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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

T.P. No. 176/621A/NCLT/AHM/2016(New)
C.A. No. 188/621A/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 92(4) 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.176/621A/NCLT/AHM/2016 (New)

C.A. No. 188/621A/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 92(4) of the Companies Act, 2013 (hereinafter referred to as "the Act" for short), punishable under Section 92(5) of the Act.

2. As per Section 92(4) of the Act, every company shall file with the Registrar of Companies Annual Return within sixty days from the date on which the Annual General Meeting is held or where no Annual General Meeting is held in any year within sixty days from the date on which the Annual General Meeting should have been held together with the statement specifying the reasons for not holding the Annual General Meeting, with such fees or additional fees as may be prescribed, within the time as specified, under Section 403.

3. It is stated in the petition that the company held the Annual General Meeting for the financial year ended 31.03.2014 on 14.04.2015 and prepared its Annual Return on 14.04.2015. But it was filed on 20th April, 2015. According to the petitioners, the non-compliance of Section 92(4) of the Act is purely due to circumstances beyond the control of the management of the company.

4. The company and its Directors filed an application before the Registrar of Companies, Gujarat, on 08.05.2015. The Registrar of Companies, Gujarat, by his report dated 29.05.2015 forwarded the application to Company Law Board, Mumbai, where the same to be registered as C.A. No.188 of 2015. Thereafter the matter came to be

transferred from CLB, Mumbai, to this Tribunal and re-numbered as T.P. No.176 of 2016.

5. 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.

6. The punishment for violation of Section 92(4) of the Act is provided in Section 92(5) of the Act. The said Section 92(5) of the Companies Act says that, if a company fails to file its Annual Return under sub-section (4), before the expiry of the period of 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 lakh 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.

7. In the case on hand, the period of default is from 20.11.2014 to 20.04.2015. The application was filed before the Registrar of Companies on 08.05.2015. Section 92 of the Act came into force with effect from 01.04.2014. Therefore, the violation comes under Section 92(4) of the Act and is punishable under Section 92(5) of the Act.

8. Section 441 of the 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 92(4) 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 the delay in filing the Annual Return occurred due to circumstances beyond the control of the management of the company, this Tribunal is inclined to compound the offence by imposing the minimum amount of fine provided in the Act.

11. The company and its three Directors are directed to pay a fine of Rs. 50,000/- each for the offence. The total compounding fine payable by the petitioners is Rs.2,00,000/-.

12. Each of the petitioners is directed pay Rs. 50,000/- 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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