NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO.
CA. NO. 16/42/2017

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 17.03.2017

NAME OF THE COMPANY: Sh. Avtar Singh

SECTION OF THE COMPANIES ACT: 441

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE

Present: Mr. P. Nagesh and Ms. Poonam, Advocates

ORDER

The petitioner Mr. Avtar Singh, was a Director in more than 20 Companies. This being in gross violation of Section 165 of the Companies Act 2013 which limits any individual of being a Director in more than 20 companies, a Show Cause Notice was issued to him by the office of the RoC on 16.02.2016. It was only then that the applicant took steps to resign from the directorship of the companies so as to adhere to the provision of Section 165. Nonetheless, prosecution has been initiated. The period of default is stated to be from 01.04.2015 to 15.06.2016 i.e for 441 days.

Contd/-.....

2. With a view not to face a protracted criminal prosecution and penal consequences, the applicant who admits this default on account of ignorance, has filed the present petition under section 441 of the Act.

3. The offence is punishable u/s 165(6) of the Companies Act, 2013 which provides for an imposition of a fine which shall not be less than Rs.5,000/- but which may extend to Rs.25,000/- for every day after the first during which the contravention continues. Accordingly the office of the RoC has recommended the imposition of a fine of **Rs.1,10,25,000/-** on the petitioner.

4. The calculation recommended by the RoC is by way of imposition of penalty on prosecution holding the defaulter guilty. Under such circumstance, the sentencing provided under the act cannot be below the minimum. However, the principle of imposing minimum fine on compounding matters is not mandatory, as compounding of an offence can be accepted by a Court even by admonishing or issuance of a warning. The petitioner submits that the said omission was inadvertent and not on account of any malafide intentions. Though ignorance of law is no excuse, one cannot shy away from the fact that the technicalities of law are complicated and adherence to several statutory provisions very complex. The said restriction of a limit to being a Director of Companies to twenty has been incorporated in the new law. It would be prudent to accept that no one would deliberately violate this provision so as to attract such a draconian fine, which in the present circumstances may extend upto Rs. One crore ten lakhs twenty five thousand only.

5. Since the applicant has prayed for compounding, the fees imposed for the inadvertent default should be of a just and equitable parameter.

6. Under the circumstances, notwithstanding what would be the minimum quantum of fine imposed by the prosecuting court at the time of sentencing, I deem it just, fit and proper to direct compounding of the default on payment of a fee of Rs.12 Lakhs for perpetuation of the offence for about 441 days.

Name of the Applicant	Penalty
Mr. Avtar Singh	Rs.12 Lakhs

7. Fine imposed on the applicant shall be paid out of his personal account.

8. Subject to the remittance of the aforesaid fine within two weeks, the offence shall stand compounded. Copy of the order be sent to the office of the RoC. Compliance Report be placed on record.

9. Petition stands disposed off in terms of the above and consigned to Record Room.

Sd/-

(Ina Malhotra)
Member Judicial