

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO. 16/20/2015
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 05.10.2016**

NAME OF THE COMPANY: M/s. Claro Consultancy Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 621A

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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1.	JASHEET SINGH	CGSC] SFIO	✱
2.	ASTHA SHARMA	ADV		
1.	AK Mehta	AC	Co.	R
	manju	CS	Co.	manju
	Rohit Khurana	Adv.	Co.	R Khurana
5.	Saud Ahmad, Joint Director (Law & Prosecution)		} S.F.I.O.	
6.	Ajeet Kumar Srivastava, Prosecutor			
7.	S.K. Nanda, Assistant Director			
8.	Sanjay Kumar Chabey, Law Consultant/Adv.			

ORDER

An application u/s 621A of the Companies Act, 1956 praying for compounding of offences u/s 215(3) & 217(3) has been filed by the petitioners. Objections have been received from the Office of the SFIO in addition to the report from the RoC. The aforesaid violations were observed during the course of investigation u/s 235(1) of the Act conducted by the SFIO. It is stated that the company did not follow the statutory procedure for adoption of annual accounts as they held only one Board Meeting during each of the financial years 2007-08 to 2010-11. In the single Board Meeting, the Balance Sheet was considered and signed. In the same meeting the Auditor's Report and the Director's Report were also approved. This procedure was adopted year after year without adhering to the prescribed norms. The period of default is therefore four years i.e 2007-08 to 2010-11.

2. The petitioners submit that the default has been made good. Being a private company with less items on its Agenda, the Board Meetings did not take much time and the Auditor was called for adoption of the accounts. His presence was not marked as there were other items to be discussed.

3. The aforesaid explanation of the petitioners was not accepted and prosecution for violations of the statutory requirements has been initiated against them.

4. The fine for violation of the provision of 215(3) is u/s 629A of the Companies Act and attracts a fine which may extend to Rs.5,000/- and where the contravention is a continuing one, with a fine which may extend to Rs.500/- per day for every day's default after the first during which contravention continuous.

5. The penalty for violation of sec. 217(3) is as per sec. 217(5) which provides for imprisonment which may extend upto 6 months, or with fine which may extend upto Rs.20,000/-, or with both. However, the said provision specifically provides that no person shall be sentenced to imprisonment unless the offence was wilfully committed. Accordingly, the ROC recommended the imposition of the maximum fine as computed below:

Name of Defaulter	Amount (in Rs.)*
1.Ms. Nira Radia	6,23,000/-
2. Ms. Karuna Menon	8,30,500/-
3.Mr. Akshay Radia	8,30,500/-
4. Partho Sanyal	6,22,500/-

6. A notice was also issued to the office of SFIO who have opposed the compounding of the offences tooth and nail. It is stated that the technical scrutiny of the Balance Sheets and other relevant documents collected from various Government agencies reflected that the directors had wilfully defaulted in complying with the mandatory provisions of the Companies Act and hence prosecution of Criminal Cases has been initiated against the concerned directors. Suggestions have been given about the involvement of Ms. Niira Radia, who is the Managing Director of the Vaishnavi Group of Companies (which also includes the present company under its umbrella), in criminal scams. These companies provided PR Consultancy for Tata Group of Companies and United Ltd. The business dealings between Tata Group of Companies and United Ltd., are a subject matter of the 2G Scam case. It is stated that the defence given by the company is imaginary, an afterthought, and that the non-compliance of the statutory provisions was deliberate and malafide.

7. Ld. Counsels for the petitioners on the other hand have argued that the default was purely technical in nature and even as per the investigation report no loss of revenue has occurred either to the Government, the exchequer or any other stakeholder whatsoever. It is further stated that the applicants are not charged with any offence under the Indian Penal Code and no mens rea has been attributed. The violation u/s 215 r/w section 217 for adopting the Balance Sheet, Auditors Report and Directors Report on the same day has been rectified. Reliance has also been made in

the matter of M/s. Neucom Consulting Pvt. Ltd., wherein the Mumbai Bench of the CLB considered similar defaults detected by the office of the SFIO, which were duly permitted to be compounded.

