

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

COMPOUNDING APPLICATION NO. 53A/621A/441/NCLT/MB/2016

CORAM:

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

In the matter of Section 621A of the Companies Act, 1956 corresponding to Section 441 of the Companies Act, 2013 for violation of Section 166 of the Companies Act, 1956

In the matter of **M/s. The Western India Race Horse Owners Association Ltd.**, having its Registered Office at C/o. RWITC Limited, Mahalaxmi Race Course, Mahalaxmi, Mumbai 400 034, Maharashtra, India.

**PRESENT FOR APPLICANT:**

Ms. Dipika Biyani, Practising Company Secretary for the Applicant.

**Date of Hearing:** 27<sup>th</sup> January, 2017.

**ORDER**

**Reserved on: 27.01.2017**  
**Pronounced on: 30.01.2017**

**Applicants in Default:**

(1) M/s. The Western India Race Horse Owners Association Ltd., (Company), (2) Mr. Pervez Tehmuras Andhyarujina (Director), (3) Mr. Sudhir Mohanlal Ruia (Director) and (4) Mr. Mahesh Nanji Thakkar (Director).

**Section Violated:**

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

1. This Compounding Application has been filed before the Regional Director, Western Region, Mumbai, which was forwarded to NCLT Mumbai Bench by Registrar of Companies, Maharashtra,

Mumbai, through a forwarding letter bearing No. ROC/STA/621-A/001784/173 along with RoC report on 31<sup>st</sup> March, 2016. The Ld. Registrar of Companies intimated that the Applicant has committed a default of not holding Annual General Meeting within the prescribed time i.e. 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 corresponding to Section 96 of the Companies Act, 2013; hence punishable for the said default u/s 168 of the Companies Act, 1956. The Ld. RoC has also reported that later on the Annual General Meeting was held on 11<sup>th</sup> May, 2015 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 corresponding to Section 96 of the Companies Act, 2013, 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 11<sup>th</sup> May, 2015 without obtaining extension from the Registrar of Companies, Mumbai due to the reason mentioned para no. 7 herein below....

5. .... 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 non-availability of competent staff in accounts department and also continuous travelling of committee members. 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 11.05.2015.

6. That the violation mentioned in para 3 was unintentional and without any wilful or *mala fide* intention.

7. 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 28<sup>th</sup> January 2015, the Annual General Meeting was held on 11<sup>th</sup> May, 2015 in which Balance Sheet was approved by the Members of the Company and same was filed with the Registrar of Companies, Mumbai form 23AC & ACA filed on 15<sup>th</sup> May, 2015 & from 21A filed on 24<sup>th</sup> May, 2015 & Challans of the same is enclosed as Annexure No.3.

8. 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 to 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 corresponding to Section 96 of the Companies Act, 2013. The Registrar of Companies, Maharashtra, Mumbai forwarded the Compounding Application vide his letter No. ROC/STA/621A/001784/173 dated 31<sup>st</sup> March, 2016 and the same has been treated as Company Application No. 53A/621A/441/NCLT/MB/2016.

4. From the side of the Applicant, Ld. Practising Company Secretary Ms. Dipika Biyani 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*ly. She has also explained that the default was committed due to non-finalization of accounts due to non-availability of competent staff in accounts department as also continuous travelling of committee members. 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 Practising Company Secretary for 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 corresponding to Section 96 of the Companies Act, 2013 merits consideration.

6. Under the old provisions of the Act, as applicable when this Compounding Application was filed in the year 2016, the relevant provision was Section 168 of the Companies Act, 1956, which is reproduced below:

**"168 for violation 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 11<sup>th</sup> May, 2015, although admittedly, which was otherwise required to be held on or before 30<sup>th</sup> September, 2014 for the accounting period ended on 31<sup>st</sup> March, 2014. The facts of the case have further revealed that the

Applicant has filed G.A.R.7 dated 15<sup>th</sup> May, 2015 intimating the submission of Form 23AC after making a payment of ₹200/- and additional fees of ₹2,400/-. The Applicant has also submitted Form 21A for the said Financial Year through G.A.R.7 dated 21<sup>st</sup> May, 2015 by making a payment of normal fee of ₹200/- and additional fee of ₹2,000/-. 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 of the Companies Act, 1956 corresponding to Section 96 of the Companies Act, 2013, as stated and explained in the above paragraphs, is compounded against the Applicant Company and its three Directors on payment of ₹5,000/- by the Applicant Company, ₹5,000/- by Mr. Pervez Tehmuras Andhyarujina (Director), ₹5,000/- by Mr. Sudhir Mohanlal Ruia (Director), and ₹5,000/- by Mr. Mahesh Nanji Thakkar (Director). 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. 53A/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: 30<sup>th</sup> January, 2017

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