

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

COMPOUNDING APPLICATION NO. 06/621A/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 210 (3) of the Companies Act, 1956 corresponding to Section 129 (2) 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 Wazalkar 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 210 (3) of the Companies Act, 1956 corresponding to Section 129 (2) of the Companies Act, 2013 r/w Section 441 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 Year 2013-14 within the stipulated time period. Reproduced below is extract from the report by the RoC, Maharashtra, Pune:-

NW

"... Suo-Moto Application filed by the Company and its Directors / Officers in default for not laying before the Annual General Meeting the Financial Statements for the Financial Year ended on 31.03.2014

As per provisions of S. 129 of the Companies Act, 2013 the Managing Director in charge of finance, the Chief Financial Officer or any other person charged with the duty of complying with the requirements of the section and in absence of any of the above mentioned officers, all the Directors of the Company shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than ₹ 50,000/- but which may extend to ₹ 5,00,000/- or with both.

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. And accordingly in that meeting the Financial Statements were approved and adopted."

2. Therefore, it is evident that the Applicant Company committed the default under the provisions of Section 210 (3) of the Companies Act, 1956 corresponding to Section 129 (2) 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 129 (2) 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:-

"4.1 That as per Section 129 (2) of the Companies Act, 2013 corresponding to Section 210 (3) of Companies Act, 1956, the Board of Directors of the Company shall lay before such Annual General Meeting financial statements

rw

of relevant financial year for adoption of accounts by shareholders of the Company.

4.2 That the accounts for financial year ending 31st March, 2014 were adopted by the shareholders in the Annual General Meeting for financial year 2013-2014, held on 7th August, 2015.

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 129 (2) of the Companies Act, 2013 r/w Section 441 of the Companies Act, 2013 corresponding to Section 210 (3) 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. 06/621A/441/NCLT/MB/2016. Section 129 (7) of Companies Act, 2013 for violation of Section 129 (2) of Companies Act, 2013, which is relevant in this Case, is as follows:-

"If a company contravenes the provisions of this section, the managing

fuw

director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or 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 129 (2) 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*. The default was made good by conducting the meeting on 7th August, 2017.

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 210 (3) of the Companies Act, 1956 corresponding to Section 129 (2) 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 129 (7) 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 imprisonment for a term which may extend to one year or with fine which shall not be less than ₹ 50,000/- but which may extend to ₹ 5,00,000/- or with both. 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 a fine of ₹ 5000/- (₹ Five Thousand only) by each applicant who is in default, i.e. the Company and the

ms

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. 06/621-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
f **Member (Judicial)**