

40  
**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**C.P. No. 6/441/NCLT/AHM/2017**

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.04.2017**

Name of the Company: Shruti Power Projects Pvt. Ltd.

Section of the Companies Act: Section 178(1) of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
--------------	-------------------------------	--------------------	-----------------------	------------------

1.

2.

**ORDER**

None present for petitioner.

Order pronounced in open Court. Vide separate sheet.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 13<sup>th</sup> day of April, 2017.

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**C.P. No. 6/441/NCLT/AHM/2017**

**CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**

**Date: 13<sup>th</sup> April, 2017**

**In the matter of:**

1. Shruti Power Projects  
Private Limited,  
608, Mauryansh Elanza  
Near Parekh Hospital  
Shymal Cross Road,  
Satellite, Ahmedabad-380015
2. Yogesh Mahasukhlal Shah  
Managing Director,  
16/B, D Block, 1<sup>st</sup> Floor,  
Khalakdina Terrace,  
Opp: August Kranti Maidan,  
Gowalia Tank, Mumbai-400036
3. Bhavin Satish Shah  
Director,  
Flat No. 104, Veena Sky Heights,  
Next to Pawar Public School,  
New Saibaba Nagar,  
Borivali West, Mumbai-400092 : Petitioners.

**Appearance:**

Mr. Pinakin Shah, learned PCS with Mr. Maulik Bhavsar, learned PCS for the Petitioners.

**FINAL ORDER**

Pronounced on 13<sup>th</sup> day of April, 2017

1. This Petition is filed by M/s. Shruti Power Projects Private Limited, its Managing Director and Director under Section 621-A of the Companies Act, 1956 and Section 441 of the Companies

Act, 2013, for compounding of the violation of Section 178(1) of the Companies Act, 2013, punishable under Section 178(8) of the Companies Act, 2013.

2. M/s. Shruti Power Projects Private Limited is a 'Deemed Public Company under Section 2(71) of the Companies Act, 2013 with effect from 23.8.2014.

3. Section 178(1) of the Companies Act, 2013 ([hereinafter referred to as "the Act") which came into force with effect from 1.4.2014, lays down that the Board of Directors of every listed Company and such other class or classes of companies as may be prescribed shall constitute a Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one half shall be independent directors.

3.1. Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014, says the following classes of Companies shall constitute a Nomination and Remuneration Committee of the Board;

(i) all public companies with a paid up capital of ten crore rupees or more;

(ii) all public companies having turnover of one hundred crore rupees or more;

(iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

with a Proviso "that public companies covered under Rule 6 which were not required to constitute a Nomination and Remuneration Committee under Section 292A of the Companies Act, 1956 shall

constitute their Nomination and Remuneration Committee within one year from the commencement of the Companies (Meetings of Board and its Powers) Rules, 2014 or appointment of independent directors by them, whichever is earlier”.

4. In the case on hand, the first Petitioner Company is a ‘Public Company’ covered by Section 2(71) of the Act. The first Petitioner Company was required to constitute a Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one half shall be independent directors within one year from the commencement of the Companies (Meetings of Board and its Powers) Rules, 2014 [hereinafter referred to as “the Rules”] or appointment of independent directors by them, whichever is earlier, i.e., by 31.3.2015. The first Petitioner Company has not constituted a Nomination and Remuneration Committee within the prescribed time, i.e., up to 31.3.2015. The Petitioner Company violated the provisions of Section 178(1) of the Act punishable under Section 178(8) of the Act.

