

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

COMPOUNDING APPLICATION NO. 310/621A/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, 1956.

In the matter of **M/s. R and G Advani Impex Private Limited**, having its Registered Office at Advani Chambers, 9<sup>th</sup> Floor, A.K. Marg, Mumbai 400 036, Maharashtra, India.

**PRESENT FOR APPLICANT:**

Ms. Ashvini Kandalgaonkar, Advocate 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. R and G Advani Impex Private Limited, (Company), (2) Mr. Sajan Jawaharmal Advani, (Managing Director).

**Section Violated:**

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

1. This Compounding Application has been filed before the Company Law Board, Western Region Bench, Mumbai, which was forwarded to NCLT Mumbai Bench by Registrar of Companies, Maharashtra, Mumbai, along with RoC Report. The Ld. Registrar of Companies intimated that the Applicant has committed a default of not holding Annual General Meeting within the prescribed time on or

before 30<sup>th</sup> September, 2014 for the year ended on 31<sup>st</sup> March, 2014. Therefore, committed the default under the provisions of Section 166 of the Companies Act, 1956; hence punishable for the said default u/s 166 of the Companies Act, 1956. The Ld. RoC has also reported that later on the Annual General Meeting was held on 29<sup>th</sup> December, 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. MKS

**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 4<sup>th</sup> February, 2015, the Applicant has committed default as follows:-

"3. As per the provisions of Section 166 of the Companies Act, 1956, Annual General Meeting for the year ended 31<sup>st</sup> March, 2014 ought to be held on or before 30<sup>th</sup> September, 2014, however the same was held on 29<sup>th</sup> December, 2014 without obtaining extension from the Registrar of Companies, Mumbai due to the reason mentioned para no.7 herein below. The default is due to the reasons mentioned in para 7 herein below. ....

8. That the default under Section 166 of the Companies Act, 1956 for the Financial year 2013-14 has been committed by the Petitioners. That the default mentioned in para 3 was committed due to following reasons:

a. For 2013-14, the default mentioned in para 3 was committed due to non-finalization of accounts due to transfer pricing account system of the company. The due date for filing accounts with Income Tax for IT Return is extended to 30.11.2014 for companies who come under the provisions of transfer pricing. Hence Annual General Meeting could not be held for the financial year ended 31<sup>st</sup> March, 2014 on or before 30.09.2014 and was held on 29.12.2014.

9. That the violation mentioned in para 3 was unintentional and without any wilful or malafide intention.

10. As and when the Balance Sheet for the year ended 31<sup>st</sup> March, 2014 were audited by Chartered Accountant and signed by

the Directors i.e. on 29<sup>th</sup> November, 2014 the Annual General Meeting was held on 29<sup>th</sup> December, 2014 in which Balance Sheet was approved by the Members of the Company and same was filed with the Registrar of Companies, Mumbai on 10<sup>th</sup> January, 2015.

.....

11. That the maximum penalty that may be imposed on the Company, and every officer of the Company who is in default for the offence under Section 166 of the Act is fine which may extend of 50,000 rupees and that in case of continuing default an additional fine may be charged that may extend to 2500 rupees per day after the first day during which default continues."

3. Accordingly, the applicant has violated the provision under Section 166 of the Companies Act, 1956. The Registrar of Companies, Maharashtra, Mumbai forwarded the Compounding Application vide his letter No. ROC/STA/621A/94 dated 14<sup>th</sup> September, 2015 to NCLT Mumbai Bench and the same has been treated as Company Application No. 310/621A/441/NCLT/MB/2015.

4. From the side of the Applicant, Ld. Advocate Ms. Ashvini Kandalgaonkar 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*. She has also explained that the default was committed due to non-finalization of accounts due to 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*. However, she 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.

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. Admitted factual position is that the AGM was held on 29<sup>th</sup> December, 2014, although belatedly, which was otherwise required to be held on or before 30<sup>th</sup> September, 2014. The <sup>facts</sup> course of the case MKS has revealed that the Petitioner has filed G.A.R. 7 dated 10<sup>th</sup> January, 2015 intimating the submission of Form 23 AC after making a payment of normal fees of ₹500/- and additional fees of ₹3,000/-. 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.

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 office of the Applicant Company who are in default, on payment of ₹5,000/- (Rupees five thousand only) 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. 310/621A/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.

Dated: 27<sup>th</sup> January, 2017

Sd/-

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