

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

COMPOUNDING APPLICATION NO. 24/621A/441/NCLT/MB/2016

CORAM:

**SHRI M.K. SHRAWAT**  
MEMBER (JUDICIAL)

In the matter of Section 621A of the Companies Act, 1956 for violation of Section 187C of the Companies Act, 1956 corresponding to Section 89 of the Companies Act, 2013.

In the matter of **M/s. Golden Gate Infrastructure Company Limited**, having its Registered Office at 13, Megaspaces, Off Solapur Bazar Road, Pune 411 001, Maharashtra, India.

**PRESENT FOR APPLICANT:**

Mr. Manoj H. Shah, Practising Company Secretary for the Applicant.

**Date of Hearing:** 24<sup>th</sup> January, 2017.

**ORDER**

**Reserved on: 24.01.2017**  
**Pronounced on: 27.01.2017**

**Applicants in Default:**

(1) M/s. Golden Gate Infrastructure Company Limited, (Company), (2) Mr. Satish Magar (Director) and (3) Mr. Umesh Magar (Director).

**Section Violated:**

Section 187C of the Companies Act, 1956 corresponding to Section 89 of the Companies Act, 2013.

1. This Compounding Application has been forwarded to NCLT Mumbai Bench by Registrar of Companies, Maharashtra, Pune along with RoC Report. The Ld. Registrar of Companies intimated that the Applicant has committed a default by not filing the requisite declarations within the prescribed time limit with the concerned

authorities. Therefore, committed the default under the provisions of Section 187C of the Companies Act, 1956; hence punishable for the said default u/s 187C (5)(a) of the Companies Act, 1956. The Ld. RoC has also reported that later on the Applicant Company has filed Form No. MGT-6 (similar to the Form No. 22B as under the provisions of Section 187C of the Companies Act, 1956 and as prescribed under the new Companies Act, 2013 as on 12<sup>th</sup> September, 2015 vide SRN C63776488. According to the Ld. RoC, although the Applicant had made good of the default by filing the declaration, the default is punishable for the period for which the delay had happened. As per the said report the delay was 578 days i.e. from due date (10<sup>th</sup> February, 2014) to the date of compliance (11<sup>th</sup> September, 2015) for which a fine of ₹1,000/- each day is to be levied.

**Nature of Violation:**

2. As per the Applicant's own submissions made in the Compounding Application filed suo motu by them for violation of Section 187C of the Companies Act, 1956, the Applicant has committed default as follows:-

"2. Facts of the case of application for compounding are given below:

4a) The Company was a subsidiary of Magarpatta Township Development & Construction Company Limited (herein after referred to as the Holding company). The said holding company was holding 51% shares in the company till 31<sup>st</sup> March 2013.

4b) In pursuance of Section 187(C) of the Companies Act, 1956 & the individual members holding single share in their name but who were not the actual owners, filed the declarations with the Company under the said section in the prescribed form no. 1. The Company received from the members of the Company the declaration in respect of beneficial interest & the said declarations were noted by the Board in its meeting held on 11<sup>th</sup> day of January 2014. ....

4c) As the company was a public limited company, it was mandatory for the company to have seven shareholders. The holding company though acquired all the shares from the individual

shareholders, retained one share each in the name of the said shareholders.

4b) In pursuance of Section 187(C) of the Companies Act, 1956 &, the individual members holding single share in their name but who were not the actual owners, filed the declarations with the company under the said section in the prescribed form no.1. The company received from the members of the company the declaration in respect of beneficial interest & the said declarations were noted by the Board in its meeting held on 11<sup>th</sup> day of January 2014. ....

4c) Further as required under the provisions of Section 187© the holding company which was holding beneficial interest in the said shares also given the declaration in the prescribed form no. II as under the provisions of Section 187 of the Companies Act, 1956 to the company, within the prescribed time.

4d) In pursuance of the provisions of Section 187(C) of the Companies Act, 1956, the declarations as received by the Company from the members whose names were entered in the Register of members informing of the beneficial interest holder and the declaration as received from the holding company declaring its beneficial interest in the said shares should have been filed by the company with Registrar of Companies, Pune in the prescribed form no. III as stated in the provisions of the Companies Act, 1956 within 30 days from the date of receipt of declarations of beneficial interest by the company i.e. on or before 10<sup>th</sup> day of February 2014.

4e) It was later noted by the company that the said prescribed form no. III as under the provisions of the Section 197(C) of the Companies Act 1956 was not filed by the company within the prescribed time, with the Registrar of Companies, Pune.

4f) In the meanwhile the Ministry of Corporate Affairs, introduced the new Companies Act, 2013 and rules there under in place of Companies Act, 1956. The said act contained new provisions for the said declaration on the beneficial interest.

4g) The Company did not have any Company Secretary and the management was not able to understand how to comply with the new provisions of the act for the said filing of the declaration of the beneficial interest as various forms which were older than six months were not being accepted by the MCA system.

4h) The petitioner submits that the aforesaid delay was accidental or due to inadvertence as the Companies Act, 2013 was introduced & there were various new provisions inserted in the Companies Act, 2013 & the petitioner company was trying to get the clarification on the provisions of the Companies Act, 2013 with respect to filing of this application for compounding of offences.

