

In the National Company Law Tribunal
New Delhi Bench

C.P No- 18/441/ND/2018

In the Matter of
M/s Newgen Software Technologies Limited

Order Delivered on: 17.01.2018

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

PRESENT- Mr. Madhu Sudan Bose for the Petitioner.

ORDER

As Per 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 314 of the Companies Act, 1956. Reply to the said petition has been filed by the office of the RoC along with their comments. Compounding the aforesaid offence is prayed for as the company failed to pass a special resolution for appointment of Ms. Shubhi Nigam being a related party, as Senior Executive-Projects and Solution, in its Wholly Owned Subsidiary w.e.f 01.06.2012.

2. Section 314(1) of the 1956 Act provides that except with the consent of the company accorded by a special resolution, no relative of a Director of a company shall hold any "office or place of profit" in the company or its

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subsidiary unless the remuneration received from such subsidiary in respect of such office is paid over to the company or its holding company.

3. In the present case Ms. Shubhi Nigam, daughter of Applicants No. 2 and 4, was appointed as manager Products and Solutions in M/s Newgen Software Inc, a wholly owned Subsidiary of the petitioner Company. She was given a remuneration of Rs.48,325/- per month during the period of training in the company i.e from 01.06.2012. On completion, she was employed in the Wholly owned subsidiary in the US w.e.f. 1st October, 2012 on an annual salary of USD 80000. She resigned on 30th November, 2014. However, the company inadvertently failed to pass the special resolution in accordance with Section 314, as she was the daughter of Applicants 2 & 4, Directors of the Petitioner company. The appointment of Ms. Subhi Nigam was duly ratified by the Board of Directors in their meeting held on 14th June, 2017. The same was communicated to the ROC on 28.07.2017.

4. The default has since been made good vide a resolution approving and ratifying her appointment in the Company and its wholly owned subsidiary Newgen Software Inc.

5. The aforesaid offence is punishable u/s 629A of the Companies Act, 1956. Accordingly, RoC has recommended the imposition of a compounding fee of Rs. 9,45,500/- on the company and on each of the other four applicants for a continuing default from 1.06.2012 to 28.07.2017 i.e. for a period of 1882 days.


6. Given the facts of the case that there is no legal impediment in compounding this offence, the petitioner/applicants' prayer can be granted. The RoC in its report has confirmed that no Prosecution has been initiated for this default which is stated to be in advertent and for which the applicants have suo moto prayed for compounding. It would be therefore just and equitable to impose the fine on the applicants as under:-

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For	Amount (Rs.)
M/s Newgen Software Technologies Limited	Rs. 2,00,000/-
Mr. Diwakar Nigam	Rs. 50,000/-
Mr. T.S Varadarajan	Rs. 50,000/-
Mr. Priyadarshini Nigam	Rs. 50,000/-
Mr. Arun Kumar Gupta	Rs. 50,000/-

7. Subject to the remittance of the aforesaid fine, the offence shall stand compounded. For compliance within 30 days. Fine levied on the directors shall be paid out of their personal accounts.

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


(Ina Malhotra)
Member (J)