NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

T.P. No. 150/621A/NCLT/AHM/2016(New)
C.A. No. 415/621A/CLB/MB/2012(Old)

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 21.10.2016

Name of the Company: Sabar Engg. Pvt. Ltd.

Section of the Companies Act: Section 297 of the Companies Act, 1956

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	CS Shilpi Thaper	practising company secretary	Sabar Engg. pvt ltd.	Shilpi Thaper
2.				

ORDER
ORDER PRONOUNCED IN OPEN COURT

Mrs. Shilpi Thaper Learned PCS for applicant present. This application is filed by

M/s. Sabar Engineering Private Limited and its Directors
Shri Jamilbhai Mansuri
Shri Iqbalbhai Ishmailbhai Mansuri

under section 621 A of the Companies Act, 1956 for violation of section 297 of the Companies Act, 1956, punishable under Sec.629 A of Companies Act 1956.

The 1st Petitioner Company entered into contracts to sell Monoblock Pump sets, Electrical Motors & their parts with related party no.1 by name M/s. Sabar Enterprises in which petitioner no.3 is one of the partner during the financial years 2008-2009, 2009-2010 and 2010-2011. Petitioner No. 2 is brother of Petitioner No.3.

The 1st petitioner Company entered into contracts to sell Monoblock Pump sets, Electrical Motors & their parts with related party no.2 by name M/s. Sabar Export Private Ltd in which petitioner no.2 is the Director during the financial years 2008-2009, 2009-2010 and 2010-2011. Petitioner No. 3 is brother of Petitioner No. 2.

The 1st Petitioner Company purchased Electrical Stamping from related party no.3 by name M/s. Sabar Stamping the proprietor of which is the brother of petitioner no.2 and 3 during the financial years 2008-2009,2009-2010, 2010-2011.

The 1st Petitioner Company purchased Submersible Pump sets, Domestic Pump sets and their parts etc. from related party no.4 by name M/s.Sabar in dusters Pvt Ltd., in which Petitioner no3 is the Director during the financial Years 2008-2009,2009-2010, 2010-2011.

The 1st Petitioner Company entered into contracts to sell Electrical Motors and their parts to related party no.5 by name M/s. India Electrical & Engineering Company in which petitioner no.3 is one of the Partner during the financial years 2008-2009,2009-2010, 2010-2011. Petitioner no.2 is brother of petitioner no.3.

The 1st Petitioner Company entered into contracts to sell Electrical Motors and their parts to related party no.6 by name M/s. Sabar Pump Private Limited in which petitioners 2 and 3 are the Director during the financial years 2008-2009, 2009-2010, 2010-2011.

The 1st petitioner Company although having Paid up Capital of one crore during the financial years 2008-2009, 2009-2010 and 2010-2011 it entered into purchase and sale transactions with related parties as stated above without the prior approval of central Government and thereby violated Sec 297 of the Act.

Petitioners 1 to 3 voluntarily admitted the above said violation and presented a petition before Registrar of Companies who in turn placed the

same before Company Law Board, Mumbai along with his report dt.25.10.2012.

The above said contracts were entered into after approval in the board meeting of first applicant company. But no prior approval of central government i.e. Regional Director has not been obtained although paid up share capital of petitioner no.1 company is one crore.

Tribunal in view of standing order 1936(E) notification dated 1.6.2016 issued by Ministry of Corporate Affairs can dispose of matters in accordance with provisions of Companies Act, 2013 or Companies Act, 1956. The violations in this case were committed before the commencement of the Companies Act, 2013.

As per the report of the ROC there are seventeen counts of transaction and there are there applicants. Section 629A of the Companies Act, 1956 provides sentence of fine which may extend to Rs. 5000/- and where the contravention is continuing one, with a further fine which may extend to Rs. 500/- for every day after the first during which the contravention continues.

The ROC in its report calculated the amount as follows:

3applicants X 5000/- X 17 =	Rs. 2,55,000/-. It comes to Rs. 85,000/- for each applicant.

A perusal of the application and report of the ROC, show the petitioners, contravened section 297 of the Companies Act, 1956, from 2008-2009 to 2010-2011 by entering into contract with related parties without approval of the Regional Director. As per the report of the ROC no similar contravention under the section 297 of the Act, has been compounded during the last three years of the application. It is also stated by the ROC in its report that the company has applied for approval of Regional Director for all such transactions to be carried out in future with related parties 1 to 4.

Ld. Company Secretary Ms. Shilpi Thapar filed order of Regional Director, Ahmedabad whereby approval has been given for entering into contract with the related parties 1 to 4 referred to above for the years 1-4-2012 to 31-03-2015, subject to the estimated values and conditions mentioned in the order.

The learned PCS contended that the price for which equipment was sold and purchased by the 1st petitioner company with related parties is only prevailing Market price and no advantage was given to the related parties and no loss has been caused to the petitioner company and its shareholders. She requested this Tribunal to take a lenient view in awarding compounding amount.

Considering the submissions of the learned Company Secretary and considering the fact that 1st petitioner company obtained the approval of Regional Director, Ahmedabad, the compounding amount need not be the maximum Fine amount provided.

Hence contravention committed by the petitioners one to three is compounded by this tribunal on payment of Rs. 68,000/- each by way of Demand Draft drawn on Nationalized Bank in favour of PAO, MCA, Mumbai within 3 weeks from the date of this order and file the original DD before the Registry of this tribunal by 15-11-2016. Total compounding amount is 3x4000x17=2,04,000/- (Rupees Two lacs four thousand only)

In case petitioners 1 to 3 fail to pay the amount as ordered above, the ROC shall take appropriate action including prosecution of petitioners 1 to 3 as per applicable law under intimation to this tribunal forthwith.

The application is disposed of accordingly.

For reporting compliance of the order by the petitioners list the matter on 18.11.2016.

21.10.16

(BIKKI RAVEENDRA BABU)
MEMBER JUDICIAL

Dated this 21st day of October 2016