

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO.
CA. NO. 16/44/2017

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 10.04.2017

NAME OF THE COMPANY: M/s. Brown Brothers Harriman Business Services (India) Pvt. 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. Himanshu Harbola, Advocate

ORDER

The petitioner company, which was incorporated on 07.09.2015, CIN U74140DL2015FTC284938, filed an suo moto application under section 56(4)(A) of the Companies Act 2013 w.r.t delay in issue of shares certificate to the subscribers of the Company, resulting in non compliance of the statutory requirements u/s 56(4)(A) of the Companies Act, 2013.

The period of default is stated to be from 07.11.2015 to 03.12.2015.

2. The petitioner submits that the company was incorporated on 07.09.2015 and therefore the share certificates were required to be issued to the subscribers of the Memorandum of Association on or before 06.11.2015. The petitioner could only issue the share certificates to the subscribers on 03.12.2015, i.e beyond the time prescribed under the statute. The petitioners submit that owing to the cumbersome and

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numerous procedural formalities involved, the bank account of the company could not be opened within two months from the date of incorporation of the company. Upon fulfillment of required formalities, the bank account of the company was opened on 07.11.2015. Consequently, the subscription money was received on 19.11.2015 and 02.12.2015 from the subscribers i.e M/s. Brown Brothers Harriman(Poland) Sp. Z.o.o and M/s. BBH IND, LLC, respectively. Due to the delay in opening Bank Account and receipt of share subscription money, the petitioners failed to issue and deliver the share certificates to the subscribers within the prescribed time of two months from the date of incorporation.

3. As per the report of the RoC, the offence is punishable u/s 56(6) of the Companies Act, 2013, wherein the company shall be punishable with fine which shall not be less than Rs.25,000/- but which may extend to Rs.5,00,000/- and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs.10,000/- but which may extend to Rs.1,00,000/-. Accordingly, the office of the RoC has calculated and recommended the imposition of the fine on the petitioner company as Rs.25,000 (Min) and Rs.5,00,000/-(Max) and Rs. 10,000/- (Min) and Rs. 1,00,000/-on each of the defaulting officers.

As per the report, prosecution has not been initiated.

4. The calculation recommended by the RoC is by way of imposition of penalty on prosecution holding the defaulter guilty. Under such circumstances, the sentencing provided under the act cannot be below the minimum. However, the principle of imposing minimum fine on compounding matters is not mandatory, as compounding of an offence can be accepted by a Court even by admonishing the defaulter or issuing a warning. The petitioner submits that the said delay was beyond their control and not on account of any malafide intentions

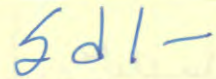
5. Given the facts of the case that the submission of procedural delay cannot be discounted, it would be just and sufficient to impose a fine of Rs. 10,000/- on the petitioner company and each of the defaulting officers. Accordingly, the fine is imposed as under:

Name of the Applicants	Penalty
M/s. Brown Brothers Harriman Business Services Pvt. Ltd.	10,000/-
Mr. Michael James McDonald	10,000/-
Ms. Lorrie Lynn Gordon	10,000/-
Mr. Hitesh Sohan Lal Jain	10,000/-

6. Fine imposed on the defaulting directors shall be paid out of their personal accounts.

7. Subject to the remittance of the aforesaid fine within four 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.

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


(Ina Malhotra)
Member Judicial