

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO. 16/06/2017
CA. NO.

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 13.02.2017**

NAME OF THE COMPANY: M/s. Bhanuenergy Infrastructure & Power Ltd.

SECTION OF THE COMPANIES ACT: 441

<u>S.NO.</u>	<u>NAME</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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Present: Mr. Deepak Kukreja and Ms. Monika Kohli

ORDER

This petition u/s 441 of the Companies Act 2013 for compounding of the defaults under sections 149, 177 & 178 r/w Sections 172 & 178 has been filed on behalf of the Company M/s. Bhanuenergy Infrastructure & Power Ltd, and its officers who were in charge and responsible for its affairs. As per the provision of Section 178(8), the company is liable to be punished with fine which would not be less than Rs.1 lac and which may extend upto Rs.5 Lacs and every officer of the company who is in default would be punishable with a term which may extend upto one year or with fine which would not be less than Rs.25,000/- but which may extend to Rs. 1 Lac or with both.

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2. The petitioners having realized their default have taken remedial steps and pray for compounding of the offence u/s 441 of the Companies Act, 2013.

3. As per the provisions of the Companies Act 2013, Section 441 provides for

“ (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only, may, either before or after the institution of any prosecution, be compounded by—

(a) the Tribunal; or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any officer authorised by the Central Government, on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorized by the Central Government, as the case may be, may specify:”

4. Given the facts of the case, since the defaults are punishable with payment of fine and/or with imprisonment, the jurisdiction to compound the offence does not lie with the NCLT.

5. The Practicing Company Secretary has placed reliance of a decision of the NCLT, Hyderabad Bench in the matter of ***M/s. Cambridge Technology***

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Enterprises Ltd & Ors. The said reliance is misplaced inasmuch as the facts of the case differ. Certain petitions have been entertained by the Benches which were filed after the Companies Act 2013 was notified i.e after 01.04.2014, but before the NCLT was constituted. Petitions for compounding defaults pertaining to the period prior to 01.04.2014 were also entertained by the Tribunal, as the enhanced fines and punishment would not have a retrospective effect.

6. In the present case, the petitions have been filed in December 2016 after constitution of the NCLT and are in respect of offences for the period after notification of the Companies Act 2013 came into effect. Under such circumstances, the petitioners' case which is punishable with fine and/or imprisonment cannot be entertained by the NCLT. The PCS has placed reliance on judgments and precedents in respect of petitions filed either before constitution of the NCLT or for defaults committed prior to 01.04.2014. The objections and arguments on behalf of the petitioners that this Bench would have jurisdiction to entertain the compounding application are therefore without merit. The petition is therefore dismissed as not being maintainable before this forum.

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(Ina Malhotra)
Member Judicial