

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

NEW DELHI BENCH
NEW DELHI

Company Petition No.16/143/ (ND)/2017

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

In the matter of:

SECTION 441 OF THE COMPANIES ACT, 2013 FOR VIOLATION OF SECTION 165
OF THE COMPANIES ACT, 2013.

BETWEEN

Tanu Gupta
DIN: 00723374
R/o A 303 Abhyant Apartment
Kondli East Delhi Vasundhra Enclave
New Delhi-110019

..... (APPLICANT)

AND

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

.....RESPONDENT

ADVOCATE FOR THE PETITIONERS: Mr. Ashutosh Gupta, Advocate

ORDER

Order Delivered on:

13.11.2017

1. In relation to the offence arising out of holding Directorship in more than 20 companies for the year 2015-2016, the applicant above named have filed the above Petition for compounding the offence under Section 165 of the Companies Act, 2013.
2. The Applicant claims that under erstwhile Companies Act, 1956, there was no restriction fixed in holding maximum number of directorship in so far as Private Limited Companies were concerned. However, in the Companies Act, 2013, such exemption for Private Companies has not been provided for and a maximum cap had been fixed and accordingly, a person can now hold office as a director, including any alternate directorships, in not more than 20 companies at the same time.
3. The applicant further aver that being a non-professional, she was not aware of the changes brought about in the provisions with respect to the limit of holding maximum number of directorships in Companies Act, 2013 in comparison to the



provisions of the Companies act, 1956 and hence had inadvertently continued to act as a Director in companies beyond the prescribed statutory limit.

4. It is further pleaded in the Petition that the violation committed for holding the directorship in companies more than the prescribed limit is not willful and that in the circumstances, 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 the petitioner/ applicant has put an end to the offence by resigning from the three companies on December 18, 2015 and January 20, 2016 respectively i.e. w.e.f 20.01.2016. Relevant forms in this regard, it is averred has also been filed by the concerned companies with the Registrar of Companies.

5. The Registrar of Companies has filed a detailed report dated 21.08.2017 and a perusal of the same shows that prosecution is pending before the Tis Hazari Court against the applicant. It is further disclosed in the report that similar offence has also not been compounded during the last 3 years. It is also reported that the default has been made good as per details furnished by RoC in its report.



6. The Learned counsel for the applicant makes submission to the effect that even though prosecution is pending against the applicant but still permission/ leave from Special Court is not required in view of the decision rendered by Hon'ble NCLAT in **M/s. Cinepolis India Pvt Ltd. & Ors. Vs Registrar of Companies, Delhi & Haryana, New Delhi** wherein while considering the provisions of section 441 (1) of the Companies Act, 2013, it has been held that in case of an offence which is punishable with fine only, this Tribunal may either before or after the institution of any prosecution be compounded by the Tribunal provided the maximum amount of fine exceeds five lakhs. Thus, it is seen that this Tribunal is vested with jurisdiction both pecuniary as well as otherwise.
7. The plea made by the Applicants 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 Judgement 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.
8. Taking into consideration the yardstick as laid down in the above judgement it is seen that defaulter had made good the default albiet after the issue of show cause

GA

notice on 03.02.2016 as well as, the prosecution having been launched by ROC which is evident from the fact that no reply had been furnished by the applicant and the DIR-12 forms of the respective companies seems to have been filed much later only on 29.08.2016. However, under the provisions of Companies Act, 2013, the punishment for default in complying with the relevant provisions requiring to holding of Directorship more than the prescribed limit is attendant only with fine as reproduced below:

“165. Number of directorships.—(6) If a person accepts an appointment as a director in contravention of sub-section (1), he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty five thousand rupees for every day after the first during which the contravention continues.


9. 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 being the minimum prescribed on the applicant amounting to Rs.14,70,000/- details of which is given as follows:

For	No of days delay	Amount (Rs)
TANU GUPTA	294x5000	14,70,000
Grand Total		14,70,000



7. Subject to the remittance of the aforesaid fine, the offence shall stand compounded. For compliance within four weeks.

8. Petition stands disposed off in terms of the above.


13/11/17
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.Mehta