

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No.: 116/441/NCLT/MB/MAH/2017

Under section 441 of the Companies Act, 2013

In the matter of

Inter Equipment (India) Pvt. Ltd., 17,
1st Floor, SadguruSadan Polyclinic, 15,
Babulnath Road, Mumbai - 400007.

.... 1st Applicant

Dr. NanduChhabria

.... 2nd Applicant

Mrs. Bharti Chhabria

.... 3rd Applicant

Judgement delivered on: 17.07.2017

Coram:

Hon'ble M.K. Shrawat, Member (J)

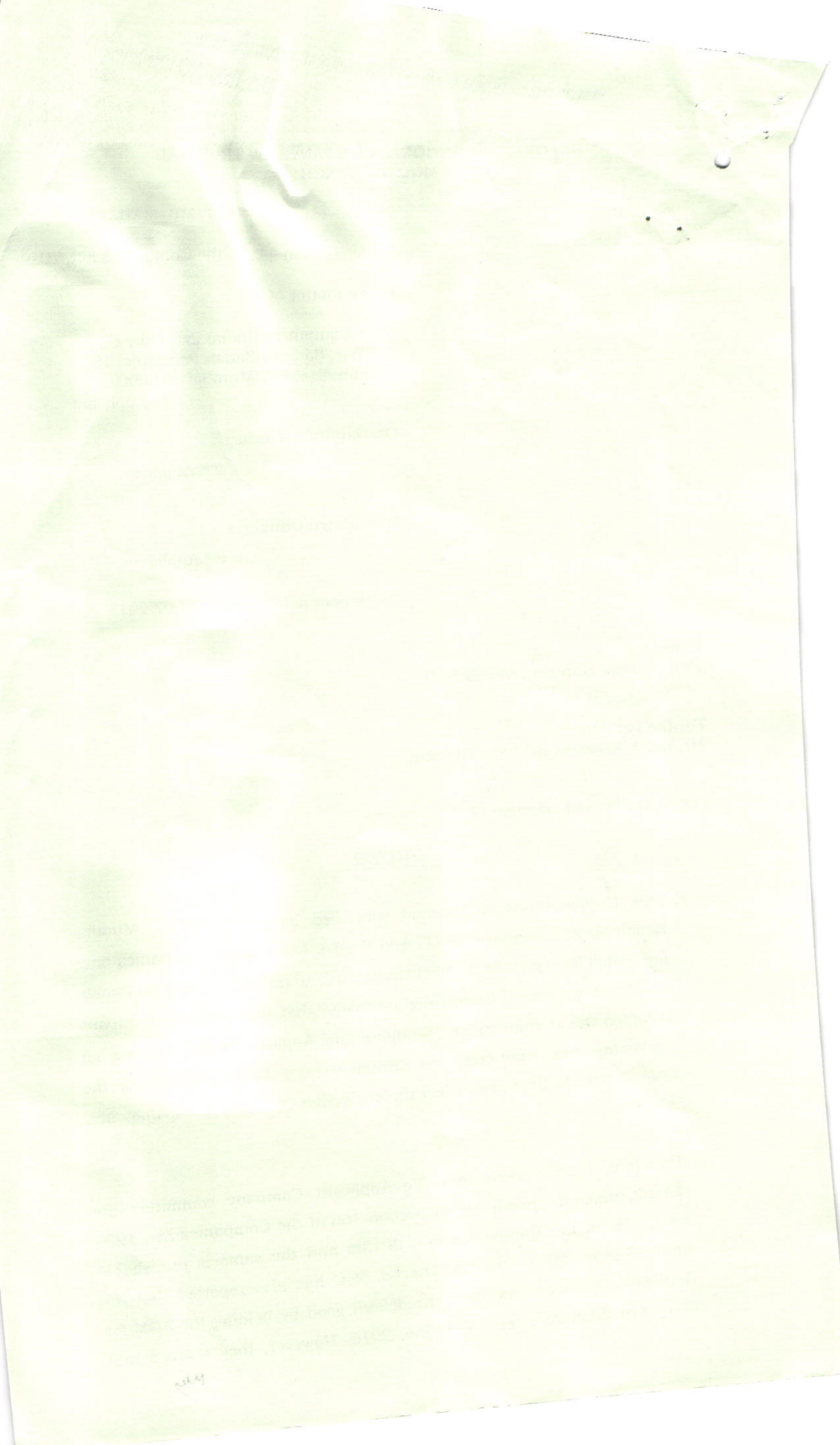
For the Petitioner:

Mr. KarthikSomasundram, Advocate

Per: M.K. Shrawat, Member (J)

