

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO.
CA. NO. 16/19/2016

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 15.03.2017

NAME OF THE COMPANY: M/s. Airtime Marketing And Sales India Pvt Ltd

SECTION OF THE COMPANIES ACT: 621A

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
--------------	-------------	--------------------	-----------------------	------------------

Present: Mr. Natasha Khurana and Mr. Arjun Singh Bhati,
Practicing Company Secretary.

ORDER

This petition has been filed u/s 621A of the Companies Act, 1956 praying for compounding of the offence u/s 166 r/w Section 96 of the Companies Act, 2013. The company was required to hold AGM for the financial year ending on 31.01.2015 latest by 31.07.2015, but for reasons beyond control could only be held on 28.08.2015.

2. As per the provision of Section 166 of the Companies Act,1956:

“Every 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 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.”

Contd/-.....

3. The company has three Directors out of which only one is a resident of India while the other two are based out of Malaysia and Singapore. Due to non availability of directors of the company at the same place towards the end of July and on account of absence of requisite quorum as required under the provisions of the Companies Act 2013, the physical Board Meeting could not be held for approving the financial statements, Board's report etc, resulting in postponing its AGM. The company applied to the RoC for seeking extension of two months for holding the AGM which was rejected.

4. As the AGM was held belatedly, the company and its Director are liable to be fined u/s 168 of the 1956 Act. In terms of the penalty recommended by the RoC, the Company and every officer should be imposed with the maximum fine which extends upto Rs.50,000/-, with a further fine of Rs.2500/- per day for every day during which the default continues, tantamounting to Rs.1,17,500/-.

5. Vide this application, which is duly supported by affidavits of the Director, it is stated that the default occurred due to circumstance beyond control and without any malafide intentions. It is further stated that the omission did not cause any prejudice either to the company, or to its members or creditors. The applicants therefore pray that the delay in holding the AGM be condoned.


6. Given the facts of the case, there is no legal impediment in compounding of this default and the petitioners/applicants' prayer can be granted. Though the office of the RoC has recommended imposition of a penalty, the same is applicable as a sentence upon a prosecution culminating in holding them guilty. In cases of compounding, the Bench does not have to adhere to the same bench mark. This Bench therefore deems it sufficient to impose a compounding fee of Rs.25,000/- on each of the applicants for the delay of 27 days' default in holding the AGM.

Name of the Applicants	Penalty
M/s. Airtime Marketing and Sales India Pvt. Ltd.	25,000/-
Mr. Achin Gupta	25,000/-

7. The fine imposed on the Director shall be paid from his individual account.

8. Subject to the remittance of the aforesaid fine within two weeks, the offence shall stand compounded. Upon compliance, the Bench Officer shall communicate the same to the office of the RoC for taking appropriate steps.

9. Petition stands disposed off in terms of the above and consigned to Record Room.


(Ina Malhotra)
Member Judicial