

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C.P.No.
CA.No. 16/53/16

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 13.12.2016**

NAME OF THE COMPANY: M/s. Shaklee India Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 621A

<u>S.NO.</u>	<u>NAME</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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Present: Mr. Pawan Sharma, Advocate.

ORDER

This petition has been filed u/s 621A of the Companies Act, 1956 praying for compounding of the offence u/s 166 of the Companies Act for holding the AGM belatedly.

2. As per the provision of Section 166 of the Companies Act, 1956:

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

Contd/-.....

Provided that a company may hold its first annual general meeting within a period of not more than eighteen months from the date of its incorporation; and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year:

Provided further that the Registrar may, for any special reason, extend the time within which any annual general meeting (not being the first annual general meeting) shall be held, by a period not exceeding three months.]

3. The petitioner's offence relates to the financial year ending 31.03.2014. The petitioner company which is a subsidiary of a US based Company, was incorporated on 11.02.2013 and was required to hold its first AGM by 10th August 2014. Since the US based Directors could hold the Board of Directors' meeting only on 02.09.2011 to approve the financial Statements, the AGM of the Indian Subsidiary could be held only on 30.10.2014, leading to a delay of 80 days.

4. As per the report of the RoC, the aforesaid violation of section 166 attracts a penalty under section 168 of the Companies Act, 1956, whereby the Company and every officer who is in default is punishable with a fine which may extend upto Rs.50,000/-, with a further fine of Rs.2500/- per day for every day during which the default continues. The RoC has thus recommended the maximum fine in terms of Section 168 of the Companies Act, 1956 which tantamounts to Rs.2,50,000/- on the Company and each of the defaulting officers.

5. It is not disputed by the office of the RoC that this was a first time offence by the applicants. The default has been made good, albeit with a delay of 80 days. The objection for the compounding of this offence by the office of the RoC is that the petitioners have not prayed for condonation of delay. Given the facts of the case, I am

inclined to accept the arguments advanced by the Ld. Counsel for the petitioner, that the requirement for filing an application for condonation of delay does not exist. The petitioner applicants accept their default and have therefore prayed for compounding of the offence. As a matter of fact if the delay in holding the AGM itself is condoned, the question of prosecution or for compounding the offence does not arise. Vide this application, which is duly supported by affidavits of the Directors, it is submitted that non adherence to the time limits for statutory compliances was neither malafide nor deliberate, but for reasons beyond their control. The applicants therefore pray that the offence of holding the AGM after 80 days beyond the statutory time limit be compounded.

6. Given the facts of the case that there is no legal impediment in compounding of this offence, the petitioner/applicants' prayer can be granted. Considering that the petitioners had suo moto filed the present application bringing their default to the notice of the authorities, this Bench deems it sufficient to impose a fine of Rs.20,000/- on each of the defaulting parties. Accordingly, fine is imposed as under:

For	Amount (Rs.)
M/s. Shaklee India Private Limited	20,000/-
Mr. Todd Ozer Tucker	20,000/-
Mr. Michael Brian Batesole	20,000/-

7. Subject to the remittance of the aforesaid fine within two weeks, the offence shall stand compounded. Upon compliance, the Bench Officer shall communicate the same to the office of the RoC for taking appropriate steps for withdrawal of the prosecution against the petitioners.

8. Petition disposed off in terms of the above.

SD/-
Tina Malhotra
Member Judicial