

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AT NEW DELHI**

**Date of Pronouncement: 06<sup>th</sup> February, 2017**

**Company Petition Nos. 16/152/2015, 16/153/2015, 16/154/2015,  
16/155/2015 and 16/157/2015**

**In the matter of**  
The Companies Act, 1956 under sections 621A

AND

**In the matter of M/s. Reebok India Company**

AND

**In the matter of Mr. Subhinder Singh Prem**

**...Applicant**

**CORAM:**  
**MS. INA MALHOTRA, MEMBER (JUDICIAL)**

**For Petitioner(s):** Mr. Rakesh Kumar and Mr. Yuvraj Khanna, Advocates  
for Applicant Company.

**For Respondent(s):** Mr. Arunendra Singh, Advocate, Mr. A.K. Shrivastava  
and Mr. S.S. Sahini, Assistant Director for SFIO.

**ORDER**

Vide this common order I propose to dispose off five Company petitions filed by the petitioners u/s 621A of the Companies Act, 1956 praying for compounding of offences arising out of various defaults and non-compliance of statutory requirements.

2. The company M/s. Reebok India Company (hereinafter referred to RIC), was incorporated in India in March 1995 as a subsidiary of a foreign holding. Accordingly it is also treated as a Public Ltd. Company. Its

*M/s. Reebok India Company Ltd.*

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authorised share capital was 23 crores divided into 23 lacs shares of Rs.100/- each. The main objects of the company was to design, style, manufacture, produce, merchandise, buy, sell, export & import all types of footwear, parts and components thereof, and accessories thereto. The applicant herein was appointed as the Managing Director on 01.10.2003. He resigned from the company on 28.03.2012. During his tenure, in August 2009, the company received a notice from RoC in respect of various non-compliance and violations u/s 58A, 209(1) & (6) r/w 209 (5) AS-9 r/w 211 (3A) (3B) & 3(C), 211(1) & 2 r/w 211(8) 217 (2AA) r/w 217(6), 227(2) r/w 233, 166(1) & 210 of the Companies Act 1956 of the provisions of Companies Act. These violations pertain to Sections 295, 297, 255 & 256, 193(2), 217(4) & 211(1).

3. The office of the RoC initiated prosecution against the applicant and the company and several other persons for various defaults which are pending adjudication in the Courts at Tis Hazari, Delhi. The offences were also referred to the SFIO which in turn has launched Criminal Prosecution for serious offences involving Sections 477A, 464, 471, 405 r/w 406, 418, 107, 409, 120A r/w 120B under the Indian Penal Code (r/w offences under the Companies Act). It is submitted that on the basis of documentary and oral evidences, a compliant case no. 38J/2014 against Subhinder Singh Prem and 34 others was filed in the Gurgaon Courts. The charge sheet has been filed under Sections 420, 477A, 406 IPC read with the relevant provisions of the Companies Act. The investigation carried out by the office

of SFIO established that the sale of RIC products were grossly inflated by the applicant in connivance with other executives of the RIC by raising fictitious invoices and booking fictitious sales and manipulating other documents. These activities were done with criminal intention and in conspiracy with selected vendors and channel partners of RIC. The investigations revealed that there was deliberate falsification of books of accounts and financial statements of the company. Bills were also discounted on fictitious basis. Further, in violation of the provisions of Section 58A of the Companies Act, 1956 deposits were also accepted under the guise of a franchise referral programme.

4. Though the RoC has sent a report quantifying the fees attracted for compounding and also bringing to the notice of this Bench the factum of pending Criminal Cases, the SFIO has filed a detailed report vehemently resisting any indulgence being granted to the applicant.

5. The discretion to compound an offence under the Companies Act is with the Tribunal and should primarily be exercised in cases of inadvertent technical aberrations. The technicalities under the Companies Act are vast, complicated and time bound and often escape the notice of even professionals handling filing of the returns and adhering to every rule and regulation in the book. The provisions for compounding primarily exist to impose fines for such inadvertent defaults with a gateway to escape the trauma of a protracted trial for a bonafide mistake. The alternate to payment

of fines is imprisonment. The legislature has provided that the resort to imprisonment should not be done unless the offence is deliberate and malafide. The discretion to compound the offence has therefore to be considered on the merits of each case, whether such a mistake was inadvertent & bonafide or deliberate.

6. The investigations in this case have clearly revealed that non adherence to statutory compliances was deliberate and malafide as there was vast scale fabrication of documents giving rise to fraud, in conspiracy with a larger group.

7. There is merit in the arguments advanced by the Ld. Counsel for the SFIO that non adherence to the statutory requirements under the Companies Act were intentional and deliberate. In certain cases of prosecution for an offence under the Companies Act, the defaults are sometimes rectified and compounding such defaults would have no effect on any criminal prosecution. However, in the present cases, the defaults are incurable and cannot be rectified. Compounding of these offences would demolish and prejudice the prosecution under the Penal provisions also. Given the circumstances, I find that the present prayers for compounding in all these petitions cannot be permitted, as these were not due to any bonafide omission or a delayed rectification of a statutory requirement. The offences herein under the Companies Act and those under the Penal Code are intrinsically linked and incurable. Compounding of the offences under



the Companies Act would hamper the Criminal Prosecutions and no accused should be allowed to get away with deliberate large scale bungling and fabrication of documents carried out with criminal intention.

8. Under such circumstances, the petitioner/applicant is not entitled to compounding of the offences under the Companies Act.

9. The prayers made for compounding of the various offences inter alia under sections 255 & 256, 297, 255, 217(4), 2(11) etc in CP Nos. 16/152/2015, 16/153/2015, 16/154/2015, 16/155/2015, 16/157/2015 are all rejected.

10. Consequently all the five CPs stand dismissed. Copy of the order be placed in all five petitions and consigned to the Record Room.

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**(Ina Malhotra)**  
**Member Judicial**