

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO.
CA. NO. 16/232/2015

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 31.03.2017**

NAME OF THE COMPANY: M/s. Bulland BuildTech 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. Mohit Oommen, Proxy Counsel

ORDER

The petitioner company, which was incorporated on 01.10.2003, failed to file its Annual Returns and Balance Sheet along with the Statement of Profit & Loss for the F.Y ending 31st March, 2014 with the RoC, resulting in non compliance of the statutory requirements u/s 159, 210 & 220 of the Companies Act, 1956.

The period of default is stated to be for 121 days in holding the AGM with the consequential delay in uploading the statements with the office of the RoC.

Contd/-.....

2. The petitioner submits that the delay was occasioned on account of a complete deadlock between the Directors and disputes before the erstwhile CLB in respect of oppression and mismanagement. Vide order dated 26.11.2013, the Hon'ble CLB had restrained the company from holding any Board or General Meeting without prior permission. Special permission for holding the Board Meeting and the AGM was granted on 14.08.2014. Objections of the Auditor had to be met before finally holding the Board Meeting on 5th Spetember,2014. It is also submitted that this was their first default and did not cause prejudice to the interest of its members or other stakeholders, nor did it impact the financial strength of the company. The company has filed Annual Return (Form 20B) on 31.03.2015 and Annual Accounts on 27.03.2015 for the financial year ending on 31.03.2014.

3. As per the report of the RoC, the fine applicable till the notification of the Companies Act was one u/s 162(1) of the Companies Act 1956 which could extend to Rs.500/- for each day's delay, while after notification of the Companies Act, 2013, i.e. w.e.f. 01.04.2014, the offence attracted a minimum fine of Rs.50,000/- but which could extend to Rs.5lacs as per the provisions of Section 92(5) of the Companies Act, 2013. Accordingly, the office of the RoC has calculated and recommended the imposition of the maximum fine on the petitioner company as Rs.10,08,500/- and Rs. 10,18,500 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. 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.

6. Given the facts of the case, it would be sufficient to impose a fine of Rs. 2.5 Lakhs on the petitioner company and each of the defaulting officers. Accordingly, the fine is imposed as under:

Name of the Applicants	Penalty
M/s. Bulland Buildtech Pvt. Ltd.	2,50,000/-
Mr. Krishna Pal Singh	2,50,000/-
Mr. Ram Kesh Basist	2,50,000/-
Mr. Rajneesh Nagar	2,50,000/-

7. Fine imposed on the applicants shall be paid out of their personal accounts.

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.

Ed/-
(Ina Malhotra)
Member Judicial