4i) The company admits that there occurred a delay of 1 year 7 months 2 days in filing the particulars, but submits that the said delay was accidental and took place on account of inadvertence and due to the changes in the act, which were genuine. It please be

noted by your Honor that we do not have employee who is an expert in Company Law matters & since the whole of the Companies Act was changed it was difficult for the company to be in consonance with the provisions of the Companies Act, 2013 immediately. The Company had no malafide or fraudulent intention in not filing the particulars within the prescribed period.

4j) The company has on date of filing of the application for the compounding of offenses filed the form no. MGT 6 (similar to the form no. 22B as under the provisions of Section 187 (C) of the Companies Act, 1956) vide SRN C63776488 dated 12<sup>th</sup> September 2015 (Annexure F) and paid additional fees of Rs. 7200/- (Rupees Seven Thousand Two Hundred Only) as prescribed under the Act.”

3. Accordingly, the Applicant has violated the provision under Section 187C of the Companies Act, 1956. The Registrar of Companies, Maharashtra, Pune forwarded the Compounding Application vide his letter No. ROCP/STA/621A/2016/5140 dated 2<sup>nd</sup> September, 2016 to NCLT Mumbai Bench and the same has been treated as Company Application No. 24/621A/441/NCLT/MB/2016.

4. From the side of the Applicant, Ld. Practising Company Secretary Mr. Manoj H. Shah appeared and explained that due to certain unavoidable circumstances the Applicant Company could not file certain requisite declarations within the prescribed time limit with the concerned authorities 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*. However, he has pleaded that the Applicant has committed the default inadvertently and voluntarily filed the Compounding Application for compounding of the said offence without waiting for orders from the Registrar of Companies, Pune and, therefore, humbly pleaded to compound the offences by imposing a minimum fine.

5. This Bench has gone through the Application of the Applicant and the Report submitted by the Registrar of Companies, Maharashtra,

Pune and also the submissions made by the Ld. Practising Company Secretary for the Applicant at the time of hearing and noted that Application made by the Applicant for compounding of offence committed under Section 187C of the Companies Act, 1956 merits consideration.

5.1 Records of the case have revealed that Form MGT-6 was submitted through Receipt G.A.R.7 dated 16<sup>th</sup> September, 2015 after paying normal fee of ₹600/- and additional fee of ₹7,200/-. The Applicant has also placed on record a copy of the Resolution passed and the Declaration by the persons referred to in Section 187-C (1) of the Companies Act, 1956. Simultaneously, the Applicant has also filed a Declaration as referred to in Section 187C Sub-section (2) / Sub-section (3) of the Companies Act, 1956. As a result, the undisputed fact is that the Petitioner has made good the default by due compliance, although belatedly.

6. Under the old provisions of the Act, as applicable when this Compounding Application was filed in the year 2016, the relevant provision was Section 187 of the Companies Act, 1956, which is reproduced below:

**"Section 187C (5)(a) of the Companies Act, 1956.**

If any person, being required by the provisions of sub-section (1), sub-section (2) or sub-section (3), to make a declaration, fails, without any reasonable excuse, to do so, he shall be punishable with fine which may extend to one thousand rupees for every day during which the failure continues."

7. Having regard to the facts and circumstances of the case, the admitted factual position is that the Registrar of Companies, Maharashtra, Pune as well as the Applicant have informed that this Compounding Application has been filed by the Company namely M/s.

Golden Gate Infrastructure Company Ltd. being "beneficial owner" and not the actual holder of the shares. RoC has also confirmed the said fact in the report dated 2<sup>nd</sup> September, 2016 as per column 24. 3. as under:

"24. 3. As stated in application the declaration as received by the company from members whose names were entered in the Register of Members informing of the beneficial interest holder and the declaration as received from the holding company declaring its beneficial interest in the said shares should have been filed in prescribed form no III within 30 days from the date of receipt of declaration of beneficial interest by the company i.e. on or before 10.02.2014. Further it is stated that company has made default good by filing Form MGT-6 on 12.09.2015

In view of this, the matter may be decided on merits."

8. Because of the above discussed factual position, the compounding of this default under the category of default is defined u/s 187C(2) of the Companies Act, 1956 which says that a person who holds beneficial interest in a share / shares of a Company which within 30 days after his becoming such beneficial owner makes a declaration specifying the nature of his interest, particulars of the person in whose names the shares stand registered in the Books of the Company (Register of Members) and such other particulars as may be described. In this case, one more admitted factual position is that instead of filing the declaration within 30 days, the same was furnished on 11<sup>th</sup> September, 2015 as reported by the RoC. Therefore, if any person failed to make a declaration within the specified time and without any reasonable excuse shall be punishable with a fine u/s 187C (5)(a), already reproduced supra, which may extend to Rs. 1,000/- for every day during which the failure continued. Nevertheless, the default was made good on 11<sup>th</sup> September, 2015 as discussed above, hence it is not a case of continuance of default. The Act has also specified that while deciding the levy of fine / penalty, the *mens rea* or a reasonable excuse should also be taken into account. On examination of the circumstances as discussed above as well as keeping in mind, especially when the default was made good although belatedly, a fine

of ₹5,000/- (Rupees five thousand only) shall be sufficient to be paid by the Company (the Applicant) 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".

9. This Compounding Application No. 24/621A/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: 27<sup>th</sup> January, 2017

Sd/-  
**M.K. SHRAWAT**  
**Member (Judicial)**