

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. 20/441/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 05.04.2017**

Name of the Company: GTPL Hathway Ltd.


Section of the Companies Act: Section 441 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Navin Pahwa	Adv.	Petitioner	Natasha
2.				

ORDER

Learned Advocate Mr. Navin Pahwa with learned Advocate Ms. Natasha Sutaria present for petitioner.

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 5th day of April, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. 20/441/NCLT/AHM/2017

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 5th April, 2017

In the matter of:

1. M/s. GTPL Hathway Limited
202, Sahajanand Shopping Centre,
Opp: Swaminarayan Mandir
Shahibaug,
Ahmedabad-380054
2. Shri Aniruddhasinhji Jadeja
Managing Director
GTPL Hathway Limited
Ahmedabad : Petitioners.

Appearance:

Mr. Navin Pahwa with Ms. Natasha Sutaria for M/s. Thakkar & Pahwa, Learned Advocates for the Petitioners.

FINAL ORDER

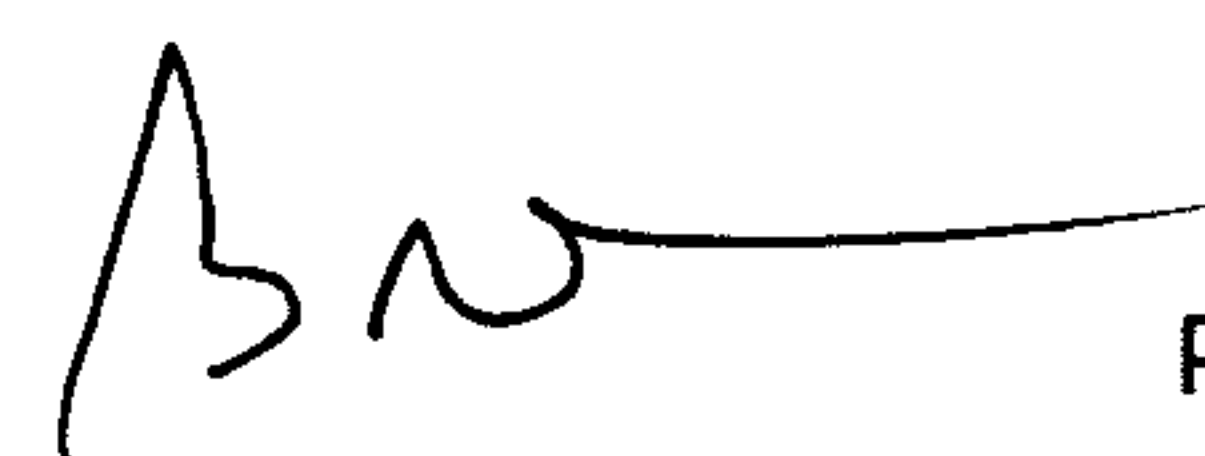
Pronounced on 5th day of April, 2017

1. M/s. GTPL Hathway Limited and its Managing Director filed this Petition under Section 441 of the Companies Act, 2013 for compounding the violation under Section 204(1) read with Section 134 of the Companies Act, 2013, under Section 441 (3)(f)(ii) of the Companies Act, 2013. M/s. GTPL Hathway Limited is a subsidiary of M/s. Hathway Cable & Datacom Limited with effect from 12.10.2007. In view of Section 2(71) of the Companies Act, 1956, subsidiary of a Public Company shall be deemed to be a Public Company. M/s. GTPL Hathway Limited was converted from 'Private Limited Company' to 'Public Company' with effect from 20th August, 2016. The Company filed its annual account for the financial year 2014-2015 on 25th May, 2015 where the Company had adopted

Director's Report but had not attached Secretarial Audit Report with the Financial Statement made up to 31.3.2015.

2. Sub-section (3) of Section 134 says what are the attachments to be attached to the statements laid before a Company in a General Meeting along with the Report of the Board of Directors. Section 134(3)(f)(ii) says that explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the Company Secretary in Practice in his Secretarial Audit Report. Section 204 says, Secretarial Audit Report given by a Company Secretary in Practice shall annex to the Board's Report made in terms of sub-section (3) of Section 134.

3. In the case on hand, the specific violation pleaded is that Secretarial Audit Report has not been annexed to the Report of Board of Directors, the violation of which is punishable under sub-section (4) of Section 204. It says, that Company or any officer of the Company or the Company Secretary in Practice contravenes Section 204, the Company, every officer of the Company, or the Company Secretary in Practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but it may extend to five lakh rupees. In the Petition, petitioners voluntarily admitted the violation. It is further stated that the Petitioners have immediately appointed a Secretarial Auditor and has obtained Secretarial Audit Report on 23rd November, 2016 and it is attached as 'Annexure 'B'. The Registrar of Companies, in his Report stated that this Petition is dated 19.12.2016. He further stated that the violation is under Section 204(1) of the Companies Act also. He also stated that the Company is not included in the list of vanishing Companies. He further stated that the Company has violated Sections 165, 203, 149 and 177, 178 of the Companies Act also. Registrar of Companies in his Report also stated that similar offence has not been compounded during the last 3 years.



4. Learned Counsel appearing for the Petitioners contended that since the Petitioners have obtained Secretarial Audit Report, lenient view may be taken in imposing the compensation amount.

5. He has also relied upon a decision dated 27.02.2017 rendered by the Hon'ble Member (Judicial) of the Company Law Tribunal, Mumbai Bench in the case of **M/s. Hathway Nashik Cable Network Private Limited and its Directors..** It relates to violation of Section 162 of the Companies Act, 1956. It provides punishment which may extend to five hundred rupees per day. In that case, the period of delay was 1019 days. The Learned Member imposed compounding amount of Rs. 2,000/-.

6. In the case on hand, the violation is under Section 204 of the Companies Act, 2013. Section 204(4) provides minimum fine amount of Rupees One Lakh which may extend to Five Lakh Rupees. Moreover, the imposition of compensation amount is the discretionary order. It depends upon the facts and circumstances of each case. Simply because one Hon'ble Member imposed certain compensation amount, the same need not be followed by other Members since it is not a laying down of law. However, the discretion has to be exercised by this Tribunal taking into consideration the nature of violation; the subsequent compliance of violation; the punishment provided for the violation; the financial condition of the Company and its Officer, etc. In the case on hand, as can be seen from the Report of Registrar of Companies, the Petitioner Company not only violated Section 204 of the Companies Act, but has also violated Sections 165, 203, 149 and 177, 178 of the Companies Act, 2013. Moreover, minimum sentence of fine has been prescribed in this case. Therefore, taking into consideration the over all facts and circumstances of the case, this Tribunal is of the considered view that Petitioners No. 1 and 2 shall pay compensation amount of Rs. 1,00,000/- (One Lakh) each.

7. Considering all the aforesaid aspects, this Tribunal is passing the following order;

Violation of Section 204 read with Section 134 of the Companies Act, 2013, committed by the petitioners is compounded on payment of Rs. 1,00,000/- (One Lakh) each. The Petitioners No. 1 and 2 shall pay the sum of Rs. 1,00,000/- [One Lakh] each 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 15.05.2017.

8. In case the petitioners fail to pay the amount as ordered above, the Registrar of Companies shall take appropriate action including prosecution of the petitioners as per applicable law under intimation to this Tribunal forthwith.

9. Petition is disposed of accordingly. Send copy of this order to the petitioners for compliance, and Registrar of Companies, Gujarat, Ahmedabad for reporting compliance of the order by the petitioners. List the matter on 25.5.2017.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

*Pronounced by me in open court on this
the 05th day of April, 2017.*

RmR.