

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No.: 343/441/NCLT/MB/MAH/2017

Under section 441 of the Companies Act, 2013

In the matter of

M/s. Travel Food Services Kolkata Private Limited, 1-B, Rashid Mansion, Ground Floor, Dr. Annie Besant Road, Worli, Mumbai – 400018.

.... Applicant Company

Heard on : 29.11.2017

Order delivered on: 10.01.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Ms. Trupal Trivedi, Practicing Company Secretary i/b. Pradeep Purwar & Associates –
Authorised Representative for the Applicants.

Per: Bhaskara Pantula Mohan, Member (J)

ORDER

Defaulters Herein:

- 1) M/s. Travel Food Services Kolkata Private Limited.
- 2) Virnath Nagnath Kudmule – Director.
- 3) Vikas Maruti Shinde – Director.

Section Violated:

S. 96 of the Companies Act, 2013.

Punishment Provided Under:

S. 99 of the Companies Act, 2013.

1. This Compounding Application was filed before the Registrar of Companies Maharashtra, Mumbai on 24.08.2016 and the same has been forwarded along with the RoC Report to NCLT, Mumbai Bench on 20.01.2017. The Ld. Registrar of Companies intimated that the Applicant Company has filed the aforementioned Compounding Application suo moto for not holding the Annual General Meeting (hereinafter AGM) of the Company for the Financial Year commencing from 01.04.2014 to 31.03.2015



within stipulated time as prescribed in the Section 96 of the Companies Act, 2013 i.e. on or before 30.09.2015.

2. Pursuant to Section 96 of the Companies Act, 2013 a Company is required to hold an AGM once in a year in addition to any other meeting. And there should not be more than 15 months' gap between to AGMs. Hence, the Applicant Company committed the default under the provisions of Section 96 of the Companies Act, 2013 and the same is punishable u/S. 99 of the Companies Act, 2013.
3. The Ld. RoC has also reported in its report dated 17.01.2017 bearing No. ROCP/STA/621A/JTA(AK)/249957/07 that the Applicant Company has made the default good by holding the AGM for the Financial Year 2014-15 on 31.05.2016 which was actually to be held on or before 30.09.2015. However, the applicants claimed that the Compounding Application is filed, so as to put the matter to rest.

Submissions from the Applicants:

4. The Learned Representative for the Applicants had submitted that, the contravention of S. 96 had occurred because one of the shareholder of the Company having 49% shareholding did not give consent to hold the AGM and because of the same the AGM was delayed.
5. It is further submitted that, due to unavoidable circumstances the Applicants/defaulters herein had violated the provisions of S. 96 (1) of the Companies Act, 2013. Although, the Applicants/defaulters herein were willing to comply with those provisions *bona fide*. It is also stated that the aforesaid violation was unintentional and without any wilful or *mala fide intention*. Further it is also submitted that, the default has been made good by conducting the AGM for the Financial Year 2014-2015 on 31.05.2016. Copy of the Notice calling the AGM is attached to the application. Moreover, the Report of the RoC also affirms the same.

Findings:

6. Accordingly, by going through the above submissions this Bench came to conclusion that, there happened to be violation of the provision under Section 96 (1) of the Companies Act, 2013. And the said offence is punishable under Section 99 of the Companies Act, 2013. These relevant sections are as follows:

“Section 96 (1) : Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not

M. Rahman:

more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:”

“Section 99 : If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.”

7. This Bench has gone through the Application and the Report submitted by the Registrar of Companies, Maharashtra, Mumbai and also the submissions made by the Ld. Representative for the Applicants/defaulters herein at the time of hearing and noted that Application made by the Applicant/defaulters herein for compounding of offence committed under Section 96 (1) which is punishable under Section 99 of the Companies Act, 2013, merits consideration; especially when the default had not continued rather made good on 31.05.2016 by holding an AGM and approving the new Statutory Auditor.
8. On examination of the circumstances as discussed above, a Compounding Fee of ₹ 5,000/- by the each applicant/defaulters herein, (i.e. ₹ 15,000/- in total) shall be sufficient as a deterrent for not repeating the impugned default in future. The imposed remittance shall be paid by way of Demand Draft drawn in favour of “Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai”.
9. This Compounding Application bearing CP No. 343/441/NCLT/MB/MAH/2017 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 give effect to this order.
10. Ordered accordingly. To be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

16.01.2018
~~22.12.2017~~

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Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)