

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO 16/28/15
CA. NO.

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 24.01.2017**

NAME OF THE COMPANY: M/s Magic AirLines Limited Section 383A

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. Jasmeet Singh, Ms. Deepmala Indore, Ms. Arti Prasad and Mr. Urmila Jeet Kaur, Advocates for SFIO

Ms. Manju Vohra, Company Secretary.

ORDER

The petitioner has filed the present application u/s 621A of the Companies Act 1956 for the offence u/s 383A of the Companies Act, 1956. The said petition has been routed through the office of the RoC along with their comments. The company had defaulted in appointing a whole time Company Secretary for the period commencing from 02.08.2006 to 17.05.2007, 02.08.2007 to 19.08.2008 and 01.09.2008 to 14.03.2009.

Contd/-.....

2. As per requirement of Section 383A of the Companies Act, 1956:

“ Every company having such paid-up share capital as may be prescribed shall have a whole-time secretary, and where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company.”

3. The paid up capital of the company was Rs.3,01,00,000/-. As per provisions of Section 383A of the Companies Act, 1956 it became mandatory to appoint a whole time Company Secretary, the prescribed limit being the paid up capital of Rs.2 crores. It is submitted by the petitioners that the said violation had occurred due to poor financial condition of the Company and the whole time Company Secretary was appointed only intermittently. Having realized their mistake, they have taken suo moto steps for compounding the offence.

4. The aforesaid offence is punishable u/s 383A (1A) of the Companies Act, 1956 and 203(5) of the Companies Act,2013 whereby the Company and every officer who is in default is punishable with a fine. The RoC has therefore recommended the imposition of the maximum fine on the Company and each of its five defaulting officers as under:-

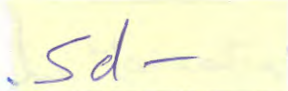
Name of Defaulter	Amount (in Rs.) approx*
M/s. Magic Airlines Pvt. Ltd.	4,30,000/-
Ms. Nira Radia	4,30,000/-
Mr. Satich Kumar Narula	4,30,000/-
Mr. Rajiv Mohan Kulshreshta	4,30,000/-
Mr. Sharwan Kumar	4,30,000/-
Mr. Rajan Aggarwal	4,30,000/-

5. Notice of this petition was also served on the SFIO. They have not been able to satisfy this Bench that the aforesaid compounding on account of non compliance would in any way hamper any alleged investigation of the affairs of the company. The compounding is on account of non adherence to the technicalities of statutory compliances, which were inadvertently not adhered to.

6. Given the facts of the case that there is no legal impediment in compounding this offence, the petitioner/applicants' prayer can be granted. This Bench deems it sufficient to impose a fine of Rs.10,000/- each on the company and its other defaulting parties. However the compounding of the offence shall be without prejudice to any alleged or intended prosecution under the penal code and shall in not be taken as a defence.

7. Subject to the remittance of the aforesaid fine within 10 days, the offence shall stand compounded. Copy of the order be sent to the office of the RoC. Compliance Report be placed on record.

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


(Ina Malhotra)
Member Judicial