

THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH, MUMBAI

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

C.A. (Compounding Application) No. 105/621A/CLB/MB/2015

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Section 441 of the Companies Act, 2013

M/s. M G M Consulting Services Private Limited ... Applicant

Present: Mr. Yogesh Hatagade, Advocate

ORDER

Reserved on 11.11.2016
Pronounced on 25.11.2016

1. This Application for compounding was submitted before the Ld. Registrar of Companies, who in turn has forwarded the Application along with the Report to the NCLT Mumbai Bench. As per the Report, Application was filed by the Company suo moto. The alleged default was stated to be for **not maintaining the Registered Office to which the notices could be addressed**. In the report, it was mentioned that as per the provisions of Section 146 of the Companies Act, 1956, a Company should have a Registered Office capable of receiving all notices and communication. In case of default of not maintaining a Registered Office to which the notices could be addressed, the default is punishable with a fine which may extend to ₹500/- for every day during which the default continues. The Ld. RoC has, therefore, stated in the Report that a sum of ₹500/- per day can be imposed as fine up to the date when an Application was filed. The Ld. RoC has also mentioned that under the provisions of Section 146 (1) (2) of the Companies Act, 1956 a prosecution has also been filed. However, he has clarified that this is not a case where any matter is pending for

investigation by Ministry, hence the Company is neither vanishing nor related to any scam.

2. Ld. Advocate Mr. Yogesh Hatagade appeared on behalf of the Applicant and drawn the attention on the facts of the case as narrated in the Application. The object of the Company is to act as a Consultant, Advocate, Attorney, etc. He has explained that as per the provisions of Section 146 (1) of Companies Act, 1956 every Company is required from the day on which it begins to carry on the business or from the 30th day after the date of its incorporation to have a Registered Office for the purpose of all communication. The facts of the case have revealed that a letter was issued dated 8th February, 2013 which was returned with the Postal remark 'Unclaimed'. Because of the said remark, it was held that the Company had defaulted in not maintaining a Registered office as prescribed u/s 146 of the Companies Act, 1956. In the Petition, the reason for the said default was explained as under:-

"8. Reasons for default:

The said registered office is also being used for residential purpose by one of the directors of the Company and it is reasonably believed that when the postman who came to deliver the letter in question, the concerned director had gone out for some work and the postman did not think it fit to enquire with the security guard of the building, and returned the letter with comment 'unclaimed'.

It has been alleged in the complaint that by letter dated 07/12/2014 and reminder dated 08/02/2014, the Complainant requested the Company to furnish the information in respect of Form No. 10 filed by the company vide SRN B41718099 on 22/06/2012 for amount 1500000000 along with the list of persons to whom debentures have been allotted through speed post. As explained above, the default was unintentional and due to reasons beyond the control of the applicants. Anyway, the Company is ready and willing to furnish the requisite information."

2.1 Ld. Counsel has also placed a copy of the Complaint, which was filed by the Assistant Registrar of Companies, Pune, Maharashtra, bearing No. CC No. 17806/2013 stating therein that the letter dated 8th February, 2013 was returned

with a Postal remark 'unclaimed'. Another notice was issued on 19th July, 2013 u/s 146 (1)/(2) and that too was returned with the Postal remark 'not claimed'. According to the said Complaint, it was alleged that the Company was not maintaining the Registered Office at the given address. Reply was furnished, but according to RoC, the explanation was unsatisfactory. Argument of the Ld. Representative is that no satisfying reason for rejection of the explanation was ever given by the RoC.

2.2 Ld. Advocate of the Applicant has also placed on record a copy of **Form 18, which was claimed to have been filed on 10th September, 2012 indicating the address of the Registered Office.** Explanation of the Applicant is that the change in the address of the Registered Office was duly intimated pursuant to Section 146 of Companies Act, 1956 by filing Form 18, but that was not taken into consideration. It has also been pleaded that the impugned Complaint was later on filed on 8th August, 2013. Ld. Advocate for the Petitioner has stated that the said address as intimated to the ROC office was the registered Office of the Company w.e.f. 16th August, 2012.

2.3 Ld. Advocate for the Applicant has also placed on record an Order of the Hon'ble Supreme Court in the case of V.L.S. Finance Ltd. (Appellant) vs. Union of India & Ors. (Respondents), Civil Appeal No.2102 of 2004, Order dated 10th May, 2013 for the legal proposition that composition/compounding of the impugned offence is permissible even if a Complaint has been lodged with the Judicial Magistrate, First Class at Pune., pending for disposal.

3. The arguments of Ld. Advocate are duly considered in the light of the Application filed and the Report of the RoC. The reason for the impugned default was stated to be non-delivery of a letter dated 8th February, 2013 which was returned with the Postal remark 'unclaimed'. The explanation of the Applicant was that earlier the Registered Office of the Company was at the residence of one of the Directors of the Company and due to miscommunication to the Postal Department, the postman had not delivered the said letter and remarked as 'unclaimed'. Otherwise, the bona fide of the Company should not have been

doubted as per the admitted factual position that the Company was filing its Annual Return along with financial statements per the provisions of the Act by quoting that very address. In case of default in complying with the requirement of Section 146, the Company and every officer of the Company, who is in default, shall be punishable with fine which may extend to ₹500/- for every day during which the default continues.

3.1 The vehement contention of the Applicant is that the impugned default was not in continuance because **Form 18 was filed on 10th September, 2012 pursuant to Section 146 of the Companies Act, 1956 indicating the Registered Office of the Company.** The change of the Registered Office was effected from 16th August, 2012 and as per the claim of the Applicant the change of address was duly communicated within 30 days' time. The old Registered Office of the Company was as under:-

M G M Consulting Services Private Limited
F-302, 3rd Floor, Raj Mahal Apartments,
CTS No. 123/1, Revenue Village, Erandwane,
Pune, Maharashtra, India, Pin Code 411004.

3.2 The new Registered Office address of the Applicant is stated to be as under:-

M G M Consulting Services Private Limited
B-105, International Convention Centre,
Senapati Bapat Road, Pune 411016
Pune, Maharashtra, India, Pin Code 411016.

4. In view of the above reasons, I am of the considered opinion that the default in question can be compounded. The Hon'ble Supreme Court in the decision, as cited supra, has also delivered certain criteria for composition/compounding of offences under certain circumstances. Respectfully, following legal ratio laid down therein, I hereby hold that a fine of ₹500/- on each of the Directors and the Company shall be sufficient as prescribed u/s 146 (4) of the Companies Act, 1956. On payment of the total amount (directed to be paid within

15 days on receipt of this order) and also on submission of the proof of payment before the concerned RoC, the offence in question shall stand compounded; therefore, consequently the Complaint filed before the First Class Magistrate at Pune shall be considered as per law. The Compounding Application No. 105/621A/CLB/MB/2016 is decided on the terms indicated above. No order as to cost.

Dated: 25.11.2016

Sd/-

Shri M.K. Shrawat
Member (Judicial)