

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

Company Petition No.16/135/ (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 96 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: 11.10.2017

1. In relation to the offence arising out of non-convening of the Annual General Meetings (AGMs) for the ^{Year} 2015-2016 the Petitioners above named have filed the above Petition for compounding the offence under Section 96/99 of the Companies Act, 2013, 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 2013 for compounding the offence.
2. The Petitioner claims that the delay in holding the AGM were inter-alia caused because company was undergoing losses. It is further pleaded in the Petition that the violation committed for not convening the AGM 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 convening the AGM for the relevant year 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 |
|---------------------------|-----------------------------|-----------------------|--|
| 01/10/2015- 23/12/2016 | 23/12/2016 | 449 days | The company has held its AGM on 30 th September, 2015 within the time allowed by ROC but could not lay the financial statements of the company for the year ended 31 st march, 2015 at the meeting. The company adjourned its AGM and held its adjourned AGM on 23 rd December, 2016 thereby making the default good under section 96 of the companies act, 2013. |

3. The Registrar of Companies has filed a detailed report dated 02.08.2017 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.

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. 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:

"99. Punishment for default in complying with provisions of sections 96 to 98. —If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

6. However, the non-compliance with the non-holding of AGM is for a period of one year and has been made good only recently and this order is passed pursuant to the orders passed in three petition bearing numbers i.e.(16/139/ND/2017, 16/140/ND/2017, 16/136/ND/2017) dated 28.08.2017.
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 fixed payable as well as for continuing default on the defaulters for one year, thus aggregating in all to Rs.1,98,000/- for the year 2015-2016 the break- up of which is given as follows:



| Name of the Applicants | Fixed fine payable | No of Days Delay & Per day fine imposed | Amount of fine payable (Rs) |
|--|--------------------|---|-----------------------------|
| | | 2015-2016 | 2015-2016 |
| INVERNESS MEDICAL SHIMLA PRIVATE LIMITED | 20000 | 92x500 | 46000 |
| MR. LALIT KUMAR SAINI | 20000 | 92x500 | 46000 |
| MR. SUSHIL KUMAR SRINIVAS | 20000 | 92x500 | 46000 |
| Total | 60000 | | 1,38,000 |



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8. 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/- 11/10/17
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.MEHTA