

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO.
CA. NO. 16/38/2017

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. Cube26 Software 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. Ashwin Bhat, Practicing Company Secretary

ORDER

The petitioner company, which was incorporated on 19.02.2014, has filed an application under section 217 r.w Section 220 & 162 of the Companies Act, 1956. The company had failed to attach the copy of the Board of Director's Report with e-form 23AC for the F.Y. 2013-14 as required u/s 217 r.w Section 220 of the Companies Act, 1956.

2. The period of default is stated to be F.Y 2013-14. As per the report of the RoC, though the prosecution has not been initiated, the petitioners had not taken steps to rectify the default till filing of the present application. During its pendency the default was made good on 29.12.2016 vide SRN:G31466949. It is submitted that the fine applicable till the notification of the Companies Act was one u/s 162 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

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recommended the imposition of a fine on the petitioner company and its five directors as Rs.3,95,000/-. The petitioner submits that the said omission was inadvertent and not on account of any malafide intentions. It was also 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 Board Report ^{and L} rectified its default by filing a revised Form 23AC & ACA with the RoC on 5th April 2017 vide SRN G40200305.

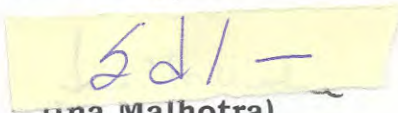
3. Given the facts of the case, I am inclined to believe that the said default was on account of inadvertent oversight and as such, it would be sufficient to impose a fine of Rs. 1 Lac on each of the petitioners i.e, the Company and its aforementioned directors for the default of non adherence to the statutory provisions for two years. Accordingly, the fine is imposed as under:

Name of the Applicants	Penalty
M/s. Cube26 Software Pvt. Ltd.	1,00,000/-
Mr. Saurav Kumar	1,00,000/-
Mr. Abhilekh Kumar Agarwal	1,00,000/-

4. The fine imposed on the Directors shall be paid from their individual accounts.

5. 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.

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


(Tina Malhotra)
Member Judicial