

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO.
CA. NO. 16/101/2016

PRESENT: SMT. INA MALHOTRA
Hon'ble Member (J)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NEW DELHI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 28.04.2017**

NAME OF THE COMPANY: M/s. APC Credit Rating Pvt Ltd

SECTION OF THE COMPANIES ACT: 621A

<u>S.NO.</u>	<u>NAME</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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Present: Mr. Pankaj Jain, Advocate

ORDER

An application for review of order dated 26.09.2016 passed by this Bench in CA 101/2016 is prayed for under Rule 154 of the NCLT Rules, 2016.

2. The Petitioners, had filed an application under Section 621A of the Companies Act, 1956 for compounding of the default under Section 159, which enjoins the Company and its Directors to file the returns containing the Company's particulars with the office of the ROC within 60 days of holding the AGM. As per averments, the AGM was held on 30th September, 2013 and the Company and its officers were required to file Form 20B within 60 days. Necessary compliance was however done on 21st November, 2015, after a delay of 720 days.

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3. Keeping in view, the submissions made by the applicants, as well as the fact that there was no legal impediment in granting their prayer, this bench had considered the prayer made and compounded the offence. While the ROC has recommended imposition of a fine of Rs. 3,60,000/- on each applicant, this bench had deemed it just, fit and proper to compound offence by the Company and its two Directors with a compounding fee of Rs. 1,00,000/- each, considering that the default had continued for a period of 2 years.

4. Vide the present application Learned Counsel for the applicants has prayed for review of the said order impugning the decision to impose the compounding fee at Rs. 1,00,000/- on each of the applicants. It is his submission that the fine imposed is harsh and not in keeping with the financial condition of the Company and therefore unwarranted and unjustified.

5. I am unable to appreciate the arguments advanced by the Learned Counsel for the applicant, either in respect of limitation or on merits. Learned Counsel submits that the period for making the correction in filing the review of the impugned order would be 2 years as per Section 420 of the Companies Act, 2013. The facts of this case do not fall under the said provision as there is neither a mathematical mistake nor a typographical/clerical error in the impugned order which needs correction. On the contrary, Learned Counsel for the applicant has impugned the decision of this bench in so far as the quantum of fine is imposed. This does not fall with the purview of 'mistake apparent on record'. The grievance of



the applicants in so far as exercise of judicial discretion is concerned, can only be redressed in appellate proceedings, should the appellate court find merit with the arguments advanced on their behalf. A review cannot be confused with an appeal wherein one order can be replaced by another. The said decision of imposing the compounding fee was a considered one as per judicial discretion vested with this court, taking into consideration the long period of default.

6. The argument that the profit and loss statement reflects NIL profit is not the only point for consideration before the Bench. It is incumbent on the Directors to be vigilant about due compliance of their statutory obligations having promoted and incorporated a company.

7. In the facts and circumstance of this case, this application for review filed on 23rd March, 2017 impugning the order dated 26.09.2016 of this bench, does not merit any consideration and is being dismissed.

8. No order as to costs.

Sd/-

(Ina Malhotra)
Member Judicial