

In the National Company Law Tribunal

New Delhi Bench

C.P No- 16/06/2017

In the Matter of

M/s BhanuEnergy Infrastructure and Power Limited

Order Delivered on – 31.08.2017

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

Present- Ms. Varsha Banerjee, Advocate
Mr. Milan Singh Negi, Advocate
Mr. Kunal Godhwani, Advocate

ORDER

The petitioners have filed this application u/s 420(2) of the Companies Act, 2013 praying review of the Order dated 13.02.2017, passed by this Bench, vide which their petition under section 441 of the Act for compounding of the offence of Section 149, 177 and 178 was dismissed. The review is prayed for in the light of the decision of the NCLAT in the matter of Sapphire Industrial Infrastructures Private Limited V. RoC, NCT of Delhi in Company Appeal(AT)No. 106 of 2017.

2. In the light of the aforesaid decision, this Bench allows the Review petition to consider the prayer for compounding.
3. The applicant having outstanding Loans in excess of Rs. 50 Crores was required to appoint two independent Directors under Rule 4 of the

L

Companies (Appointment and Qualification of Directors) Rules, 2014 w.e.f 28.08.2015 and also to constitute an Audit Committee and Nomination & Remuneration Committee as per the requirement of section 178, having failed to do so and are therefore liable for the said offence. The default has been made good as the company has since appointed Independent Directors and also constituted the Audit Committee and Nomination & Remuneration Committee on 21.07.2016, a fact confirmed by the RoC.

4. The said petition has been filed suo-moto and has been routed through the office of the RoC along with their comments. There is no repudiation by the department of the applicant's assertion that all objections have been removed as the Committee was constituted w.e.f 21.07.2016.
5. As per averments made in the petition, duly supported by the affidavits of the applicants, it is submitted that the default was inadvertent and there were no malafide intentions, and having made good the offence, they have suo-moto prayed for compounding of the same.
6. The aforesaid default is punishable u/s 172 of the Act, 2013:-

“the company and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 50,000/- but may extend to Rs. 5 Lakhs”.

As per the provision of Section 178(8) of the Act, 2013:-

“company shall be punishable with fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 5 Lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than Rs. 25,000/- but which may extend to Rs. 1 lakh or with both”.

7. In term of the section 172 of the Act, the RoC has recommended the maximum fine of **Rs. 5 Lakhs** on the company and each of its Directors. Under section 178(8), it has recommended imposing a fine **of Rs. 5 Lakhs** on the company and **Rs. 1 Lakh** on each of its Directors.
8. As the default has been made good, the petitioners/applicants' prayer can be granted. In terms of the decision of the Hon'ble NCLAT in the matter of **M/s Viavi Solutions India Private Limited V. Registrar of Companies reported in (2017) 139 CLA 242** for rationalizing fines, it has been observed that while compounding offences various parameters be borne in mind. Accordingly, it would be just and equitable to impose the minimum fine attracted for the offence.

S. No	Name Defaulter	Fine Under Section 172 Amount (In Rs.)	Fine Under Section 178(2) Amount (In Rs.)	Total Amount
1.	M/s Bhanuenergy Infrastructure and Power Limited	Rs. 1,00,000/-	Rs. 1,00,000/-	Rs. 2,00,000/-
2.	Mr. Yash Bhatnagar	Rs. 1,00,000/-	Rs. 25,000/-	Rs. 1,25,000/-
3.	Mr. Dharam Prakash Bhatnagar	Rs. 1,00,000/-	Rs. 25,000/-	Rs. 1,25,000/-
4.	Ms. Pooja Bhasin	Rs. 1,00,000/-	Rs. 25,000/-	Rs. 1,25,000/-
5.	Mr. Manoj Sharma	Rs. 1,00,000/-	Rs. 25,000/-	Rs. 1,25,000/-

9. Fine imposed on the Directors/officers shall be paid out of their personal accounts.

10. Subject to the remittance of the aforesaid fine within 15 days, the offence shall stand compounded. Copy of the order be sent to the office of the RoC. Compliance Report be placed on record.
11. Petition stands disposed off in terms of the above and be consigned to Record Room.

— Sd —

(Ina Malhotra)

Member Judicial