

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
COMPOUNDING APPLICATION NO. 04/621A/441/NCLT/MB/2016

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Section 621A of the Companies Act, 1956 corresponding to Section 441 of the Companies Act, 2013 for violation of Section 159 of the Companies Act, 1956 corresponding to Section 92(4) of the Companies Act, 2013.

In the matter of **M/s. UA Information Systems Private Limited**, having its Registered Office at 306, Shrinivas Apts., Patwardhan Baug, Erandwana Co-op. Hsg. Soc., Pune 411 004, Maharashtra, India.

PRESENT FOR APPLICANT:

Ms Prachi Wazalwar and Mr. Abhay Wadhwa, Advocates for the Applicant.

ORDER

Date of Order : 19.06.2017

Applicants in Default:

- (1) M/s. UA Information Systems (Company),
- (2) Ms. Sheela Nandan Bal (Whole Time Director).

Section Violated:

Section 159 of the Companies Act, 1956 corresponding to Section 92(4) of the Companies Act, 2013 r/w Section 441 of the Companies Act, 2013.

1. This Compounding Application was filed before the Regional Director, Western Region, Mumbai on 31st May, 2016 which was forwarded to NCLT Mumbai Bench by Registrar of Companies, Maharashtra, Pune along with RoC Report. The Ld. Registrar of Companies intimated that the Applicant Company has filed the aforementioned Compounding Application suo motu for non-filing of Annual Return for Financial year ended on 31st March, 2014 within the

RMS

stipulated time period. Reproduced below is extract from the report dated 28th July, 2016 by the RoC, Maharashtra, Pune:-

".... Suo-Moto Application filed by the Company for non-filing of Annual Return for Financial Year ended 31.03.2014 within stipulated time period.

As per the provisions of Section 92 of the Companies Act, 2013 if a company fails to file its Annual Return within the statutory time period, the Company shall be punishable with fine which shall not be less than Rs.50,000 but which may extend to Rs.5,00,000 and every officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than Rs.50,000 but which may extend to Rs.5,00,000 or with both. ...

3. It is observed from the application that the Company was unable to file Annual Return for the Financial year 2013-14 within the statutory period of account of internal disputes between the Board of Directors of the Company and change in management of the Company during the period. The Company has filed its Annual Return on 9th September, 2015 as soon as the disputes were solved and new management had taken over."

2. Therefore, it is evident that the Applicant Company committed the default under the provisions of Section 159 of the Companies Act, 1956 corresponding to Section 92(4) of the Companies Act, 2013 r/w Section 441 of the Companies Act, 2013.

The Ld. RoC has also reported that the Applicant Company has claimed that they had complied with the provisions of Section 92(4) of the Companies Act, 2013. 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 159 of the Companies Act, 1956, corresponding to Section 92(4) of the Companies Act, 2013 r/w Section 441 of the Companies Act, 2013, the Applicant has committed default as follows:-

"4.1 That as per Section 92(4) of Companies Act 2013 [159 of the Companies Act, 1956], every Company shall file with registrar a copy of the annual return within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which annual general meeting should have been held together with statement

MU

specifying the reason for not holding annual general meeting with such additional fees.

4.2 That for financial year 2013-14, the copy of the annual return was filed by Company on 9th September, 2015. The copy of Challan of filing of Annual Return for year ending on 31st March 2014 having SRN: Q58533837, is annexed hereto as Annexure-A2.

4.3 That Annual General Meeting for financial year 2013-14 could not be held within due date that is 3rd day of August 2014 due to internal disputes between the Board of Directors. The Directors approved the Balance Sheet and Profit & Loss Account in the Board Meeting held on 29th November, 2014 but did not consider or discuss the matter of approval of Directors Report and calling of Annual General Meeting.

4.4 The Directors inadvertently failed to approach the Registrar of Companies, Pune for grant of extension of time in holding Annual General Meeting for the year ended 31st March, 2014. In the meantime there was a change in the Management and the new Management in its Board Meeting held on 27th July, 2015 approved the Directors Report and called the Annual General Meeting on 7th August, 2015 and thus the Annual General Meeting was held on 7th August, 2015 resulting in violation of the provisions of Section 96(1) of the Companies Act, 2013 (section 166(1) of the Companies Act, 1956) and thus the Annual General Meeting was held on 7th August, 2015 in which accounts were adopted by the shareholders. Annual Return for financial year 2013-14 was then filed with Registrar of Companies on 9th September 2015 [SRN: Q58533837] which resulted in delay and violation of the provisions of Section 92(4) of Companies Act 2013 [159 of the Companies Act, 1956]. Petitions under Section 96, Section 129(2), Section 137(1) of Companies Act, 2013 [Section 159, Section 201(3), Section 220(1) of the Companies Act, 1956] are being filed separately along with this petition.

4. Accordingly, the Applicant has violated the provision under Section 159 of the Companies Act, 1956 corresponding to Section 92(4) of the Companies Act, 2013 r/w Section 441 of the Companies Act, 2013. The Registrar of Companies, Maharashtra, Pune forwarded the Compounding Application vide his letter No. ROCP/STA/621A/ 2016/4852 dated 28th July, 2016 to NCLT Mumbai Bench and the same has been treated as Compounding Application No. 04/621A/441/ NCLT/MB/2016. Section 92 (5) of Companies Act, 2013 for violation of Section 92(4) of Companies Act, 2013, which is relevant in this Case, is as follows:-

"Section 92 (5) If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fees, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or

ms

with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.”

5. From the side of the Applicant, Ld. Advocates Ms. Prachi Manekar and Mr. Abhay Wadhwa appeared and explained that inadvertently the Applicant Company could not fulfil the conditions laid down under Section 92(4) of the Companies Act, 2013 although the Applicant was willing to comply with the provisions of the Companies Act, 2013 *bona fide*. Ld. Representative of the Applicant also stated that the aforesaid violation was unintentional and without any wilful or *mala fide intention*.

6. This Bench has gone through the Application of the Applicant and the Report submitted by the Registrar of Companies, Maharashtra, Mumbai and also the submissions made by the Ld. Advocates for the Applicant at the time of hearing and noted that Application made by the Applicant for compounding of offence committed under Section 159 of the Companies Act, 1956 corresponding to Section 92(4) of the Companies Act, 2013 merits consideration.

7. Because of the above discussed factual position, the compounding of this default under the category of default is defined Section 92(4) of the Companies Act, 2013 already reproduced supra, which says that the company, and every officer of the company who is in default, shall be punishable with minimum fine of ₹50,000/- but which may extend to ₹ 5,00,000/-. But this bench is satisfied by the submissions made by the Ld. Advocates for the petitioners, which states the decision given by Hon'ble National Company Law Tribunal, New Delhi Bench in CA 16/45/2017. In this decision the Hon'ble Judicial Member, stated that:

“However the principle of imposing minimum fine on compounding matters is not mandatory, as compounding of an offence can be accepted by a Court even by admonishing or issuance of a warning”

On examination of the circumstances as discussed above and being satisfied with the decision of NCLT, New Delhi Bench, already

mlls

reproduced supra, a fine of ₹ 5000/- (Rupees Five Thousand only) by the Company and fine of ₹ 5000/- (Rupees Five Thousand only) by the 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 No. 04/621-A/441/NCLT/MB/2016 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 take the consequential action. Ordered accordingly.

Dated: 19th June, 2017

Sd/-

M.K. SHRAWAT
Member (Judicial)