

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
COMPOUNDING APPLICATION NO. 05/621A/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 166(1) of the Companies Act, 1956 corresponding to Section 96(1) 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 Manekar 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 (Director).

Section Violated:

Section 166(1) of the Companies Act, 1956 corresponding to Section 96(1) of the Companies Act, 2013 r/w Section 441 of the Companies Act, 2013 and Punishable u/S. 99 of the Companies Act, 2013.

1. This Compounding Application was filed before the Company Law Board, Regional Bench, 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 not conducting its Annual General Meeting for the Financial

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Year 2013-14 within the stipulated time period. Reproduced below is extract from the report by the RoC, Maharashtra, Pune:-

"... Suo-Moto Application filed by the Company and its Directors / Officers in default for not conducting its Annual General Meeting for the Financial Year 2013-14 within the stipulated time.

As per the provisions of Section 99 of the Companies Act, 2013 if any default is made in complying with the provisions of Section 96 or 97 or 98, the Company and every officer of the company who is in default shall be punishable with fine which may extend to Rs.1,00,000 and in case of a continuing default, with a further fine which may extend to Rs.5,000/- for every day during which such defaults continues. ...

3. It is observed from the application that the Company was unable to conduct the Annual General Meeting on the due date being 3rd August, 2014 on account of internal disputes between the Board of Directors of the Company and change in management of the Company during the period. The Company conducted the Annual General Meeting on 7th August, 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 166 (1) of the Companies Act, 1956 corresponding to Section 96 (1) 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 96(1) 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 166(1) of the Companies Act, 1956, corresponding to Section 96(1) of the Companies Act, 2013 r/w Section 441 of the Companies Act, 2013, the Applicant has committed default as follows:-

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"4.1 That as per Section 96 (1) of Companies Act 2013 [166(1) of the Companies Act, 1956], every Company must in each year hold and Annual General Meeting of the shareholders within 15 months from the date of previous Annual General Meeting so held or six months from the financial year end, whichever is earlier. That the financial year of the Company is 1st day of April to 31st day of March every year.

4.2 That the last Annual General Meeting of the Company for the financial year 2013-14 was held on 3rd May 2013. Thus the Company should have held and conducted Annual General Meeting for the financial year 2013-14 latest by 3rd day of August 2014 (being the earliest date within six months from the financial year end i.e. 31st March, 2014 and 15 months of the previous Annual General Meeting i.e. from AGM 2013 held on 3rd May, 2013).

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.

4.3 That 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). Petitions under Section 92(4), 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



4.4 That the Company further declares that 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 96(1) of the Companies Act, 2013 r/w Section 441 of the Companies Act, 2013 corresponding to Section 166(1) of the Companies Act, 1956. 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. 05/621A/441/NCLT/MB/2016. Section 96 of Companies Act, 2013 for violation of Section 96(1) of Companies Act, 2013, which is relevant in this Case, is as follows:-

"Section 99 of the Companies Act, 2013 for violation under Section 96, 97 or 98 of the Companies Act, 2013.

If any default is made in holding a meeting of the company in 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 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 96 (1) of the Companies Act, 2013 although the Applicant was willing to comply with the provisions of the Companies Act, 2013 *bona fide*. The default was made good by holding the meeting on 7th August, 2015 although belatedly. 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

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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 166 (1) of the Companies Act, 1956 corresponding to Section 96 (1) 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 under Section 96 (1) 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 fine which may extend to ₹ 1,00,000/-. On examination of the circumstances as discussed above, a fine of ₹ 5000 (₹ Five Thousand only) by each applicant who is in default, i.e. the Company and the Director, in total ₹ 10,000/- (₹ Ten Thousand only) 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. 304//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)