

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO.
CA. NO. 16/243/12

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 10.04.2017**

NAME OF THE COMPANY: M/s. Jindal Arya Impex P Ltd.

SECTION OF THE COMPANIES ACT: 621A

<u>S.NO.</u>	<u>NAME</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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Present: Mr. Amit Kumar

ORDER

The petitioners have filed this application u/s 621A of the Companies Act, 1956 praying for compounding of the offence u/s 297 of the Companies Act. The said petition has been routed through the office of the RoC along with their comments. The default was on account of Related Party Transactions without obtaining prior approval of the Central Government. The company, which is engaged in the business of Sale & Purchase of agricultural produces and food items, had business transactions with M/s. United Foods Pvt. Ltd. Sh. Prateek Jindal and Smt. Sunita Jindal had common interest, being Directors in both the companies. Since the paid up share capital of the company was more than Rs.1 crore, they were required to seek prior approval of the Central Government which they failed to do, thereby violating the provisions of Section 297(1) of the Companies Act 1956.

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2. The period of default is stated to be from 14.12.2011 to 15.06.2016. It is submitted by the petitioners that the said violation had occurred due to inadvertence and without any malafide intentions. Having realized their mistake, they have now sought permission from the office of the Regional Director.

3. The aforesaid offence is punishable u/s 629A of the Companies Act, 1956 whereby the Company and every officer who is in default is punishable with a minimum fine of Rs.5000/- and where the contravention is a continuing one, with a further fine which may extend to Rs.500 for every day after the first during which the contravention continues. Under the 2013 Act, the fine stands doubled. The office of the RoC has therefore calculated the fine under the two Acts for the relevant period of default. The fine attracted for default of 837 days prior to 01.04.2014 tantamounts Rs.4,18,500/-. W.e.f 01.04.2014, the fine is calculated at 8,06,000/- for 806 days. Accordingly, the RoC has recommended a levy of Rs.12,24,500/- on each of the applicants.

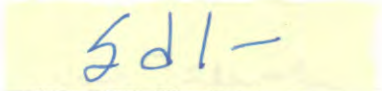
4. Given the facts of the case that there is no legal impediment in compounding of this one time default which has since been rectified by seeking approval from the office of the Regional Director, their prayer for compounding can be granted. The calculation recommended by the RoC is by way of imposition 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 the defaulter or issuing 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. It would be



prudent to accept that no one would deliberately violate this provision so as to attract such a draconian fine. In view of the fact that the Directors are also being penalized in the compounding application filed by M/s. United Foods Pvt. Ltd., this Bench deems it sufficient to impose a fine of Rs. 5,00,000/- on the company and Rs.4 lakhs on each of the defaulting Directors. Accordingly, the fine is imposed as under:

For	Amount (Rs.)
M/s. Jindal Arya Impex Pvt. Ltd.	5,00,000/-
Mr. Prateek Jindal	4,00,000/-
Mrs. Sunita Jindal	4,00,000/-

5. Fine imposed on the Directors/officers shall be paid out of their personal accounts.
6. 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.
7. Petition stands disposed off in terms of the above and be consigned to Record Room.


(Ina Malhotra)
Member Judicial