

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**

7<sup>th</sup> Floor, Block-3,  
C.G.O Complex Lodhi Road,  
New Delhi-110003  
Dated: 24.11.2016

To


The Regional Director  
Northern Region,  
Paryavaran Bhawan, C.G.O.Complex,  
New Delhi-110003

**Subject: In the matter of M/s. Pernod Ricard India Pvt. Ltd. under section 621A of the Companies Act, 1956.**

Sir,

I am directed to enclose a certified copy of the order dated 23.11.2016 passed by Hon'ble NCLT in CP No.16/113/2016, wherein the Hon'ble Board has directed the abovementioned Regional Director to be present on the next date of hearing i.e., 28.11.2016. You are, therefore, requested to be present before the NCLT on 28.11.2016.

Your's faithfully

  
(Prem Chand)  
Assistant Director  
24.11.2016

**Encl: As above**

✓  
Copy to: The Registrar of Companies,  
NCT, Delhi & Haryana  
4<sup>th</sup> Floor, IFCI Tower,  
61 Nehru Place  
New Delhi- 110019

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**  
**NEW DELHI**

**C. P. NO.**  
**CA. NO. 16/113/2016**

**PRESENT: SMT. INA MALHOTRA**  
**Hon'ble Member (J)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NEW DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 23.11.2016**

**NAME OF THE COMPANY:** M/s. Pernod Recard India Pvt. Ltd.

**SECTION OF THE COMPANIES ACT:** 621A

<b>S.NO.</b>	<b>NAME</b>	<b>DESIGNATION</b>	<b>REPRESENTATION</b>	<b>SIGNATURE</b>
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**ORDER**

Dr. Asfar Ali, Assistant Director in the office of the RoC is present in Court and has apprised this Bench that they are yet to receive directions from the Ministry of Corporate Affairs through the office of the Regional Director in respect of further prosecuting the petitioners. The petitioners are being prosecuted for a violation of Section 211(3A) of the Companies Act 1956 r/w AS 29 for not making any provision for the interest component on the disputed customs duty prior to 13<sup>th</sup> July, 2006 in their financial statements. They have prayed for compounding, though in the light of the Hon'ble Supreme Court's judgment there is no liability to pay interest retrospectively or make provisions for the same.

2. The short point involved is that when as per the law laid down by the Apex Court no liability arises, why should the petitioner be prosecuted or go through the rigmarole of facing a criminal trial. Vide order dated 30.09.2016, the Office of the Registrar of Companies was directed to take suitable steps i.e either withdraw the prosecution pending in the Criminal Court or inform this Bench as to why such a step

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was not being taken. The office of the Registrar of Companies has passed on the buck to the office of the Regional Director which has not taken any decision till date and are still deliberating on the issue.

3. Dr. Asfar Ali has filed an e-mail received from the office of the Regional Director whereby they have questioned the relevance of the Hon'ble Supreme Court's order in the light of the facts of the instant case. Enough time was granted to them to study this aspect. Their laid back attitude and direction to seek another date from NCLT is a matter of concern. Once the matter is for judicial consideration, expeditious decisions is required for a quick disposal. The lethargy to assist the Court by taking an expeditious decision has not only wasted the time of this Bench, but also of the prosecuting Criminal Court. The Government should be sensitive to the trauma faced by litigants in unnecessarily being prosecuted or appearing in Court to defend themselves. Perhaps that is why the petitioner and many others find that the easy way out is to plead guilty, pay the fine even when no offence may be made out. This Bench is mindful of the fact a direction given for withdrawal of prosecution would suffice (as in the matter of *A. Sivasailam v. RoC (1995) 83 Com Cases 151*) but for the fact that culture of unnecessarily prosecuting people should be viewed seriously by bureaucrats or at least remedial measures be taken expeditiously once they have been put to notice. It is time that their attitude that the Courts shall take appropriate decision on actions perpetuated by them comes to a halt and some amount of accountability and responsibility is assumed by them.

4. As no satisfactory reply has been received, other than passing on the buck from one desk to another, it would be expedient for the Regional Director to be present in Court to explain reasons for the inordinate delay in taking a decision.

5. To come up on 28.11.2016.

Sd-

(Ina Malhotra)

Member Judicial