

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO. 16/10/2017
CA. NO.

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 17.04.2017**

NAME OF THE COMPANY: M/s. Sapphire Industrial Infrastructures Pvt Ltd .

SECTION OF THE COMPANIES ACT: 441

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
--------------	-------------	--------------------	-----------------------	------------------

Present: Ms. Varsha Banerjee and Mr. Kunal Godhwani,
Advocates for the petitioner.

ORDER

Vide the present application, the petitioners seek review of order dated 13.02.2017 vide which their application under section 441 of the Companies Act 2013 for compounding the default under section 177 was not entertained. The said application had been filed on behalf of the company as well as by its officers who were in charge and responsible of its affairs during the relevant period.

This Bench had dismissed the petition as not been maintainable before the Tribunal in terms of the provisions of Section 441 which enables the Bench to compound offence which are punishable with fine only. Since the offence u/s 177 is punishable u/s 178 with fine and/or

Contd/-.....

✓

imprisonment, this Bench was of the view that compounding could not be entertained. While dismissing the said petition, it was observed in the impugned order that the application had been filed in December 2016 after constitution of the NCLT for offences relating to the period after coming into effect of the Companies Act, 2013. It was the considered opinion of this Bench that the discretion to entertain the petition under the Companies Act, 1956 i.e u/s 621A was not applicable, given the fact that the petition was filed after constitution of the NCLT and for the default made after coming into effect of the Companies Act, 2013.

The arguments advanced by the Ld. Counsel for the applicant is two fold. Firstly, as per the provisions of Section 178 of the Companies Act, only a fine is required to be imposed on the Company. This argument is of little help as the petition was a composite one on behalf of the Directors and the company and not for the company alone.

Secondly it is submitted that since the offence related to the period prior to the date of notification of the NCLT, the matter may be treated as one under section 621A of the old Act and not under section 441 of the 2013 Act.

My reasoning for not entertaining the said petition was explicit and does not invite reconsideration under the Review jurisdiction. An error of judgment, if any, can be addressed in Appellate proceedings but cannot be entertained in a review for substituting a decision consciously made.



Facts of the case do not call for exercise of the jurisdiction to review the impugned order or to recall it.

Application disposed off in terms of the above.

Sd/-

(Ina Malhotra)
Member Judicial