

NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

C.P No. 107/(MAH)/2012  
CA No.

CORAM: Present: SHRI B.S.V. PRAKASH KUMAR  
MEMBER (J)


SHRI V. NALLASENAPATHY  
MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 06.03.2017

NAME OF THE PARTIES: M/s. SHCIL Services Limited

SECTION OF THE COMPANIES ACT: 621A of the Companies Act 1956

S. No. NAME DESIGNATION SIGNATURE

S. No.	NAME	DESIGNATION	SIGNATURE
1.	M. S. BHARDWAJ	Adv for Applicant	

**ORDER**

**C.A. NO. 107/621-A/441/NCLT/MB/MAH/2012**

1. The Applicants filed this Compounding Application u/s 621A of the Companies Act, 1956 for compounding offences of non-compliance of Section 193(1), 193(1)(a) and 193(2) of the Act on the ground that they have not committed the offences wilfully.

2. When the Applicant filed this Compounding Application, Serious Fraud Investigation filed objections stating that these violations could not be compounded for the Ministry of Corporation Affairs sanctioned permission to initiate prosecution in this matter. Accordingly, Company Case No. 761/SS/2010 is filed against the

Applicant. SFIO further submits that these offences are not compoundable as the same is coupled with non-compoundable offences covered under Section 468, 471 r/w 463, 464, 477 & 120B of IPC. In pursuant thereof, a Criminal Case No. 113/2011 has been filed by SFIO. The SFIO further submits that these Applicants filed a Revision over the charge made against them under the aforesaid IPC Section, the Appellate Court dismissed the Revision filed by the Applicants whereby, it has to be construed that these Applicants failed to get discharge over the charges made against them. Since the offences committed under the Company Sections being attracted to IPC Sections, criminal case has been filed on the acts committed in violation of Companies Act. In view of the said reasoning, SFIO has stated that even though two different cases are registered and pending before two different Courts on the same factual transaction, this case for compounding filed under sections of Company Act cannot be compounded separately.

3. On hearing the submissions of both the sides, it is evident that the prosecuting agency filed separate case to prosecute the Applicants for the offences covered under Companies Act, 1956, in respect of the offences under IPC, SFIO filed separate case before another Magistrate Court, till date, those two criminal cases have not yet been clubbed whereby SFIO cannot take a stand that the offences for which separate prosecution sought being emerged out of the same transaction, the offences under Companies Act cannot be compounded.

4. This argument has no merit for two reasons – (1) the prosecuting agency itself sought for separate trials before separate Courts, (2) these applicants have not sought for discharge them from the charges levied against them under Companies Act, they are only seeking for compounding the offences admitting their guilt thereby admitting guilt cannot be equated either to discharge or acquittal. Therefore, even if these offences are compounded, the prosecuting agency can still proceed with the cases on the footing that it has not been decided whether any offence has been made by the Applicants or not. Indeed, it is compounding offences on admitting the guilt of the Applicants in respect to the violations falling within Companies Act. Moreover, Section 621A Companies Act categorically mentions that the compounding under Section 621A is independent of the provisions of section 320 of Criminal Procedure Code thereby compounding the violations falling u/s 193(1), 193(1)(a) and 193(2) of the Companies Act, will not attract any of the provisions of Cr. P. C thereby this Bench hereby compounded these offences against the Applicants.

4. In view of the above compounding, the Applicants are levied with compounding fee of 2,500 each u/s 193(1), 193(1)(a) and 193(2) of the Companies Act.

Sd/-

**B.S.V. PRAKASH KUMAR**  
Member (Judicial)

Sd/-

**V. NALLASENAPATHY**  
Member (Technical)