

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

COMPOUNDING APPLICATION NO. 14/621A/441/NCLT/MB/2015

CORAM:

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

In the matter of Section 621A of the Companies Act, 1956 for violation of Section 166 of the Companies Act, 2013 corresponding to Section 96 of the Companies Act, 2013 r/w Section 441 of the Companies Act, 2013.

In the matter of **M/s. Nine T Nine Automotive Private Limited**, having its Registered Office at Ward No.5, Sr. No.15, S. No. 287/15, Hingne Khurd, Pune 411 051, Maharashtra, India.

**PRESENT FOR APPLICANT:**

Mr. Akshay Chandrakant Auti, Practising Company Secretary for the Applicant.

**Date of Hearing:** 20<sup>th</sup> January, 2017.

**ORDER**

**Reserved on: 20.01.2017**  
**Pronounced on: 06.02.2017**

**Applicants in Default:**

(1) M/s. Nine T Nine Automotive Private Limited, (Company), (2) Mr. Kunal Nivrutti Mohite (Director) and (3) Mr. Karan Namdev Mohite (Director).

**Section Violated:**

Section 166 of the Companies Act, 1956 corresponding to Section 96 of Companies Act, 2013 r/w Section 441 of Companies Act, 2013.

1. This Compounding Application has been filed before the Registrar of Companies, Maharashtra, Pune 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 has committed a default of not conducting the Applicant Company's first adjourned meeting for the financial year ended on 31<sup>st</sup> March, 2014 within the stipulated time i.e. on or before 30<sup>th</sup> September, 2014. Therefore, the Applicant Company committed the default under the provisions of Section 166 of the Companies Act, 1956 which is punishable u/s 166 of the Companies Act, 1956. The Ld. RoC has also reported that later on the Annual General Meeting was held on 26<sup>th</sup> October, 2014 for the accounting period ended 31<sup>st</sup> March, 2014. According to the Ld. RoC, although the Applicant had made good of the default by holding the AGM, due to the delay in holding the AGM, the default is punishable for the period for which the delay had happened.

**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 166 of the Companies Act, 1956 on 8<sup>th</sup> October, 2015, they had defaulted by not holding the Annual General Meeting with the prescribed time. The facts of the case as per the Applicant's submissions are as under:-

**"Facts of the Case:**

That in terms of first proviso of the provisions of section 166 of The Companies Act 1956, a company may hold its First Annual General Meeting within a period of not more than eighteen months from the date of its incorporation. In terms of section 210 of the Companies Act, 1956, Company should lay before First Annual General Meeting Balance Sheet and Profit and Loss Account for a period which shall relate to a period not precede day of the First Annual General Meeting by nine months. Therefore in terms of section 166 read with section 210 of the Companies Act, 1956, a Company should hold First Annual General Meeting within nine months from end of its financial year or within eighteen months from the date of its incorporation whichever is earlier.

Financial Year of the Applicant Company is from 14<sup>th</sup> of March 2013 to 31<sup>st</sup> of March 2014. For the year ended on 31<sup>st</sup> March 2014, Company called its First Annual General Meeting on 12<sup>th</sup> September 2014 after giving due notice. In the First Annual

General Meeting held on 12<sup>th</sup> September 2014, accounts of the Company for the period 14<sup>th</sup> March 2013 to 31<sup>st</sup> March 2014 could not be placed before the meeting and the meeting was adjourned till 27<sup>th</sup> October 2014 for want of placing the same before the shareholders for their adoption. The accounts were duly placed before the adjourned meeting held on 27<sup>th</sup> October 2014.

In terms of section 166 of The Companies Act, 1956 every company has to hold First Annual General Meeting. In terms of section 166 read with Section 210 of the Companies Act, 1956, a Company should hold First Annual General Meeting within nine months from the date of its incorporation whichever is earlier. Any adjourned meeting must also be held within the time limit as per sections 166 & 210 of the Companies Act, 1956. In this case applicant Company ought to have held First Annual General Meeting on or before 13<sup>th</sup> September 2014 including any adjournment thereof. **The First Annual General Meeting was held on 12<sup>th</sup> September, 2014, well within time limit, but the same was adjourned for want of placing the accounts before the shareholders for adoption on 27<sup>th</sup> October 2014 which is not within prescribed time limit** and has been held without seeking the permission of Registrar of Companies, Pune as extension is not allowed for holding of the First Annual General Meeting.

#### **8. Commission of Offence:**

That in terms of the provisions of section 166 of the Companies Act, 1956, Company ought to have held the First Annual General Meeting for the financial year ended 31<sup>st</sup> March 2014 on or before 13<sup>th</sup> September 2014 including any adjournment thereof. The said First Annual General Meeting was held on 12<sup>th</sup> September 2014 but was adjourned till 27<sup>th</sup> October 2014 resulting into violation of provisions of section 166 of the Companies Act, 1956.

