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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

T.P. No. 175/621A/NCLT/AHM/2016(New)
C.A. No. 169/621A/CLB/MB/2015(Old)

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU**
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.03.2017

Name of the Company: Sunborne Energy Gujarat One Pvt. Ltd.

Section of the Companies Act: Section 96 of the Companies Act, 2013

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER

None present for both parties.

Order Pronounced in open Court vide separate sheet.

16/3/17

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 16th day of March, 2017.

NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 16th day of March, 2017

T.P. No.175/621A/NCLT/AHM/2016 (New)

C.A. No. 169/621A/CLB/MB/2015 (Old)

In the matter of: -

1. Sunborne Energy Gujarat One Pvt. Ltd.,
A company incorporated under the
Companies Act, 1956 and having its
Registered Office at 22, New York Tower-B,
Near Thaltej Cross Roads,
S. G. Highway,
Ahmedabad – 380 054.

2. Mr. Sailendra Mohan Bebortha,
Son of Mr. Gupta Chandra Bebortha,
Residing at: BH 7B, DDA Flats,
Munirka, New Delhi – 110067.

3. Mr. Gagan Vermani,
Son of Mr. Om Prakash Vermani,
Residing at P1/06, Tower-2,
Greater Noida,
Uttar Pradesh – 201308.

4. Mr. Aveek Banerjee,
Son of Mr. Nripesh Banerjee,
Residing at A/1702, 17th Floor,
Lake Castle CHS Hiranandani,
Hiranandani Gardens,
Powai, Mumbai – 400076. ... Petitioners

Appearance: -

Mr. Pankaj Nigam, PCS, for the petitioners.

FINAL ORDER
(Date: 16.03.2017)

1. This petition is filed by M/s Sunborne Energy Gujarat One Pvt. Ltd. and its three directors for compounding under Section 621A of

the Companies Act, 1956 for the violation of Section 96 of the Companies Act, 2013 (hereinafter referred to as "the Act" for short) punishable under Section 99 of the Act.

2. It is stated in the petition that the company could not hold the Annual General Meeting for the financial year ending 31.03.2014 due to deadlock in the management of the company. It is also stated in the petition that the company held the Annual General Meeting with a delay of 196 days.

3. The company and its Directors voluntarily filed the compounding application before the Registrar of Companies on 08.05.2014. The Registrar of Companies, Gujarat, by his report dated 08.05.2015 forwarded the application to Company Law Board, Mumbai, where the same to be registered as C.A. No.169 of 2015. Thereafter the matter came to be transferred from CLB, Mumbai, to this Tribunal and re-numbered as T.P. No.175 of 2016.

4. The Registrar of Companies, in his report, stated that no similar offence was compounded during the last three years by the petitioners. The Registrar of Companies, in his report, also stated that the company is not included in the list of vanishing companies.

5. The punishment for violation of Section 96 of the Act is provided in Section 99 of the Act. The said Section 99 of the Act says that, if any default is made in holding meeting of the company in accordance

with Section 96, 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. In the case on hand, according to the petitioners and according to the report of the Registrar of Companies, due to dead lock in the management, the Annual General Meeting of the company could not be held for the year ended 31.03.2014.

7. Section 96 of the Act came into force with effect from 01.04.2014. The petition was filed on 08.05.2014. The period of default is from 01.10.2014 to 13.04.2015. Therefore, the violation comes under Section 96 of the Act and is punishable under Section 99 of the Act.

8. Section 441 of the Companies Act came into force only with effect from 01.06.2016. Therefore, this Tribunal has to follow the compounding procedure laid down under Section 621A of the Companies Act, 1956 in respect of violation of Section 96 of the Act.

9. The Ministry of Corporate Affairs, by of notification No.SO 1936E dated 01.06.2016 declared that the matters transferred from Company Law Board to NCLT shall be disposed of in accordance with the provisions of Act 18 of 2013 or Companies Act, 1956. Since

Section 441 of the Act has not come into force by the date of violation and by the date of filing of this petition, this Tribunal has to follow the procedure laid down under Section 621A of the Companies Act, 1956.

10. Considering the fact that Annual General Meeting of the Company could not be held due to deadlock in the management of the company and considering the fact that the company has complied with the same with delay, this Tribunal is inclined to take a lenient view in imposing fine while compounding the offence.

11. The company and its three Directors are directed to pay a fine of Rs. 20,000/- each for not conducting the Annual General Meeting and each of the petitioners are also directed to pay a fine of Rs.1000/- per each day's default. There is a delay of 195 days in holding the Annual General Meeting. Therefore, the total fine, which the company and its directors are required to pay, is as follows: -

Rs. 20,000/- x 4	=	Rs. 80,000/-
plus Rs.1000/- x 4 x 195	=	Rs.7,80,000/-

Total		Rs.8,60,000/-
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12. Hence, the violation of Section 96 of the Act committed by the petitioners is compounded on payment of Rs.2,15,000/- each by way of Demand Draft drawn on any nationalised bank in favour of Pay and Accounts Office, Ministry of Corporate Affairs, Mumbai within

three weeks and to file the original Demand Draft before the Registry of this Tribunal on or before 12th April, 2017.

13. In case the petitioners fail to pay the amount as ordered above, the Registrar of Companies, Gujarat, Ahmedabad shall take appropriate action, including prosecution of the petitioners, as per applicable law under intimation to this Tribunal forthwith.

14. The petition is disposed of accordingly. Send a copy of this order to the petitioners for compliance and the Registrar of Companies. For reporting compliance of the order by the petitioners, list the matter on 17th April, 2017.

16/3/17

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on this
16th day of March, 2017.

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