

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COMPANY APPLICATION NO. 26/441/NCLT/MB/2016
PRESENT: B.S.V. PRAKASH KUMAR, MEMBER (JUDICIAL) AND
V. NALLASENAPATHY MEMBER (TECHNICAL)

In the matter of Section 621A of the Companies Act, 1956 read with Section 441 of the Companies Act, 2013.

In the matter of **M/s. AVI Photochem Ltd.**, having its Registered Office at 110, Manish Ind. Estate No. 4, Navghar Raod, Vasai (E), District: Thane-410 210.

PRESENT FOR THE APPLICANT: -

Bhama K. Patil, Practising Company Secretary for the for the Applicants.

Date of Hearing: 28.10.2016

ORDER

Applicants in Default: -

M/s. AVI Photochem Ltd., (Company), Mr. Avinash Dhirajlal Vora (Director), Mr. Pradeep Himatlal Joshi (Director).

Section Violated; -

Section 159 of the Companies Act, 1956.

Nature of Violation; -

1. As per the submission made in the Report of Registrar of Companies, Mumbai and from the submissions made in the Compounding Application it is observed under the provisions of Section 159 of the Companies Act, 19456 ("the Act"), Companies having a share capital shall, within 60 days from the day on which each of the annual general meetings referred to in Section 166 is held, prepare and file with the Registrar a return as per Schedule V, Part-I.

The annual return for the following years could not be filed within the requisite time period as mentioned in section 159.

Financial Year	AGM Date	Due Date of filling	Date of filing	No of days delayed
2001-2002	30.09.2002	30.11.2002	14.03.2011	8 years 3 Months and 14 days
2002-2003	30.09.2003	30.11.2003	14.03.2011	7 years 3 months and 14 days
2003-2004	30.09.2004	30.11.2004	04.03.2011	6 years 3 months and 4 days
2004-2005	30.09.2005	30.11.2005	04.03.2011	5 years 3 months and 4 days

2005-2006	30.09.2006	30.11.2006	04.03.2011	4 years 3 months and 4 days
2006-2007	29.09.2007	29.11.2007	04.03.2011	3 years 3 months and 4 days
2007-2008	30.09.2008	30.11.2008	04.03.2011	2 years 3 months and 4 days
2008-2009	30.09.2009	30.11.2009	04.03.2011	1 years 3 months and 4 days
2009-2010	30.09.2010	30.11.2010	01.02.2012	1 years 2 months and 1 days

The delay in filing the returns for above said period was due to the following reasons: The company was in big financial loss due to stoppage of production at the factory on account of its bankers filing a case of recovery of advances in the DRT and the bank account being frozen. The financial position of the company was absolutely precarious and functioning was not possible as there were no funds to carry out even basis operations. The staff of the Company had resigned as the company was not in a position to pay the salaries and there was no one to address the compliance. Also company's consultants for various compliance had stopped rendering their services as their outstanding were not cleared.

Due to delay in filing the returns, the Registrar of Companies has filed the case with The Additional Chief Metropolitan Magistrate, 37 Court, Esplanade, Mumbai. During the verification of the prosecution details on the Portal of Ministry of Corporate Affairs, Applicants have found about the matter and accordingly Applicants have filed an application for compounding of offence for non-filing of Annual Returns under Section 621A of the Companies Act, 1956 for composition of offence under Section 159 of the Act.

Accordingly, the applicants have, violated the provision under Section 159 of the Companies Act, 1956. The Registrar of Companies, Mumbai forwarded the compounding application vide his letter No. ROC/STA/621A/JTA(M)/205 dated 07.09.2016 and the same has been treated as Company Application No. 26/621A/NCLT/MB/MAH/2016.

2.. We have gone through the application of the applicants and the report submitted by the Registrar of Companies, Mumbai and also the submissions made by Authorised Representative for applicants at the time of hearing and noted that application made by the applicants for compounding of offence committed under Section 159 of the Companies Act, 1956, merited consideration.

3. Having regard to the facts and circumstances of the case, the offence committed under Section 159 of the Companies Act, 1956. As stated and explained above in first para is compounded against the Company and its two directors on payment of Rs. 3,00,000/- by M/s. AVI Photochem Ltd., (Company), Rs. 2,00,000/- by Mr. Avinash Dhirajlal Vora (Director) and Rs. 2,00,000/- Mr. Pradeep Himatlal Joshi (Director). The remittance shall be made by way of Demand Draft in favour of "Pay and Accounts

Officer, Ministry of Corporate Affairs, Mumbai". Since the Company and its two directors named above have remitted total amount of Rs. 7,00,000/- through Demand Draft Nos. 045042, 045044 & 742311 dated 23.01.2016, drawn on Cosmos Bank, Vile parle Branch & Union Bank to this Bench towards compounding fees, the Registrar of Companies, Mumbai is hereby directed to take further action as provided under Section 621A(3)(c)(d) of the Companies Act, 1956 read with Section 441 (3) (c) (d) of the Companies Act, 2013.

Ordered Accordingly,

Sd/-

B. S.V. PRAKASH KUMAR

Member (Judicial)

Sd/-

V.NALLASENAPATHY

Member (Technical)

Dated this **January 25, 2017**