

In the National Company Law Tribunal
New Delhi Bench

C.P No- 16/235/ND/2017

In the Matter of
M/s Avenue Asia Advisors Private Limited

Order Delivered on-05.02.2018

CORAM: INA MALHOTRA, MEMBER (JUDICIAL)
DEEPA KRISHAN, MEMBER (TECHNICAL)

PRESENT- Mr. Himanshu Harbola, Advocate
Mr. Manish Raj, CP

ORDER

Per Ms. Ina Malhotra(Member Judicial)

This petition has been filed u/s 441 of the Companies Act, 1956 praying for compounding of the offence u/s 96 of the Companies Act. The said petition which has been routed through the office of the RoC along with their comments, prays for compounding the offence of not holding the AGM for the Financial year 2015-2016 within the period required under the Statute.

2. As per the provision of Section 96(1) of the Companies Act, 2013:

“Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such

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in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.”

3. The petitioner's offence relates to period from 16.12.2016 to 26.06.2017 leading to a delay of 193 days thus violating the provisions of Section 96 of the Companies Act, 2013. The default has since been made good.

4. The aforesaid offence is punishable u/s 99 of the Companies Act, whereby the Company and every officer who is in default is punishable with a fine which may extend to Rs. 1,00,000/- and in the case of continuing default with a further fine which may extend to Rs. 5000/- for every day during which the default continues. Accordingly, RoC has recommended the imposition of a compounding fee of **Rs. 10,60,000/-** on the company and the other applicants.

5. The applicant submitted that the accounts could not be audited on time as M/s Uberoi Sood & Kapoor, Chartered Accountants Delhi, was appointed as the Statutory Auditors of the Company for the financial year 2015-2016 who had tendered their resignation on 03.11.2016. Pursuant to the resignation, M/s Price Waterhouse & Co., Chartered Accountants LLP, were appointed as the Statutory Auditors at the EGM held on 18.11.2016 to conduct the Audit for the F.Y 2015-2016.

5. It is submitted that the AGM could not be convened within the statutory period as the accounts could not be audited on time. Given the facts of the case that the petition has been filed suo moto, and that there is no legal impediment in compounding of this offence, the petitioner/applicants' prayer can be granted. Keeping in view the submissions made and the guidelines set out by the Hon'ble NCLAT, it would be just and equitable to impose the fine as under:-

For	Amount (Rs.)
M/s Avenue Asia Advisors Private Limited	Rs. 1 Lakh
Mr. Marc Lasry	Rs. 1 Lakh
Ms. Sonia Esther Gardner	Rs. 1 Lakh
Mr. Rohit Santani	Nil (as cessation was w.e.f. 03.09.2016)

7. Subject to the remittance of the aforesaid fine, the offence shall stand compounded. For compliance within two weeks. Fine levied on the directors shall be paid out of their personal accounts.

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


(Deepa Krishan)

Member Technical


(Ina Malhotra)

Member Judicial