

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COMPANY APPLICATION NO. 300/621A/CLB/MB/2015

PRESENT: B.S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

In the matter of Section 621-A of the Companies Act, 1956

And

In the matter of M/s Multi Commodity Exchange India Ltd., having its Registered Office at Exchange Square, Chakala, Suren Road, Andheri (E), Mumbai - 400093

PRESENT FOR THE APPLICANT: -

R Muralimohan – Practicing Company Secretary

Date of Hearing: 19.05.2016

ORDER

Applicants in Default: -

- 1) M/s. Multi Commodity Exchange Ltd.
- 2) Mr. Jignesh Shah – Director
- 3) Mr. Joseph Massey – Director
- 4) Mr. Shreekant Javalgekar – Director
- 5) Mr. Padmanabhan Ramanathan – Ex-Company Secretary

Section Violated; -

Section 224(8) of the Companies Act, 1956.

1. Nature of Violation: -

As per the submission made in the report of the RoC, Mumbai and as per the submissions made in the Compounding Application, it is observed that, sub section (a) &(b) of section 224(8) of the Act, the remuneration of the statutory auditors has to be fixed by the shareholders in their General Meeting. Section further states that in case the shareholders have not fixed remuneration to be paid to the auditors for the next financial year, in the AGM. Therein such cases it had to be fixed in such manner as the company in the general meeting may decide. However, on perusal of the resolutions passed by the shareholders and Board of Directors for the last 3 years, it was noticed that the shareholders had not fixed the remuneration before the audit work really started and the entire payment of audit fees was rather ratified by the board in the subsequent meeting. For instance, the audit fee for the year 2012-2013 was ratified by the board in their meeting held on 29/05/2013, whereas the auditor has signed the audit report for the year 2012-13 on 29/05/2013. The Board should have fixed the audit fee before the Statutory Audit work. Form the above, it could be seen that the Company has not complied with the provisions of S. 224 (8) in letter and spirit and therefore violated the said provisions of the Act.

The said violation is punishable with the fine which may be extend to ₹ 5000/- and where the contravention is continuing one with a further fine which may extend to ₹ 500/- for every day during which the contravention continues.

The Registrar of Companies, Mumbai has forwarded the compounding application vide his letter No. ROC/STA/621A/74 dated 04th September 2015 which was reached to CLB, Mumbai Bench on 8th September 2015 and the same has been treated as Company Application No.300/621A/CLB/MB/2015.

2. The undersigned, then the Presiding Officer of the erstwhile Company Law Board had gone through the application and the report submitted by the Registrar of Companies, Mumbai and also the submissions made by the authorised representative of the Company at the time of hearing and noted that application for compounding of offence committed under S. 224(8) of the Companies Act, 1956, merited consideration.
3. Accordingly, the offence committed under the said section and explained above has been ordered on 19.05.2016 to be compounded against the each defaulter on payment of ₹ 2,75,000/-.
4. Subsequently, vide Notification No. A-45011/14/2016-Ad. IV dated 01.06.2016, issued by the Ministry of Corporate Affairs, New Delhi, the Central Government has constituted the National Company Law Tribunal and dissolved the erstwhile Company Law Board w.e.f. 01.06.2016.
5. The applicants above named, have remitted the total compounding fees of ₹ 2,75,000/- by 4 (Four) Demand Drafts. The has drawn on 1) HDFC Bank bearing no. 683262 dated 04.06.2016 2) ICICI Bank bearing no. 009241 dated 07.06.2016 3.) Axis Bank bearing nos. 042389 dated 02.06.2016 and 4) Axis Bank bearing nos. 042384 dated 01.06.2016 respectively, with the newly constituted office of the National Company Law Tribunal, Mumbai Bench i.e. after dissolution of the Company Law Board.
6. Having regard to the facts and circumstances of the case, the offence committed under S. 224(8) of the Companies Act, 1956 by the Company, is hereby compounded.
7. Therefore, Registrar of Companies, Mumbai is hereby directed to take further action as provided under S. 621 A (3) (c) (d) of the Companies Act, 1956.

Ordered Accordingly,

Sd/-

B. S. V. PRAKASH KUMAR
Member (Judicial)

Dated this June , 16 2017