

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

COMPOUNDING APPLICATION NO. 01/621A/CLB/MB/2016

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Section 621A of the Companies Act, 1956 for violation of Section 266 C of the Companies Act, 1956.

In the matter of **Ms. Anahaita Nalin Shah**, R/at. Karim Court, 2nd Floor, 3rd Pasta Lane Line II, C J Road, Colaba, Mumbai – 400005, Maharashtra, India.

PRESENT FOR APPLICANT:

Mr. Pramod S. Shah, Practicing Company Secretary – Authorised Representative for the Applicant.

ORDER

Date of Order : 04.07.2017

APPLICANT IN DEFAULT:

(1) Ms. Anahaita Nalin Shah.

Section Violated:

Section 266 G of the Companies Act, 1956.

1. This Compounding Application was filed before the Registrar of Companies Maharashtra, Mumbai on 06th October, 2015 and the same has been forwarded along with the RoC Report to CLB, Western Region, Mumbai Bench, on 01st January, 2016. After establishment of National Company Law Tribunal, Mumbai Bench the same has been transferred to NCLT, Mumbai Bench. The Ld. Registrar of Companies intimated that the Applicant Company has filed the aforementioned Compounding Application suo moto for having more than one Director Identification Number (hereinafter referred as DIN).

2. Therefore, it is evident that the Applicant Company committed the default under the provisions of Section 266 C of the Companies Act, 1956. The Ld. RoC has also reported that the Applicant Company has made the

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default good by filing e-form RD – 1 and form DIR – 5 for surrendering the extra DIN. 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 266 C of the Companies Act, 1956, the Applicant has committed default as follows:-

"1. The applicant received on 21st November, 2014, the Summons dated 9th September, 2010 having Dispute No. 14508/14 from the CJM, Gautam Budh Nagar, UP, to appear in the said Court on 05/01/2015 accusing the Applicant of violation of the Provisions of Section 266 C and S. 266 G of the Companies Act, 1956 and Rules made thereunder. A copy of the same is enclosed hereto as Exhibit 'A'.

2. On receipt of the summons, I searched my old records and I came to know that I have been allotted two DINs as detailed below:

- i) 00089518 dated 3rd May, 2006 in the name of Anahaita Pirojsha Shah (Wrong DIN).
- ii) 00304641 dated 23rd August, 2006, in the name of Anahaita Nalin Shah (Correct DIN).

3. I checked all the records and found that the Wrong DIN allotted to me contained error regard to name of my Husband, father, and my surname for which I have no supporting documents as the name and the details mentioned in that DIN is not in existence nor it is valid. I was allotted the Correct DIN in August, 2006 which I have been using for all Company related filings....."

4. Accordingly, the Applicant has violated the provision under Section 266 C of the Companies Act, 1956. And the same is punishable under Section 266 G of the Companies Act, 1956. Section 266 G, which is relevant in this Case, is as follows:-

"Section 266 G : If any individual or director, referred to in section 266A or section 266C or section 266D or a company referred to in section 266E, contravenes any of the provisions of those sections, every such individual or director or the company, as the case may be, who or which, is in default, shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues."

5. From the side of the Applicant, Ld. Practicing Secretary Mr. Pramod S. Shah had appeared and explained that, inadvertently the Applicant had

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violated the provisions of S. 266 C of the Companies Act, 1956 although the Applicant was willing to comply with the provisions of the Companies Act, 1956 *bona fide*. Ld. Representative of the Applicant also stated that the aforesaid violation was unintentional and without any wilful or *mala fide intention*. An attention was drawn on the submissions made before the Chief Judicial Magistrate, Gautam Buddh Nagar, Uttar Pradesh, as follows :

"The fact that I, Anahaita Nalin Shah, (Unmarried name : Anahaita Piroja Shroff) have been married to Mr. Nalin Vrajlal Shah from the past 30 years i.e. 1984 and all my supporting documents i.e. PAN Card and Passport Documents are in the name of Anahaita Nalin Shah. My previous name was Anahaita Pirojsha Shroff, whereas I came to know about this hybrid name of Anahaita Pirojsha Shah only after making enquiry post your Notice served to me U/S. 266 C and 266 G. I wish to inform you that post facto we have taken immediate steps to surrender the additional DIN (in the name of Anahaita Pirojsha Shah) which is wrong DIN and the undersigned took immediate steps to surrender additional DIN by filing of an application for surrender of DIN pursuant to Section 153 & rule 11 (f) of the Companies (Appointment and Qualification of Directors) Rules, 2014 duly signed and certified by the Applicant along with all the supporting.

*Further the undersigned also took all its effects to make the default good by resigning from the Company in which the DIN which was obtained inadvertently and on the basis of which appointment as a director was done in the Company naming Efficiency Equipment Private Limited incorporated under Companies Act, 1956 vide CIN U72200MH1983PTC029583. The status of the signatory details of the aforesaid Company showing names of the Directors currently on the Board of the Company the MCA Portal is marked and attached herewith as **Annexure A**. The undersigned is no more a director in the aforesaid Company.*

The undersigned is awaiting approval from the Ministry of Corporate Affairs on Form RD – 1 filed with the Registrar of Companies for surrender of an additional DIN. The status of

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*the aforesaid Form RD – 1 reflecting on the MCA Portal is marked and enclosed herewith as **Annexure B**.*

*The Hon'ble Court is requested to take notice of filing of Form DIR – 5 by the undersigned for surrender of DIN as an attachment in Form RD – 1 which is prescribed for filing of an application to the Central Government (Regional Director). The Copy of the Form RD – 1 filed with the Ministry of Corporate Affairs duly signed and certified by the Director of the Company along with its Challan and attachments is marked and enclosed herewith as '**Annexure C**'.*

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. Representative for the Applicant at the time of hearing and noted that Application made by the Applicant for compounding of offence committed under Section 266 C of the Companies Act, 1956, merits consideration because as per the admitted facts and as also duly reported by the RoC in the report as :

“the applicant has submitted that, the DIN 00304641 which is issued in correct name of the applicant is cancelled and the other DIN 00089518 wherein the applicants name is incorrect has been retained. Hence, the DIN 00304641 may be restored.”

7. On examination of the circumstances as discussed above, a fine of ₹ **2500/- (₹ Two Thousand Five Hundred Only)** by the applicant 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. The prayer of the Applicant deserves to be accepted to the effect that, the RoC is directed to withdraw complaint made before the respected CJM Court, Gautam Buddh Nagar, Uttar Pradesh. Since the matter is hereby Compounded therefore the Consequential order ^{by} any of the Judicial Authority ^{may} can be passed by taking due cognizance of the findings of this Tribunal.

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9. This Compounding Application No. 01/621-A/CLB/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. The RoC shall also release the Correct DIN to the Applicant by cancelling the defective DIN.

10. Ordered accordingly.

Dated: 04th July, 2017

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