

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI  
COMPOUNDING APPLICATION NO. 07/621A/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 220 (1) of the Companies Act, 1956 corresponding to Section 137 (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 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 220 (1) of the Companies Act, 1956 corresponding to Section 137 (1) 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 31<sup>st</sup> 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:-

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"... Suo-Moto Application filed by the Company for non – filing of Balance Sheet for Financial Year commencing from 1<sup>st</sup> April, 2013 to 31<sup>st</sup> March, 2014, within stipulated time.

As per provisions of Section 137 (3) of the Companies Act, 2013, the Company shall be punishable with fine of ₹ 1000/- everyday during which the failure continue but which shall not be more than ₹ 10,00,000/- and the Managing Director and the Chief Financial Official of the Company, if any, and in the absence of the Managing Director and the Chief Financial Officer or any other Director who is charged by the Board with the responsibility of complying with the provisions of this section and in the absence of such directors of the Company shall be punishable with imprisonment for a term which may extend to 6 (Six) months or with fine which shall not be less than ₹ 1,00,000/- (₹ One Lakh) but which may extend to ₹ 5,00,000/- (₹ Five Lacs) 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 3<sup>rd</sup> 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 7<sup>th</sup> 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 220 (1) of the Companies Act, 1956 corresponding to Section 137 (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 137 (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

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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 137 (1) of Companies Act [Section 220 (1) of the Companies Act, 1956], every Company shall file with Registrar a copy of the Financial Statements within 30 (Thirty) days from the date on which the AGM is held or where no AGM is held in any year within 30 (Thirty) days from the date on which AGM should have been held with such additional fees as prescribed.

4.2 That for financial year 2013-14, the copy of the Financial Statements were filed by the Company on 7<sup>th</sup> October, 2015.

That Annual General Meeting for financial year 2013-14 could not be held within due date that is 3<sup>rd</sup> 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 29<sup>th</sup> 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 31<sup>st</sup> March, 2014. In the meantime there was a change in the Management and the new Management in its Board Meeting held on 27<sup>th</sup> July, 2015 approved the Directors Report and called the Annual General Meeting on 7<sup>th</sup> August, 2015 and thus the Annual General Meeting was held on 7<sup>th</sup> 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). Financial statements for financial year 2013-14 were then filed with the Registrar of Companies on 7<sup>th</sup> October, 2015 which resulted in delay and violation of the provisions of Section 137 (1) of the Companies Act, 2013 [S. 220 (1) of the Companies Act, 1956].

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.

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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 28<sup>th</sup> July, 2016 to NCLT Mumbai Bench and the same has been treated as Compounding Application No. 07/621A/441/NCLT/MB/2016. Section 137 (3) of Companies Act, 2013 for violation of Section 137 (1) of Companies Act, 2013, which is relevant in this Case, is as follows:-

“ If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified in section 403, the company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh 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 96(1) 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*. It is stated that, the Company has made the default good by filing the same on 7<sup>th</sup> October, 2015 i.e. with the delay of 400 days. Further the Ld. Representative has submitted that there is actual delay of 130 days because as per S. 403 of the Act, the said statements can be filed within 270 days from the due date by paying additional fee and the proof of such fee is attached to Page 41 of the petition. Therefore, there is actual delay of 130 days.


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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 137 (3) 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 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. 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: 19<sup>th</sup> June, 2017

Sd/-

**M.K. SHRAWAT**  
**Member (Judicial)**