

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, SINGLE BENCH
NEW DELHI

Company Petition No.16/101/ (ND)/2017

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

In the matter of:

SECTION 441 OF THE COMPANIES ACT, 2013 (SECTION 621A OF THE COMPANIES ACT, 1956) FOR VIOLATION OF SECTION 166 OF THE COMPANIES ACT, 1956 AND SECTION 96 OF THE COMPANIES ACT, 2013.

AMONGST

PAHUJA TAKII SEED LIMITED (Applicant No.1)
HAVING REGISTERED OFFICE AT:
D-246, STREET NO.10, BALAJI CHAMBERS, OFFICE NO.303
LAXMI NAGAR, New Delhi-110092

MR. OSAMU SUGIMURA (Applicant No.2)
ERSTWHILE DIRECTOR OF APPLICANT NO.1
S/O MR. TAKESHI SUGIMURA
R/O 794, KIDERA-CHO, NARA, JAPAN

MR. MASAKI KASHIWAGI (Applicant No.3)
ERSTWHILE DIRECTOR OF APPLICANT NO.1
S/O MR. MITUSUTERU KASHIWAGI
R/O 564-9, KITAMACHI, NISHIURA-KAMINOSHIMODACHURI
OMMAE-DORI, KAMIGYO, KYOTO, JAPAN



MR. KAZUO HATSUDA (Applicant No.4)
ERSTWHILE DIRECTOR OF APPLICANT NO.1
S/O MR. SAICHIRO HATSUDA
R/o 1-1-53-505, TOHEI, CHUO-KU, OSAKA, JAPAN

..... APPLICANTS

AND

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

.....RESPONDENT

ADVOCATE FOR THE PETITIONERS: Mr. Cicu Mukhopadhyay, Senior Advocate
Mr. Anirudh Das, Advocate
Mr. Aditya Mukherjee, Advocate



ORDER

ORDER DELIVERED ON: 18.08.2017

1. In relation to the offence arising out of non-convening of the Annual General Meetings (AGMs) for the years 2011-12 and 2012-13, the Petitioners above named have filed the above Petition for compounding the offence under Section 166/ 168 of the erstwhile Companies Act, 1956, with the Registrar of Companies, NCT of Delhi & Haryana (RoC) and the same has been put up before us as required under the provisions of Companies Act 1956/ 2013 for compounding the offence.
2. The Petitioner claims that the delay in holding the AGMS were inter-alia caused by the then subsisting dispute between the shareholders interse of the 1st Applicant , the delay in the valuation exercise subsequent to the arrival of settlement , the delays with respect to consequent transfer of shares to Takii on account of the requirement of RBI approval and related compliances, the change in management of the Applicant Company and subsequent corporate actions required to be undertaken by the new management of the Applicant company. 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
01.04.2011 to 31.03.2012	30.09.2012	17.12.2016
01.04.2012 to 31.03.2013	30.09.2013	18.12.2016

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 01.06.2017 that no complaint has been received against the Company and that there is no inspection or investigation proceedings pending against the Company.

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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 judgements 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 Public Limited Company. The plea of the Petitioners in the Petition that in view of the pre-existing dispute for the relevant years for which they have not been able to comply may not be a valid ground under law for their exoneration, but however to an extent is a mitigating factor in relation to determining the quantum of fine. Further the existing financial position of Petitioner Company seems to be also not on a sound footing. Moreover, 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 as reproduced below:

"168. Penalty for default in complying with section 166 or 167- If default is made in holding a meeting of the company in accordance with section 166, or in complying with any directions of the [Tribunal or the Central Government, as the case may be] under sub-section (1) of section 167, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [fifty] thousand rupees and in the case of a continuing default, with a further fine which may extend to [two thousand five hundred] rupees for every day after the first during which such default continues."

6. However, the non-compliance with the non-holding of AGM is for a continuous period of two years and has been made good only recently after a period of more than 3 years as evidenced from the report filed by Roc..
7. 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 fixed payable as well as for continuing default on the defaulters for each of the years, thus aggregating in all to Rs.28,07,500/- for the two years (i.e) 2011-12 & 2012-13 the break- up of which is given as follows:

Name of Applicants	Fixed fine payable	No of Days Delay & Per day fine imposed	Amount of fine payable (Rs)	No of days delay & Fine imposed/ day	Fixed fine payable	Amount of fine payable (Rs)
		2011-2012	2011-2012	2012-2013		2012-2013
PAHUJA TAKII SEED LIMITED	10000	1536x250	3,84,000	1171x250	10000	2,92,750

MR. OSAMU SUGIMURA	10000	1536x250	3,84,000	1171x250	10000	2,92,750
MR. MASAKI KASHIWAGI	10000	1536x250	3,84,000	1171x250	10000	2,92,750
MR. KAZUO HATSUDA	10000	1045x250	2,61,250	680x250	10000	1,70,000
MR. MASAKAZU MUKAIDE	10000	492x250	1,23,000	492x250	10000	1,23,000
Total	50000		15,36,250		50000	11,71,250

8. 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.

Petition stands disposed off in terms of the above.

Sell - (R.VARADHARAJAN) / 18-08-17
 (R.VARADHARAJAN)
 MEMBER (JUDICIAL)

U.D.MEHTA

PAHUJA TAKII SEED LIMITED
 CP.No.16/101/ND/2017