

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, SINGLE BENCH
NEW DELHI

Company Petition No.16/104/ (ND)/2017

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

In the matter of:

SECTION 441 OF THE COMPANIES ACT, 2013 (SECTION 621A OF THE
COMPOANIES ACT, 1956) FOR VIOLATION OF SECTION 383A OF THE
COMPANAIES ACT, 1956.

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)

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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

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ORDER

ORDER DELIVERED ON: 18.08.2017.

1. In relation to the offence arising out of non-filing of certificate from a secretary in whole-time practice with the Registrar of Companies, NCT of Delhi and Haryana in FORM 66 for the financial years 2011-12 and 2012-13, the Petitioners above named have filed the above Petition for compounding the offence under Section 383A of the erstwhile Companies Act, 1956, with the Registrar of Companies, NCT of Delhi & Haryana and the same has been put up before us as required under the provisions of Companies Act 1956 for compounding the offence.
2. The Petitioner claims that the delay in filing of certificate from a secretary in whole-time practice during the financial years 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 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 non-filing of



certificate from a secretary in whole-time practice 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. It is also averred that they have put an end to the offence by filing of certificate from a secretary in whole-time practice for the relevant years as tabulated in the Petition and which is extracted below:

Financial Year	Last date on which the certificate to be filed	Actual Board meeting Date
01.04.2011 to 31.03.2012	30.10.2012	17.02.2017
01.04.2012 to 31.03.2013	30.10.2013	17.02.2017

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.

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 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 for 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, the punishment for default in complying with the relevant provisions requiring the filing of certificate from a secretary in whole-time practice is attendant only with fine as reproduced below:

“383A(1A) If a company fails to comply with the provisions of sub-section (1), the company and every officer of the company who is in default, shall be punishable with fine which may extend to [five hundred] rupees for every day during which the default continues : Provided that in

any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole time secretary.]”.

6. However, the non-compliance with the non-filing of certificate from a secretary in whole-time practice is for a continuous period of two years and has been put an end to only recently in February, 2017. Further in relation to Companies, particularly Public Limited Companies, numerous compliances under the Companies Act, 1956 or 2013 were/ are required to be made and the appointment as contemplated would have facilitated the Applicant to have complied with the same in time and in accordance with law. Hence, this Tribunal is not able to take a lenient view on the default.

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 on the defaulters for each of the cases,

thus aggregating in all to Rs.14,59,800/- for the two years the break- up of which is given as follows:

Name of Applicants	No of Delays/ Per day fine imposed	Amount of fine payable (Rs)	No of days delay & Fine imposed per day	Amount of fine payable (Rs)
	2011-2012	2011-2012	2012-2013	2012-2013
PAHUJA TAKII SEED LIMITED	1566x150	2,34,900	1200x150	1,80,000
MR. OSAMU SUGIMURA	1506x150	2,25,900	1146x150	1,71,900
MR. MASAKI KASHIWAGI	1506x150	2,25,900	1146x150	1,71,900
MR. KAZUO HATSUDA	1014x150	1,52,100	648x150	97,200
	TOTAL	8,38,800		6,21,000

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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.

Sd/- (18.08.17)
(R. VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.MEHTA