

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
COMPOUNDING APPLICATION NO. 15/621A/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 210 of the Companies Act, 2013 corresponding to Section 129 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: 20th 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 210 of the Companies Act, 1956 corresponding to Section 129 of the 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 laying before the Annual General Meeting the Balance Sheet for the financial year ended on 31st March, 2014. Therefore, the Applicant Company committed the default under the provisions of Section 210 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 26th October, 2014 for the accounting period ended 31st March, 2014 and financial statements were approved at the AGM. 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 210 of the Companies Act, 1956 on 8th October, 2015, they had defaulted by not placing before the Annual General Meeting financial statements of the Company for the period ended on 31st March, 2014 within the prescribed time. The facts of the case as per the Applicant's submissions are as under:-

"7. Facts of the Case:

That in terms of the provisions of section 210 of The Companies Act 1956, every company shall lay before its First Annual General Meeting held pursuant to Section 166 of the Companies Act, 1956, Balance sheet and Profit & Loss Account for a period beginning with the incorporation of the company and ending with a day which shall not precede the day of meeting by more than 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.

In terms of section 210 of the Companies Act, every company shall lay before its First Annual General Meeting annual accounts for a financial year for which First Annual General Meeting is held. If

First Annual General Meeting is adjourned for want of non-preparation of Accounts, then such adjourned meeting must be conducted within maximum time limit available for holding of First Annual General Meeting in accordance with section 166 read with section 210 of the Companies Act, 1956 and annual accounts must be laid before such adjourned meeting whichever is earlier.

Financial Year of the Company is from 14th of March 2013 to 31st of March 2014. For the year ended on 31st March 2014, Company called its First Annual General Meeting on 12th September 2014 after giving due notice. In the First Annual General Meeting held on 12th September 2014, accounts of the Company for the period 14th March 2013 to 31st March 2014 could not be placed before the meeting and the meeting was adjourned till 27th October 2014 for want of adoption of accounts. The accounts were duly placed before the adjourned meeting held on 27th October 2014.

8. Commission of Offence:

That in terms of the provisions of section 210 of the Companies Act, 1956, Company ought to have held the First Annual General Meeting for the financial year ended 31st March 2014 on or before 13th September 2014 including any adjournment thereof and annual accounts must be laid before such meeting or adjourned meeting. First Annual General Meeting for the financial year ended 31st March 2014 was held on 12th September 2014 but was adjourned till 27th October 2014 for laying of annual accounts as accounts were not prepared and audited on the date of original First Annual General Meeting i.e. 12th September 2014. This has resulted into violation of provisions of section 210 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 31st March 2014 on 12th September, 2014. But as the audited accounts were not ready, they could not be laid before the First Annual General Meeting. The meeting was adjourned till 27th October 2014 and at adjourned meeting, accounts were laid before the meeting and same were adopted.

There was no intention of the Company to avoid compliance of the law but as the accounts of the Company were not ready, it was forced to hold its First Annual General Meeting beyond statutory limit.

10. Absence of Mens Rea:

The "Applicant" submits that the default is not intentional and is not of such nature as will prejudice the interests of the members or creditors or other parties dealing with the Company.

11. Compoundable Nature of the Offence.

The "Applicant" hereby submit that the offence relating of default under section 210 of the Companies Act, 1956, is the first offence and hence compoundable under section 621A of the Companies Act, 1956.

12. Nature and extent of Penalty for the Offence:

Pursuant to the provisions of Section 210 of the Companies Act, 1956, for violation of provision of section 210 of the Companies Act, 1956, Director of the Company is liable for imprisonment which may extend upto six months or penalty of Rs. 10,000 (Rupees Ten Thousand Only) or with both.

3. Accordingly, the applicant has violated the provision under Section 210 of the Companies Act, 1956. The Registrar of Companies, Maharashtra, Pune forwarded the Compounding Application vide his letter No. ROC/STA/621A/2015/1608 dated 13th January, 2016 to NCLT Mumbai Bench and the same has been treated as Company Application No. 15/621A/441/NCLT/MB/2016.

4. From the side of the Applicant, Mr. Akshay Chandrakant Auti, Ld. Practising Company Secretary appeared and explained that due to certain unavoidable circumstances the Applicant had violated Section 210 of the Companies Act, 1956 by not placing before the Annual General Meeting financial statements of the Company for the period ended on 31st March, 2014 within the prescribed time. The Applicant Company was incorporated on 14th March, 2013 for which the first time accounts were finalised as on 31st March, 2014. The Company was in the formative stage to start the business. The Applicant could not do so 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. Ld. Representative of the Applicant also stated that the aforestated 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 Petition 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 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 210 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 210 of the Companies Act, 1956, which is reproduced below:

"Section 210 (5) of the Companies Act, 1956

If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both."

7. the Company was incorporated on 14th March, 2013 as per the RoC report. Directors of the Applicant Company are (1) Mr. Kunal Nivrutti Mohite and (2) Mr. Karan Namdeo Mohite. The undisputed fact is that on 27th October, 2014 the AGM was held and the accounts were approved for the accounting period ended on 31st March, 2014. The Applicant has also placed on record a copy of G.A.R. 7 dated 10th August, 2015 intimating the submission of Form 23AC after making a payment of ₹300/- and additional fees of ₹3,600/-. As a result, the Applicant had made good the default by complying with the provisions of the Act, although belatedly. 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 210 of the Companies Act, 1956, as stated and explained in the above paragraphs, is compounded against the Applicant Company M/s. Nine T Nine Automotives Private Limited and any person being a Director of the Applicant on payment of ₹2,000/- (Rupees two thousand only) to be paid by each person in default. 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. 15/621A/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.

Sd/-

Dated: 6th February, 2017

M.K. SHRAWAT
MEMBER (JUDICIAL)