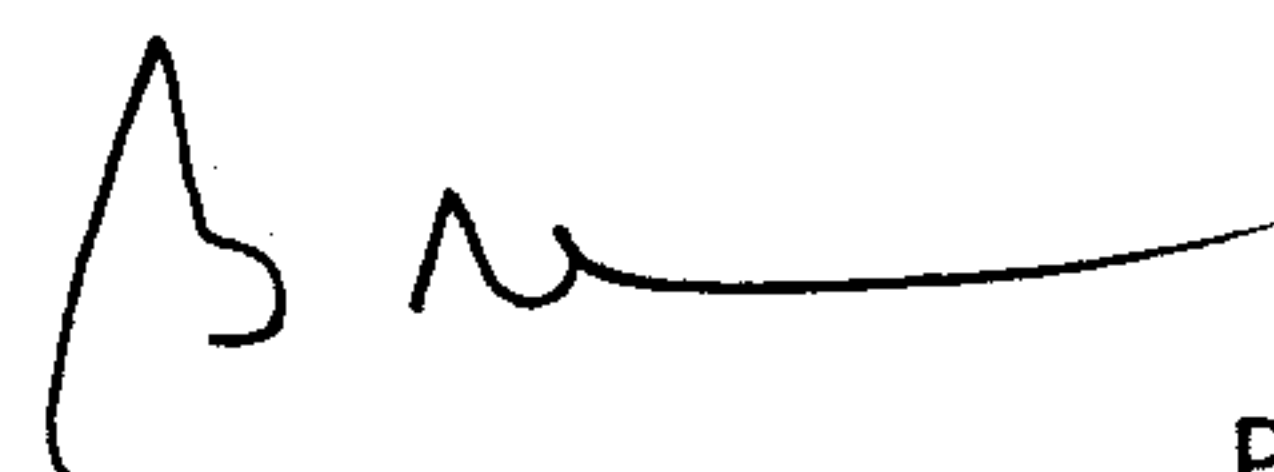
5. Petitioners, in their Petition, voluntarily admitted their violation of Section 178(1) of the Act. It is further stated in the Petition that the Petitioner Company has constituted a Nomination and Remuneration Committee with effect from 1.10.2015 when the Board taking note of the same appointed Mr. Chetan Hasmukhlal Mehta and Mr. Mitesh Kuvadia as ‘Independent Directors’ and Smt. Nisha Bhavin Shah as ‘Non-Executive Director’ of the Company and filed e-Form DIR 12 with the office of Registrar of Companies on 6.6.2016. Petitioners filed the Application on 14.9.2016 before the Registrar of Companies. The Registrar of Companies forwarded the Application along with his Report dated 20<sup>th</sup> December, 2016. The Registry of this Tribunal registered the same as ‘CP No. 6 of 2017’.

6. Section 178(8) of the Act provides punishment for contravention of Sections 177 and 178 of the Act. The punishment provided is, “the Company shall be punishable with fine which shall

be one lakh rupees but which may extend to five lakh rupees; and every officer of the Company who is in default shall be punishable with imprisonment which may extend to one year or with fine which shall not be less than twenty five thousand rupees but which may extend to one lakh rupees, or with both.” Section 178 of the Act came into force with effect from 1.4.2014. Section 441 of the Act came into force with effect from 1.6.2016. The period of default is during the financial year 31.3.2015. Section 178 of the Act came into force with effect from 1.4.2014 and, therefore, in this case this Tribunal has to follow the procedure laid down in Section 441 of the Act for compounding the violation of Section 178(1) of the Act for which punishment is provided in sub-section (8) of Section 178 of the Act.

7. Section 441 of the Act says, “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 or after the institution of any prosecution, be compounded by the Tribunal or by the Regional Director or any officer authorised by the Central Government if the maximum amount of fine imposed for such offence does not exceed five lakh rupees.

8. In the case on hand, the punishment provided for the Petitioner Company under Section 178(8) is fine only, which shall not be less than one lakh rupees but which may extend to five lakh rupees. In the case of officers of the Company, i.e., Petitioners No. 2 and 3, Section 178(8) provides, ‘imprisonment for a term which may extend to one year or with fine which shall not be less than twenty five thousand rupees but which may extend to one lakh rupees or with both. Therefore, in view of Section 441(1) of the Act, this Tribunal has got power to compound the violation of Section 178(1) of the Act, only in respect of the Company, but not to its Officers, i.e., Petitioners No. 2 and 3.



9. As can be seen from the averments in the Petition, the Petitioner Company has constituted a Nomination and Remuneration Committee and therefore the requirement is complied with after the due date. It is stated in the Report of the Registrar of Companies that the Company is not included in the list of vanishing companies and no similar offence under Section 178(1) of the Act was compounded by the Company during the last three years.

