

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**  
**NEW DELHI**

**C. P. NO .16/15/15**  
**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 215(3) and  
217(3) Of The Companies Act , 1956

**SECTION OF THE COMPANIES ACT:** 621A

<b><u>S.NO.</u></b>	<b><u>NAME</u></b>	<b><u>DESIGNATION</u></b>	<b><u>REPRESENTATION</u></b>	<b><u>SIGNATURE</u></b>
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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**

An application u/s 621A of the Companies Act, 1956 praying for  
compounding of offences u/s 215(3) & 217(3) has been filed by the petitioners.  
Objections have been received from the Office of the SFIO in addition to the  
report from the RoC. The aforesaid violations were observed during the course of  
investigation u/s 235(1) of the Act conducted by the SFIO. It is stated that the  
company did not follow the statutory procedure for adoption of annual accounts  
as they held only one Board Meeting during each for the financial years 2007-08  
to 2010-11. In the single Board Meeting for every year, the Balance Sheet was  
considered and signed. In the same meeting the Auditor's Report and the

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Director's Report were also approved. This procedure was adopted year in year out without adhering to the prescribed norms which requires the Balance Sheet and the P&L Account to be approved by the Board before they are signed in accordance with the provisions of Section 215(3) of the Act. Further, as per provisions of Section 217(3) of the Companies Act, the Board was bound to give fullest information and explanations in its report on every reservation, qualification or adverse remark contained in the Auditor's report.

2. The period of default is therefore four years i.e 2007-08 to 2010-11. The petitioners submit that the default has been made good. Their explanation is that being a private company with less items on its Agenda, the Board Meetings did not take much time and the Auditor was called for adoption of the accounts. His presence was not marked as there were other items to be discussed.

3. The aforesaid explanation of the petitioners was not accepted and prosecution for violations of the statutory requirements has been initiated against them.

4. The penalty for violation of sec. 217(3) is as per sec. 217(5) which provides for imprisonment which may extend upto 6 months, or with fine which may extend upto Rs.20,000/-, or with both. However, the said provision specifically provides that no person shall be sentenced to imprisonment unless the offence was wilfully committed. Accordingly, the ROC recommended the imposition of the maximum fine as computed below:

Name of Defaulter	Amount (in Rs.)*
Ms. Nira Radia	80,000/-
Mr. Satish Kumar Narula	80,000/-



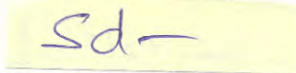
Mr. Rajiv Mohan Kulshreshta	80,000/-
Ms. Karuna Menon	80,000/-

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. Further, such compounding of a default, which has otherwise been since rectified, cannot in any manner prejudice the alleged investigations or prosecution by the SFIO.

6. The default of violating the provisions of sec. 215(3) & 217(3) of the Companies Act is stated to be for 4 years. The petitioners claim that the default has been made good. The SFIO and the RoC have not been able to repudiate the same. 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. Since there is no legal impediment in compounding the offence of sec. 215(3) r/w Section 217(3) as prayed for in the present petition, I deem it sufficient to impose a composite fine of Rs.12,000/- for the four years of default on each of the defaulting officers.

7. Subject to the remittance of the aforesaid fine within 15 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