ORDER

1. This Compounding Application was filed before the NCLT, Mumbai Bench on 25th January, 2017. And the Ld. Registrar of Companies have forwarded its report on 27th February, 2017 to the NCLT, Mumbai Bench. The Ld. Registrar of Companies intimated that the Applicant Company has filed the aforementioned Compounding Application suo moto for not convening and conducting the Annual General Meeting (AGM) for the years 2008-2015 as prescribed under Section 96 of the Companies Act, 2013.
2. Therefore, it is evident that the Applicant Company committed the default under the provisions of Section 166 of the Companies Act, 1956 r.w S. 96 of the Companies Act, 2013m and the same is punishable under Section 99 of the Act. The Ld. RoC has also reported that the Applicant Company has made the default good by holding the AGM for the years 2008-2015 on 14th June, 2016. However, they claimed that



they have filed the Compounding Application so as to put the matter to rest.

Facts of the Case:

3. As per the Applicant's own submissions made in the Compounding Application filed by them for violation of Section 166 of the Companies Act, 1956 r.w. Section 96 of the Companies Act, 2013, the Applicant has committed default as follows:-

"...1. That in the present instance, the Company has defaulted in convening and conducting the AGM for the years 2008-2015. That for the years 2008-2015, the AGM was convened and held on June 14, 2016.

2. The AGM for the years 2008-2015 could not be held till June 14, 2016 due to disputes between the applicant nos. 2 and 3 on the one side and the younger brother of the Applicant No. 2 and his family members on the other.

3. That since the Company has defaulted in timely convening and conducting the AGM for the period from the 2008 till 2015. The Company was in violation of the Provisions of S. 166 of the Companies Act, 1956 till March 31, 2014 and thereafter has been in violation of S. 96 (1) of the Companies Act, 2013.

4. The Default is caused due to the inevitable circumstances, inadvertently and without prejudice to the interest of the members of the Company."

4. Accordingly, the Applicant has violated the provision under Section 166 of the Companies Act, 1956 r.w. Section 96 of the Companies Act, 2013. The offence is punishable under Section 168 of the Companies Act, 1956 r.w. Section 99 (3) of the Companies Act, 2013. These relevant sections are as follows:

"Section 169 of the Companies Act, 1956 :Penalty for default in complying with section 166 or 167. If default is made in holding a meeting of the company in accordance with section 166, or in complying with any directions of the Central Government under sub- section (1) of section 167, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees and in the case of a continuing default, with a further fine which may extend to two hundred and fifty rupees for every day after the first during which such default continues."

"Section 99 of the Companies Act, 2013 :If any default is made in holding a meeting of the company in

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accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.”

5. From the side of the Applicants, Ld. Advocate, Mr. Karthik Somasundram had appeared and explained that, due to compelling circumstances the Applicant had violated the provisions of S. 166 of the Companies Act, 1956 r.w. S. 96 (1) of the Companies Act, 2013. Although, the Applicant was willing to comply with those provisions *bona fide*. Ld. Representative of the Applicant also stated that the aforesaid violation was unintentional and without any wilful or *mala fide intention*. It was further submitted that, there was dispute between the members of the Company and the matter was pending in the High Court of Bombay and therefore there was unavoidable contravention of the provisions of the Acts. Further the Ld. Representative of the Applicants also submitted that, the default has been made good by holding the AGM for the period 2008-2015 on 14th June, 2016 and the minutes of the said meeting is attached as **Exhibit C** to the Petition.
6. This Bench has gone through the Application and the Report submitted by the Registrar of Companies, Maharashtra, Mumbai and also the submissions made by the Ld. Advocate for the Applicant at the time of hearing and noted that Application made by the Applicant for compounding of offence committed under Section 166 of the Companies Act, 1956 r.w. Section 96 (1) of the Companies Act, 2013, merits consideration.
7. On examination of the circumstances as discussed above, a fine of ₹ 5000/- (₹ Five Thousand only) by the applicant company and a fine of ₹ 2500/- (₹ Two Thousand Five Hundred Only) by the each director shall be sufficient as a deterrent for not repeating the impugned default in future. The imposed remittance shall be paid by way of Demand Draft drawn in favour of “Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai”.
8. This Compounding Application bearing CP No. 116/441/NCLT/MB/MAH/2017 is, therefore, disposed of on the terms directed above with a rider that the payment of the fine imposed be made within 15 days on receipt of this order. Needless to mention, the

offence shall stand compounded subject to the remittance of the fine imposed. A compliance report, therefore, shall be placed on record. Only thereafter the Ld. RoC shall give effect of this order.

9. Ordered accordingly.

Dated: 17th July, 2017

Sd/-

M. K. Shrawat
Member (Judicial)