#### **9. Reasons for the Commission of the Offence:**

The Company has held First Annual General Meeting for the financial year ended 31<sup>st</sup> March 2014 on 12<sup>th</sup> September, 2014. But as the audited accounts were not ready and hence could not be laid before the First Annual General Meeting held on 12<sup>th</sup> September 2014. The meeting was adjourned till 27<sup>th</sup> October 2014 and at adjourned meeting, accounts were laid before the meeting and same were adopted.

#### **10. Absence of Mens Rea:**

The "Applicant Company" submits that the default under section 166 of the Companies Act, 1956, is the first offence and hence compoundable under section 621A of the Companies Act, 1956.

#### **11. Compoundable Nature of the Offence.**

The "Applicant Company" hereby submits that the offence relating of default under section 166 of the Companies Act, 1956, is the

first offence and hence compoundable under section 621A of the Companies Act, 1956.

**12. Suo Motu Admission of Offence:**

The 'Applicant Company' has suo Motu, made this application in order to avoid if possible litigation and apprehension of prosecution."

3. Accordingly, the applicant has violated the provision under Section 166 of the Companies Act, 1956. The Registrar of Companies, Maharashtra, Pune forwarded the Compounding Application vide his letter No. ROCP/STA/621A/2015/1608 dated 13<sup>th</sup> January, 2016 to NCLT Mumbai Bench and the same has been treated as Company Application No. 14/621A/441/NCLT/MB/2016.

4. From the side of the Applicant, Mr. Akshay Chandrakant Auti, Practising Company Secretary appeared and explained that due to certain unavoidable circumstances the Annual General Meeting could not be held although the Applicant was willing to comply with the provisions of the Companies Act, 1956 *bona fide*. He has also explained that the default was committed due to non-finalization of accounts because of transfer pricing account system of the company. Ld. Representative of the Applicant also stated that the aforesaid violation was unintentional and without any wilful or *mala fide intention*. The Applicant Company was incorporated on 14<sup>th</sup> March, 2013 for which the first time accounts were finalised as on 31<sup>st</sup> March, 2014. The Company was in the formative stage to start the business. However, he has pleaded that the Applicant has committed the default inadvertently and voluntarily filed the Petition for compounding of the said offence without waiting for orders from the Registrar of Companies, Mumbai and, therefore, humbly pleaded to compound the offences by imposing a minimum fine after considering the bad financial position of the Applicant Company.



5. 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. Advocate for the Applicant at the time of hearing and noted that Application made by the Applicant for compounding of offence committed under Section 166 of the Companies Act, 1956 merits consideration.

6. Under the old provisions of the Act, as applicable when this Compounding Application was filed in the year 2015, the relevant provision was Section 166 (Section 168 for violation of Section 166) of the Companies Act, 1956, which is reproduced below:

**"168 for violation of Section 166 of the Companies Act, 1956**

If default is made in holding a meeting of the company in accordance with Section 166, or in complying with any directions of the *Tribunal or the Central Government, as the case may be* under sub-section (1) of Section 167, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees and in the case of a continuing default, with a further fine which may extend to two thousand five hundred rupees for every day after the first during which such default continues."

7. The Company was incorporated on 14<sup>th</sup> March, 2013 as per the RoC report. Directors of the Applicant Company are (1) Mr. Kunal Nivrutti Mohite and (2) Mr. Karan Namdeo Mohite. Admitted factual position is that the AGM was held on 27<sup>th</sup> October, 2014, although belatedly, which was otherwise required to be held on or before 30<sup>th</sup> September, 2014. The facts of the case have revealed that the Petitioner has filed G.A.R. 7 dated 24<sup>th</sup> September, 2015 after making a payment of normal fees of ₹300/-. As a result, the Applicant had made good the impugned default by complying with the provisions of the Act. Therefore, this is not a case of continuation of default as the default had ended when the AGM was held and the same was intimated to the RoC office in compliance of the provisions of the Act. Regarding 'Filing position', the RoC has affirmed that the default was made good by filing the Annual Return and Balance Sheet for the

Financial Year 2013-14. Therefore, it is not a case of continuing default.

8. Having regard to the facts and circumstances of the case, the offence committed under Section 166 r/w Section 168 of the Companies Act, 1956, as stated and explained in the above paragraphs, is compounded against the Applicant Company and every officer of the Applicant Company who are in default, on payment of ₹2,000/- (Rupees two thousand only) to be paid by each person in default for violation of Section 166 of the Companies Act, 1956 for not holding the AGM within the stipulated time. The remittance shall be made by way of Demand Draft drawn in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai".

9. This Compounding Application No. 14/621A/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: 6<sup>th</sup> February, 2017

Sd/-  
**M.K. SHRAWAT**  
**MEMBER (JUDICIAL)**