

THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH, MUMBAI

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.A. (Compounding Application) No.20/621A/441/MB/2016

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Section 92 of the Companies Act, 2013

M/s. Gega Infotech Pvt. Ltd.

... Applicant

Present: Mr. Ulhas B. Shetty (Practicing Company Secretary-Applicant)

Reserved on 05.10.2016

Pronounced 24.10.2016

1. The Applicant has moved the Compounding Application dated 5th September, 2015 seeking compounding of an offence stated to be for violation of Section 159 of Companies Act, 1956 (hereinafter referred to as "old Act") in exercise of the powers vested u/s 621A of the old Act.
2. Although in the Application the prayer was that by taking a lenient view minimum compounding fees u/s 621A of the old Act may be levied; but during the course of hearing of the Application it was found that Applicant had made the requisite compliance by making a payment of "Additional Fees".
3. As a result, the Applicant is now seeking permission to withdraw the Compounding Application as per the following statement made on oath of which relevant portion is extracted below:-

"IV. FACTS OF THE CASE ARE GIVEN BELOW:

1. *The Company was unable to hold its Annual General Meeting for the financial year 2013-2014 within the due date i.e. 30th September, 2014.*
2. *The Company held a Board meeting on 30th June, 2014 & approved the annual accounts i.e. Profit & Loss Account & balance Sheet for the financial year 2013-2014.*

3. *the Board of Directors of the company in its Board meeting held on 13th September fixed the date, day, time & venue for convening Annual General Meeting on 30th September, 2014 on a shorter notice. The Company took necessary consent letters for convening Annual General Meeting at a shorter notice on 30th September, 2014.*
4. *A week before the AGM, the two Directors, Mr. Arvind Belgaonkar and Mr. Sunil Dhage (who also are the members with 39.65% & 39.65% shareholding) respectively informed the company that they are unwell and will not be in a position to attend the AGM.*
5. *A day before the AGM, the other two members, Mrs. Smita Mukund Bilolikar and Mr. Ravi Krishnan informed the Company that they had to suddenly go out of town for some serious commitments.*
6. *The time limit for submitting proxy forms was also over.*
7. *Due to above reasons, the AGM could not be convened on 30/09/2014 within due date.*
8. *The Company subsequently held a Board meeting on 5th November, 2014 & fixed the day, date, place and time for holding the Annual General Meeting on 27th November, 2014 providing proper 21 days notice as required.*
9. *This lead to a situation where the balance sheet and profit & loss account for the year ending 31/03/2014 could not be filed with the Registrar of Companies within the prescribed time limit with normal fees as laid down under section 137 of the Act.*
10. *The Company has filed the mandatory forms as required. (Form 23AC & Form 23ACA filed on 25/07/2015, Form 20B filed on 27/06/2015 and Form 66 filed on 31/07/2015 and Challans for Financial year 2013-2014 are enclosed as Annexure 1).*
11. *The above petition (Case no. 21/2016) in the matter of M/s. Gega Infotech Pvt. Ltd. Filed under section 441 read with section 137 of the Companies Act, 2013 was fixed for hearing under Case no. 21/2016 before the National Company Law Tribunal on Wednesday, 27th July, 2016.*
12. *The Counsel for the Company, CS Ulhas B. Shetty appeared for hearing before the Honourable Member (J) Shri M.K. Shrawat, NCLT on Wednesday, 27th July, 2016.*
13. *The Counsel pointed out to the HONOURABLE Justice that the provision of Section 92(4) read with section 403 provides that the annual return can be filed with Register of Companies with normal fees within 60 days from the date on which Annual General Meeting (AGM) should have been held but can also be filed with additional fees (in addition to normal fees) within 270 days from the date on which it should have been filed.*

14. *The Due date for filing an annual return as per section 92(4) is sixty days from the date on which Annual general meeting is held or where no general meeting is held or where no annual meeting is held in any year, within sixty days from which the annual general meeting should have been held. In this case, the due date for filing the annual return with normal fees with Registrar of Companies was 29th November, 2014 i.e., 60 days from the date of Annual General Meeting 30th September, 2014 and if not file within the 60 days, under the provision of section 403, the annual return could be filed latest within further 270 days, that is, on or before 26th August, 2015.*
15. *The Counsel pointed out that the annual return, as required under section 92(4), was duly filed by the Company on 27th June, 2015, 60 days within the extended time period of 270 days provided under section 403 of the Act that is, 60 days before the stipulated time period ending on 26th August, 2015.*
16. *The Counsel pleaded that the filing of the petition was done inadvertently and through oversight and pleaded that the delay for which condonation was sought under the petition was delay permissible under section 403 of the Companies act 2013 and other relevant provision of the Act, 2013. Hence, the act of delayed filing is NOT punishable under section 92(5) of the Companies Act 2013 and hence the Counsel sought withdrawal of the Petition (Case no. 20/2016) u/s 621A of the Companies Act, 1956 read with section 159 of the Companies Act, 1956 filed with the Company Law Board, Mumbai being the transferred petition before The National Company Law Tribunal under section 441 of the Companies Act 2013 read with section 92 of the Act.*
4. On this issue two Reports of the Ld. ROC respectively dated 1st February, 2016 (received alongwith the Application) and dated 5th October, 2016 are on record as well as duly perused.
5. On the question of withdrawal of an Application, a Rule has been framed by National Company Law Tribunal Rules, 2016 and the relevant Sub-Rule 2 of Rule 44 prescribes as under:-
- “44 (2) Where at any stage prior to the hearing of the petition or application, the applicant desires to withdraw his petition or application, he shall make an application to that effect to the Tribunal, and the Tribunal on hearing the applicant and if necessary, such other party arrayed as opposite parties in the petition or the application or otherwise, may permit such withdrawal upon imposing such costs as it may deem fit and proper for the Tribunal in the interests of the justice.”*
6. Considering the totality of the facts and circumstances of the case that due to explained circumstances AGM could not be held on 30th September, 2014 but it was held on 27th ^{November} ~~March~~, 2014 and thereafter under the provisions of Section 92(4) r/w ^{MKJ}

Section 403 Annual Return was filed by making a payment of Additional Fees of Rs.6,000/- (Challan on record) dated 27th June, 2015, it is hereby ordered as under:-

ORDER

“The Applicant is hereby granted leave to withdraw the Compounding Application (C.A. 20/621A/2016). The Application is, therefore, disposed of as withdrawn. No Order as to cost.”

Dated: 24.10.2016

Sd/-

Shri M.K. Shrawat
Member (Judicial)