8. Given the vehement opposition by the office of the SFIO, this bench granted various opportunities to them to show as to how compounding of the present offences would be prejudicial to the scams they were insinuating. Except for vague and general averments, no involvement of the petitioners was shown, muchless the effect of the violations for which compounding is prayed for on any other case. The technicalities and adherence to the complicated requirements under the law may not be understood by many, and the competence of the professional Company Secretaries, Auditors, Chartered Accountants also comes into play. Therefore negligence or inadvertent errors in adhering to the provisions cannot always be attributed to wilful omissions. The SFIO has failed to substantiate how the default in this case is stated to be wilful or in what way the petitioners stand to gain by such errors or omissions. No doubt this Tribunal is vested with the discretion of refusing the relief under sec. 621 A of the Act, but refusal to compound offences has to be for just and valid reasons and not based on a mere bogey raised by the department. The SFIO was finally asked to file his affidavit showing the involvement of the petitioners in any proceedings other than those pertaining to the present violations. They were specifically asked to satisfy this Bench as to how compounding of the present offences would prejudicially affect the alleged other cases. Needless to say that no cogent answers were given. Even the alleged involvement of Ms. Niira Radia in any other case was not cited. Mr. Jaspreet Singh, Id counsel for the SFIO fairly conceded that the offences sought to be compounded do not have any bearing nor would hamper or affect the cases pertaining to the 2 G scam as alluded. Under such circumstances, it is observed that the raising of the objections to these applications under sec. 621A by the office of the SFIO were baseless with no application of mind and which has only resulted in wasting the precious time of the Tribunal and loss of interest to the exchequer. Their resistance was wholly extraneous and irrelevant to the aspects required to be taken into consideration while exercising

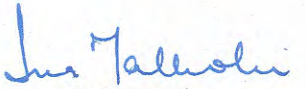
such discretion for compounding of the offences in question. The government machinery is supposed to act with responsibility and cannot be an instrument to cause impediments where none exist. The various orders on record only go to show the extreme indulgence granted by this Bench to the SFIO by affording opportunity after opportunity to justify their resistance, but their obdurate and recalcitrant attitude reeks of either malafide or total inefficiency. The legal department handling the affairs of the SFIO should shoulder the responsibility in giving courts proper assistance in resisting a prayer made a petitioner and not deliberately derailing proceedings in which relief is legally permissible. It is their equal responsibility to ensure just and proper dispensation of justice and not oppose a relief for the sake of winning kudos for themselves. Their attitude is inexplicable, moreso, when a similar bogey raised by them before the Mumbai bench of the CLB in the matter of M/s. Neucom Consultancy Pvt. Ltd. was rejected and no appeal impugning the decision to compound the offences was preferred. Further, their attitude reeks of malafide, as to their own knowledge the offences neither gave advantage to the company or to any person, to be termed as wilful nor are a subject matter of the 2 G scam as alleged. Law provides for compounding of the offences, and unless legally impermissible, relief should be granted by the courts in normal course. Withholding the same on arbitrary grounds would in itself be a travesty of justice.

9. The default of violating the provisions of sec. 215(3) & 217(3) of the Companies Act is stated to be for 4 years. The petitioners claim that the default has been made good. The SFIO/ RoC have not been able to repudiate the same. Since there is no legal impediment in compounding the offence of sec. 215(3) r/w Section 217(3) as prayed for in the present petition, I deem it sufficient to impose a composite fine for the four years of default as under:

Name of Defaulter	Amount (in Rs.)*
1. Ms. Nira Radia	75,000/-
2. Ms. Karuna Menon	1,00,000/-
3. Mr. Akshay Radia	1,00,000/-
4. Partho Sanyal	75,000/-

10. Subject to the remittance of the aforesaid fine within 30 days, the offence shall stand compounded. Copy of the order be sent to the office of the RoC. Compliance Report be placed on record.

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


(Ina Malhotra)
Member Judicial