

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, SINGLE BENCH
NEW DELHI

Company Petition No.16/140/ (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 92 OF THE COMPANIES ACT, 2013.

AMONGST

INVERNESS MEDICAL SHIMLA PRIVATE LIMITED
HAVING REGISTERED OFFICE AT:
D-SM-221, DSM-222, DLF TOWERS, SHIVAJI MARG
NAZAFGARH ROAD, NEW DELHI-110015

.....Petitioner No.1

MR. LALIT KUMAR SAINI
DIRECTOR OF PETITIONER NO.1
S/O MR. SAMAY SINGH
R/O A-2, TOWER, FLAT NO.804 UNIWORLD CITY, SECTOR 30
GURGAON-122001

.....Petitioner No.2

MR. SUSHIL KUMAR SRINIVAS RAO
DIRECTOR OF PETITIONER NO.1
S/O MR. ADYAPADY SRINIVAS RAO
R/O F-1101, PURVA VENEZIA, MAJOR UNNIKRISHAN ROAD, NEAR MOTHER
DAIRY, YELAHANKYA NEW TOWN, YELAHANKYA,
BENGALURU-560064

.....Petitioner No.3



AND

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

.....RESPONDENT

ADVOCATE/ AUTHORIZED REPRESENTATIVE
FOR THE PETITIONERS: Mr. Deepak Bansal, Company Secretary



ORDER

ORDER DELIVERED ON: 28-09-2017

1. In relation to the offence arising out of non-filing of annual return with the Registrar of Companies, NCT of Delhi and Haryana (RoC) in e form MGT-7 for the financial years 2014-2015, the Petitioners above named have filed the above Petition for compounding the offence under Section 92 of the Companies Act, 2013, 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 2013 for compounding the offence.
2. The Petitioner claims that the delay in filing of Annual return during the financial year were inter-alia caused because of the losses in the company. It is further pleaded in the Petition that the violation committed for non-filing of annual return 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, 2013. It is also averred that they have put an end to the offence by filing the annual return for the relevant years as tabulated in the Petition and which is extracted below:



Period of Default	Date of making default good	No of days of Default	How the default made good
26/08/2016-09/02/2017	09/02/2017	167days	The company filed its Annual return in e form MGT-7 for the financial year ended on 31 st March, 2015 on 9 th February, 2017 after a delay of 167 days after expiry of 270 days allowed per Section 403 (1) of the Companies Act, 2013

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 02.08.2017 that no complaint has been received against the Company and that there is no inspection or investigation proceedings pending against the Company. The ROC has correctly computed the period of default occurring on and from 30.11.2015 upto and until 09.02.2017 when the petitioner company made good the default by filing form AOC-4 being the Annual Return for the year 2014-2015. The contention of the Petitioner that the period of default should be computed after



the expiry of 270 days by invoking Section 403 of the Companies Act, 2013 is not well founded as the same has been prescribed for levy of additional fee if any, and is without prejudice to any other liability including the levy of penalty and hence will not thereby exonerate the petitioners.

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 **M/s Viavi Solutions Private Limited & Ors vs Registrar of Companies, NCT Delhi and Haryana** in relation to imposing of fine and compounding of an offence.

5. Applying the above yardstick it is seen that the Petitioner Company is a private Limited Company. The plea of the Petitioners in the Petition that in view of the pre-existing losses for the relevant year 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 the filing of annual return is attendant only with fine as reproduced below:

"92 (5) Annual return. —

(5) If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fees, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

6. However, the non-compliance with the non-filing of annual return is for a period of more than one year and has been made good only in February, 2017.
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 default year, aggregating in all to Rs.1,50,000/- for the one year i.e.2014-2015, the break- up of which is given as follows:



Name of Applicants	Amount of fine payable (Rs)
	2014-2015
INVERNESS MEDICAL SHIMLA PRIVATE LIMITED	50000
MR.LALIT KUMAR SAINI	50000
MR. SUSHILKUMAR SRINIVAS RAO	50000
	1,50,000

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

Petition stands disposed off in terms of the above.

Sd/-
(R.VARADHARAJAN) / 28/9/17
MEMBER (JUDICIAL)

U.D.MEHTA