

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO.
CA. NO. 16/45/2017

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 23.03.2017**

NAME OF THE COMPANY: M/s. Future Foam India Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 441 {56 (4)(a)}

<u>S.NO.</u>	<u>NAME</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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Present: Mr. Shafiq Ahmed, Advocate

ORDER

The petitioners have filed this application u/s 441 of the Companies Act, 2013 praying for compounding of the offence u/s 56(4)(A) of the Companies Act. The said petition has been routed through the office of the RoC along with their comments. The company has caused delay in issuing of Share Certificates to the subscribers of the Company, thereby violating the provisions of Section 56(4)(A) of the Companies Act 2013.

2. As per the provisions of Section 56(4)(A)

“(4). Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—

(a). within a period of two months from the date of incorporation, in the case of subscribers to the memorandum.”

Contd/-.....

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3. The petitioner company was incorporated on 11.02.2015 and assigned CIN U17233DL2015PTC276551. Its authorized and paid up capital was Rs. One lakh. The company received subscription money from its subscribers as below:

S.No.	Date of remittance	Name of the Subscriber	Amount of remittance (in Rs.)
1.	28.10.2016	Mr. Anshul Gupta	45000/-
2.	01.11.2016	Mr. Randall Evans Lake	9655/-
3.	02.11.2016	M/s. Future Foam Inc.	45000/-
4.	23.11.2016	Mr. Randall Evans Lake	345/-

4. The share certificates were however issued to its aforesaid members only pursuant to the Board Meeting dated 20.12.2016

5. The period of default is stated to be for the F.Y. 11.04.2015 to 20.12.2016. It is submitted by the petitioners that the said violation had occurred due to inadvertence and without any malafide intention.

6. The aforesaid offence is punishable u/s 56(6) of the Companies Act, 2013 whereby the Company shall be punishable with fine which shall not be less than Rs.25,000/- but which may extend to Rs.5 Lakhs and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs.10,000/- but which may extend to Rs.1 lakh. **The RoC has therefore recommended the imposition of the fine of Rs.25,000/-(Min.) and Rs.5,00,000/-(Max) on the company and Rs.10,000/-(Min) and Rs.1,00,000/- on each of its three defaulting officers.**

7. The calculation recommended by the RoC is by way of imposition of penalty on prosecution holding the defaulter guilty. Under such circumstances, the sentencing provided under the act cannot be below the minimum. However, the principle of imposing minimum fine on compounding matters is not mandatory, as compounding of an offence can be accepted by a Court even by admonishing or issuance of a warning. The petitioner submits that the said omission was inadvertent and not on account of any malafide intentions. Though ignorance of law is no excuse, one cannot shy away from the fact that the technicalities of law are complicated and adherence to several statutory provisions very complex.

8. Given the facts of the case that there is no legal impediment in compounding this default, moreso as it has been made good, the petitioners/applicants' prayer can be granted. The petitioners pray for rationalization of the compounding fee. This Bench deems it sufficient to impose a fine of Rs. 10,000/- on each of the defaulting petitioners. Accordingly, fine is imposed as under:

For	Amount (Rs.)
M/s. Future Foam India Pvt. Ltd.	10,000/-
Mr. Nirmal Kumar Gupta	10,000/-
Mr. Anshul Gupta	10,000/-
Mr. Randall Evans Lake	10,000/-

9. Subject to the remittance of the aforesaid fine within 15 days, the offence shall stand compounded. Compliance Report be placed on record upon which due communication be sent to the office of the RoC.

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

Idl-

(Ina Malhotra)
Member Judicial