or one-time.
- x) Similar offence earlier committed or not.
- xi) The act of defaulters is prejudicial to the interest of the member(s) or company or public interest or not.
- xii) Share value of the company, etc.

5. Applying the above yardstick it is seen that the Petitioner Company is a Private Limited Company whose shares are not listed, obviously. Further, the financial statements for the year ended 31.03.2016 discloses that the Company is coming out of the initial inertia attendant to a newly incorporated Company and slowly had started breaking out of the same and has been started earning a decent profit only in the year 2016. Further it is also seen that defaulter has made good the default on its own. Further both under the provisions of Companies Act, 1956 as well as under the 2013 Act, the punishment for default in complying with the relevant provisions requiring to convene AGM is attendant only with fine. However, the non-compliance with the non-holding of AGM is for a period of three years.



6. Hence, in the circumstances of the case, this Tribunal is of the view that it will be fit and proper to impose the following fine on the defaulters for each of the cases, thus aggregating in all to Rs.9.00 lakhs (Rupees nine lakhs) for the three years the break up of which is given as follows:

For	Amount (Rs.)		
	2012-13	2013-14	2014-15
PHG Hotels	300,000/=	200,000/=	100,000/=
Shiv Mahajan	25,000/=	25,000/=	25,000/=
JOHN ALAN UEBERROTH	25,000/=	25,000/=	25,000/=
KYLE CHRISTOPHER UEBERROTH	25,000/=	25,000/=	25,000/=
LINDSEY SUSANNE UEBERROTH	25,000/=	25,000/=	25,000/=
Grand Total	400,000/=	300,000/=	200,000/=

7. Subject to the remittance of the aforesaid fine, the offence shall stand compounded. For compliance within three weeks. Fine levied on the Directors shall be paid out of their personal accounts.



8. Petition stands disposed off in terms of the above.

8/8/17
(R.VARADHARAJAN)
MEMBER(JUDICIAL)

U.D.MEHTA
04.08.2017