36

NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

T.P. No. 177/621A/NCLT/AHM/2016(New)
C.A. No. 189/621A/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 137 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.

36

NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 16th day of March, 2017

T.P. No.177/621A/NCLT/AHM/2016 (New)

C.A. No. 189/621A/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 137(1) of the Companies Act, 2013 (hereinafter referred to as "the Act")for short), punishable under Section 137(3) of the Act.

2. Section 137(1) of the Act says that a copy of the financial statement with all its annexures duly adopted at the Annual General Meeting of the company shall be filed with the Registrar within thirty days of the Annual General Meeting or with such fee or additional fee as may be prescribed within the time specified under Section 403.

3. Section 137(3) provides punishment for violation of Section 137(1). It says that, if a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified in section 403, the company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees. It also says that the Directors of the company are liable for punishment with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

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 08.05.2015 forwarded the application to Company Law Board, Mumbai, where the same to be

registered as C.A. No.189 of 2015. Thereafter the matter came to be transferred from CLB, Mumbai, to this Tribunal and re-numbered as T.P. No.177 of 2016.

5. It is stated in the application that due to the deadlock in the management of the company, the company could not hold the Annual General Meeting for the financial year ended 31.03.2014 till the due date prescribed, i.e. upto 30.09.2014 and, accordingly, could not file the copy of financial statements with the Registrar of Companies for the purpose of complying with the provisions of Section 137 of the Act.

6. 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.

7. In the case on hand, the period of default is from 31.10.2014 to 17.04.2015. The application was filed before the Registrar of Companies on 08.05.2015. Therefore, there is a delay of 169 days caused in complying with the provisions of Section 137(1) of the Act. Section 137 of the Act came into force with effect from 01.04.2014. Therefore, the violation comes under Section 137(1) of the Act and is punishable under Section 137(3) 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 137(1) 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 facts of the case, the company shall pay a fine of Rs.1000/- for each day's violation towards compounding, which comes to Rs.1000/- x 169 = 1,69,000/-. The three directors shall pay Rs.1 lakh each, which comes to Rs.3 lakhs. Thus, the total compounding fine comes to Rs.4,69,000/-.

11. Petitioner No.1-company is directed to pay Rs.1,69,000/- and petitioners 2, 3 and 4 are directed to pay Rs.1 lakh 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.

12. 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.

13. 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.

gt