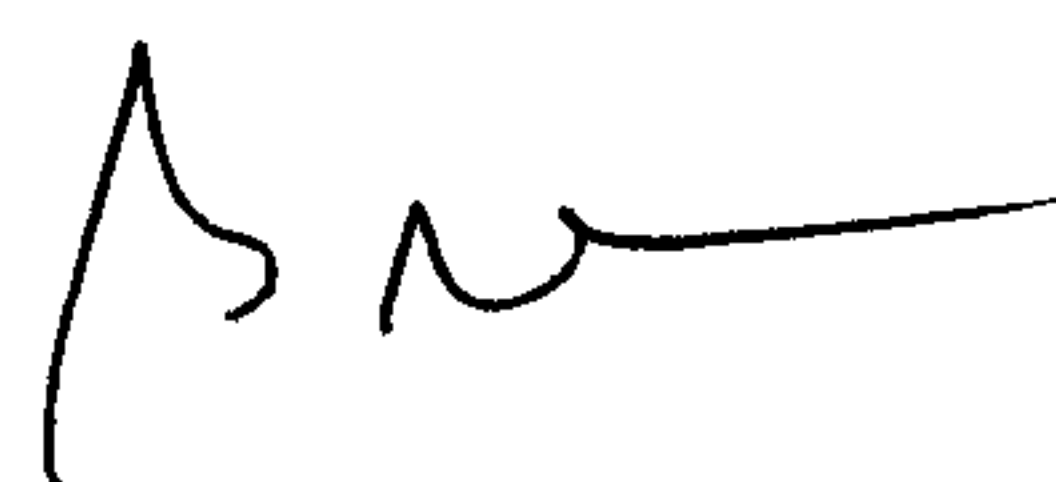
10. Considering the above said facts, and considering the minimum amount of fine provided, this Tribunal is of the considered view that the first Petitioner can be permitted to compound the violation under Section 178(1) of the Act by paying a compounding fee of Rs. 1,00,000 (One Lakh).

11. This Tribunal further order, that it has no power to compound the offence under Section 178(1) of the Act punishable under Section 178(8) of the Act in respect of Petitioner No. 2 and Petitioner No. 3.

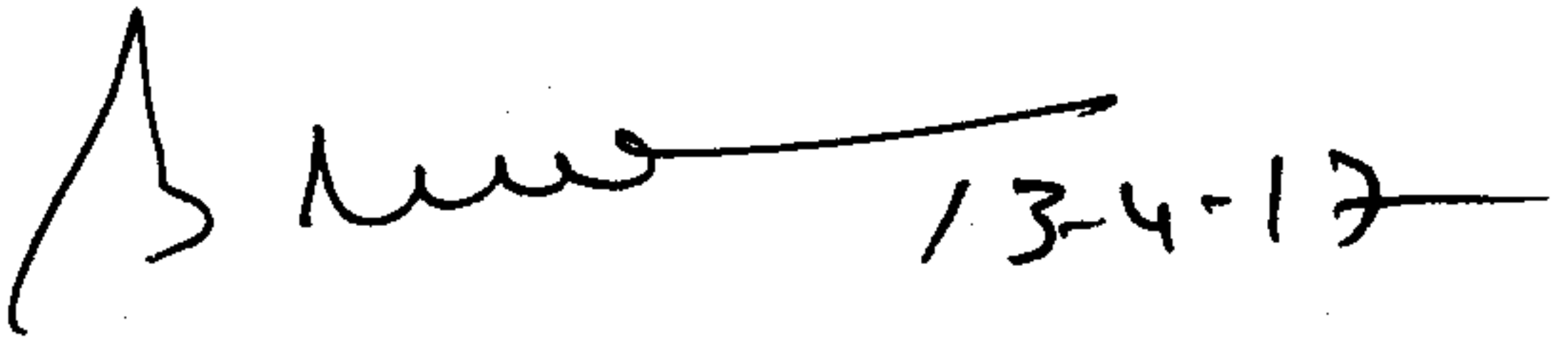
12. The Petition is disposed of with following directions to the first Petitioner Company;

12.1. The Petitioner No. 1 Company is directed to deposit the sum of Rs. 1,00,000/- [One Lakh] by way of Demand Draft drawn on Nationalised Bank in favour of Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai, within three weeks from the date of this order and file the original Demand Draft before the Registry of this Tribunal on or before 5<sup>th</sup> May, 2017.

12.2. In case the Petitioner No.1 Company fail to pay the amount as ordered above, the Registrar of Companies shall take appropriate action including prosecution of the Petitioner Company as per applicable law under intimation to this Tribunal forthwith.



13. The Petition is dismissed in respect of Petitioners No. 2 and Petitioner No.3. Send copy of this order to the Petitioners<sup>No1</sup> for compliance, and Registrar of Companies, Gujarat, Ahmedabad for reporting compliance of the order by the first Petitioner Company. List the matter on 09.5.2017.

  
**BIKKI RAVEENDRA BABU**  
**MEMBER JUDICIAL**

*Pronounced by me in open court on this  
the 13<sup>th</sup> day of April, 2017.*

RmR