

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

COMPOUNDING APPLICATION NO. 362/621A/441/NCLT/MB/2015

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

In the matter of Section 441 of the Companies Act, 2013 (corresponding Section 621A of the Companies Act, 1956) for violation of Section 159 of the Companies Act, 1956.

In the matter of **M/s. Hathway Nashik Cable Network Private Limited**, having its Registered Office at Rahejas, 4th Floor, Corner of Main Avenue & V.P. Road, Santacruz (W), Mumbai 400 054, Maharashtra, India.

PRESENT FOR APPLICANT:

Mr. Vijay Kabta, Applicant in person.

Date of hearing: 17th February, 2017

ORDER

Reserved on: 17.02.2017

Pronounced on: 27.02.2017

Applicants in Default:

(1) M/s. Hathway Nashik Cable Network Private Limited (Company),
(2) Mr. Vijay Vishwanath Kabta (Director), (3) Mr. Milind Dattatraya Karnik (Director) and (4) Mr. Mr. Bhavik Vasant Palan (Director).

Section Violated:

Section 159 of the Companies Act, 195 and corresponding Section 92 of the Companies, Act, 2013 (Annual Return).

Nature of Violation:

1. The Applicant has moved this Application before the Registrar of Companies, Maharashtra, Mumbai, who in turn has forwarded the

same to this bench vide a covering letter bearing No. ROC/STA/621A/128 dated 10th December, 2015. The default intimated in the RoC report falls u/s 159 of the Companies Act, 1956 i.e. non-submission of "Annual Return" within the prescribed time. According to RoC, the Annual Return for the Financial year ended on 31st March, 2011 should have been filed within 60 days from the date of Annual General Meeting. As per RoC, the admitted factual position was that the Applicant company had filed the Annual Return on 14th August, 2015. For this violation, punishment is prescribed u/s 162 of the Companies Act, 1956.

2. The Applicant Company and its three Directors, vide their Application under Section 621A of the Companies Act, 1956, before the Registrar of Companies, Maharashtra, Mumbai, admitted the default on their part and their relevant admissions in the said Application are reproduced below:-

"4. The Schedule V i.e. Annual Return for the financial year ended 31st march 2011 in prescribed e-form 20B was required to be uploaded on the portal of the website of Ministry of Corporate Affairs within 60 days the said date of Annual General Meetings of the Company i.e. on or before 29th November, 2011.

5. The Company and its directors has been issued Default Notice bearing No. ROC/CO.NO.11-122539/DN/1290 TO 1293 dated 15th March, 2012.

6. The Company had subsequently filed Schedule V i.e. Annual return for the financial year ended 31st march 2011 in prescribed e-form 20B on 14th August, 2015 vide SRN No. Q58367244 thereby causing a delay of 1019 days.

7. The Board of directors at their meeting held on 14th August, 2015 considered the facts of the said violation under the provisions of Sub-Section 1 of Section 220 of the Act and it was resolved to make an application under Section 621A of the Companies Act, 1956 for compounding of the said offence by the Company and officers in default.

9. The present application under Section 621A of the Act is being made for compounding of offence committed by the Company and below named Directors by violation of Section 166 read with Section 159 of the Act for failing to file the Annual Return as at 31st March, 2011 and profit and loss account for the year ended on that date with the Registrar of Companies, Maharashtra, Mumbai, within the stipulated time limit."

3. Accordingly, the Applicant has violated the provision under Section 159 of the Companies Act, 1956 and corresponding Section 92 of the Companies Act, 2013. The Registrar of Companies, Maharashtra, Mumbai, forwarded the Compounding Application vide his letter No. ROC/STA/621A/128 dated 10th December, 2015 and the same has been treated as Compounding Application No. 362/621A/441/NCLT/MB/2015.

4. 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 Mr. Vijay Kabta Director of the Applicant Company at the time of hearing and noted that Application made by the Applicant Company for compounding of offence committed under Section 159 of the Companies Act, 1956 and corresponding Section 92 of the Companies Act, 2013 merits consideration.

4(a) The Annual Return for the Financial Year ended 31st March, 2011 was required to be uploaded within 60 days from the date of Annual General Meeting i.e. on or before 29th November, 2011 as admitted by the Applicant. The meeting of the Board of Directors was held on 14th August, 2015. As a consequence, thereafter, on 14th August, 2015 vide G.A.R. 7 normal fees of ₹400/- and additional fees of ₹4,800/- was filed along with Form 20B i.e. Form for filing Annual Return by the Company.

4(b) In the light of the narrated facts, the preliminary argument is that the default was made good by complying the provisions of the Act, though belatedly. The other argument is that for the Financial Year ended on 31st March, 2011, as per the audited accounts, the

Company has suffered losses; therefore, the Applicant Company was in a bad financial position.

4(c) The facts of the case have also revealed that a Complaint bearing No. C.C. No. 3700683/SS/2013 was filed by the Dy. Registrar of Companies, Ministry of Corporate Affairs, Government of India, Mumbai, Maharashtra on 31st March, 2013 before the Hon'ble Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai. In the said Complaint, a prayer was made that the Hon'ble Court be pleased to issue an Order directing to file the Annual Return with all the documents required to be attached, within 15 days from the date of said Order. It is informed that nothing has happened since the compliance of filing of the Annual Return suo motu by Applicant on 14th August, 2015.

5. Under the provisions of the Companies Act, 1956, the relevant provision was Section 162, which is reproduced below:

"Section 162 of the Companies Act, 1956

If a company fails to comply with any of the provisions contained in **section 159, 160 or 161**, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues."

6. As per RoC, this fine of Rs. 500/- per day is applicable for the period from 30th November, 14th August, 2015 i.e. delay of 1,019 days.

7. Having regard to the facts and circumstances of the case and because of the above discussed factual position, the category of default is defined u/s 162 of the Companies Act, 1956, already reproduced supra, which says that every officer of the company who is in default shall be punishable with a fine which may extend to five hundred rupees for every day during which the default continues. In this case, one more admitted factual

position is that instead of filing the declaration within stipulated time, the same was furnished on 14th August, 2015 as reported by the RoC. Nevertheless, the default was made good on 14th August, 2015 as discussed above. The Act has specified that while deciding the levy of fine / penalty, the compliance, if any, 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 ₹2,000/- (Rupees two thousand only) shall be sufficient to be paid by each person as prescribed u/s 162 of the Companies Act, 1956 and the Company (the Applicant); as a deterrent for not repeating the impugned default in future. The decision is taken on the basis of few basic legal positions that the Tribunal is empowered u/s 441 to compound certain offences if punishable with fine only. In this particular case, the Section imposing punishment has used the terminology 'or' and not 'with'; therefore, keeping this distinction in mind, decided to proceed with the matter. Further, the second decision of imposing a fine to a minimal amount is on the basis of First Proviso to Section 441 of the Companies Act, 2013 which has placed a rider not to impose more than the prescribed fine. Since there is no such embargo in respect of the minimum amount, considering the financial position, it was deemed to fit to impose a small amount of fine as a deterrence to discourage and prevent the repetition of such default by this Company and its officers. Otherwise also, the imposition of fine is not to be considered as a source of revenue to the exchequer, but prescribed with the intention to discourage the repetition of default. Keeping this position of law in mind, the RoC has to submit in his Report whether similar offence was compounded during the last three years and if the answer is being in negative, it was held that the Applicant deserves the compounding of the offence. 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. 362/621A/441/NCLT/MB /2015 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.

Sd/-

Dated: 27th February, 2017

M.K. SHRAWAT
Member (Judicial)