

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No.: 274/441/NCLT/MB/MAH/2017

Under Section 441 of the Companies Act, 2013

In the matter of

M/s. ARA Trusteeship Company Private
Limited, 501, 5th Floor, Marvel Alaina,
Koregaon Park, Pune – 411001.

.... Applicant Company

Heard on : 21.11.2017

Order delivered on: 06.12.2017

Coram :

Hon`ble M. K. Shrawat, Member (J)

Hon`ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Mahesh Darji, Practicing Company Secretary – Authorised Representative for the
Applicants.

Per: M.K. Shrawat, Member (J)

ORDER

Applicant/Defaulter Herein:

M/s. ARA Trusteeship Company Private Limited – Company.

Section Violated:

S. 89 (1) of the Companies Act, 2013.

Punishment Provided Under:

S. 89 (5) of the Companies Act, 2013.

1. This Compounding Application was filed before the Registrar of Companies, Mumbai (hereinafter as **RoC**) and the same has been forwarded to the NCLT, Mumbai on 4th August, 2017 along with its report bearing no. ROCP/STA/621A/2016/8225 (hereinafter as **RoC Report**).
2. The Learned RoC has informed that, this application was filed because the Company has violated the provisions of S. 89 (1) of the Companies Act, 2013 (hereinafter as **Act**) where the Company fails to file declaration in Form MGT – 4 in respect of acquisition of 13,23,163 Equity Shares of company namely “M/s. RDA Holdings Private Limited”

as a Trustee of the beneficial owner i.e. 'M/s. Rohinton and Anu Aga Family Discretionary No. 2 Trust'.

3. The Learned RoC also reported that, the Company has made the said default good by submitting the requisite declaration in Form MGT – 4 on 31st March, 2016. But this application is filed so as to settle matter at rest.

Submissions from the Applicants:

4. The Learned Representative for the Applicants/Defaulters herein, submitted that, the Contravention of the provisions of S. 89 (1) of the Act was bona fide and without any mala fide intention.
5. It is also submitted that, due to lack of professional expertise the delay has been occurred and it is totally unintentional.
6. It is further submitted that, the Applicants/Defaulters herein, made the default good and the requisite form i.e. Form MGT – 4 is submitted with the RoC on 31st March, 2016 and the copy of the same is attached herewith as **Exhibit – A**. But as the delay of 16 months is there therefore the Applicant/Defaulter herein has filed this Compounding Application suo-moto.
7. It is also submitted that, the RoC in its Report also recognises that, the Company has made the default good. However for the said period of default imposed a consolidated fine of ₹ 5,53,000/- which is very excessive and unreasonable as presently the Company do not having the business, pleaded by the Learned Representative.

Findings:

8. Examined the facts of the case in the lights of provisions of S. 89 (1) of the Act, where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares then the Section says that such person shall make a declaration within time prescribed specifying the name and other particulars of the person who holds the beneficial interest in such shares. The Applicant/Defaulter herein, is entered as the holder of the shares however, the Applicant/Defaulter herein, does not hold the beneficial interest in such shares. The beneficial interest belongs to 'M/s. Rohinton and Anu Aga Family Discretionary No. 2 Trust'. The requisite information as prescribed was submitted hence, default was made good, although belatedly.

9. Accordingly, by going through the facts of the case and the submissions made by the Learned Representative for the Applicants/Defaulters herein, the conclusion can be drawn that, the Applicants/Defaulters herein had violated the Provision of S. 89 (1) of the Act. And for the said violation the punishment is provided u/Section 89 (5) of the Act, which is relevant in this Case, is as follows:-

“If any person fails, to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.”

10. This Bench has gone through the Application of the Applicants/Defaulters herein and the Report submitted by the RoC and also the submissions made by the Learned Representative at the time of hearing and noted that Application made by the Applicants/Defaulters herein for compounding of offence committed under S. 89 (1) of the Companies Act, 2013, merits consideration.
11. On examination of the circumstances as discussed above a Compounding Fee of ₹ 10,000/- by Applicant/Defaulter herein, shall be sufficient as a deterrent for not repeating the impugned default in future. The imposed remittance shall be paid by way of Demand Draft drawn in favour of “Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai” within 30 days from the receipt of this order.
12. This Compounding Application No. 274/441/NCLT/MB/2017 is, therefore, disposed of on the terms directed above. Needless to mention, the offence shall stand compounded subject to the remittance of the Compounding Fee imposed. A compliance report, therefore, shall be placed on record. Only thereafter the Learned RoC shall take the consequential action.
13. Ordered accordingly.

Sd/-

**BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)**

Sd/-

**M. K. SHRAWAT
MEMBER (JUDICIAL)**

Dated : 06.12.2017