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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

T.P. No. 178/621A/NCLT/AHM/2016(New)
C.A. No. 214/621A/CLB/MB/2015(Old)

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU**
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 09.02.2017

Name of the Company: Shree Shrine Engineering & Marketing Co. Ltd.

Section of the Companies Act: Section 210 of the Companies Act, 1956

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER

None present for Petitioner.

Order pronounced in open court. Vide separate order attached.

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 9th day of February, 2017.

NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD

T.P. No. 178/621A/NCLT/AHM/2016 (New)

C.A. No. 214/621A/CLB/MB/2015 (Old)

Shree Shrine Engineering & Marketing Co. Pvt. Ltd.,
Shed No. L-5203/4, GIDC Industrial Estate,
Ankleshwar, District-Bharuch, Gujarat-393002

OR

Shri Ashok Kumar
Director of Shree Shrine Engineering & Marketing
Company Pvt. Ltd.,
Din No. 02001260 : Petitioner.

Versus

Registrar of Companies,
Gujarat. : Respondent.

Appearance:

Mr. Amitabh, Legal Representative for the Petitioner Company.

FINAL ORDER

Pronounced on 9th February, 2017

1. On 8th July, 2015, a petition was filed before the Regional Director, North-Western Region, Ahmedabad under Section 621-A of The Companies Act, 1956 seeking composition of offence under Section 210 of The Companies Act, 1956.

2. The aforesaid petition is presented by Shree Shrine Engineering & Marketing Company Pvt. Ltd., or its Director, Mr. Ashok Kumar. The Online Application also shows that the compounding petition is filed by Shree Shrine Engineering &

Marketing Company Pvt. Ltd., (hereinafter be referred to as "the Petitioner Company") and its Director, Mr. Ashok Kumar.

3. The Registrar of Companies forwarded the above said petition to the Company Law Board, Mumbai, along with his Report dated 6th July, 2015. In the said Report, it is stated by the Registrar of Companies that provisions of Section 129(2) of The Companies Act, 2013, have been enforced with effect from 1.4.2014. It is also stated in the Report of the Registrar of Companies, that the period of the default is from 30th September, 2014 to 29th December, 2014. According to the Report of the Registrar of Companies, in view of Section 2(60) and 129(2) and (7) of the Companies Act, it is only the Directors of the Company that are liable for prosecution and therefore they can only file an application for compounding but not by the Company. According to the Report of the Registrar of Companies, there are two Directors in the Petitioner Company.

4. A perusal of Section 2(60) read with Section 129(2) and (7) of the Companies Act, 2013, makes it clear that only officers of the Company, that are enumerated in Section 2(60), are liable for prosecution in case of violation of Section 129(2) of the Act. In the case on hand, the petition for compounding is filed by the Petitioner Company or its Director, Shri Ashok Kumar. It appears that the 2nd Director of the Petitioner Company has not put in any application for compounding. Therefore, this petition is being taken as a Petition filed by Shri Ashok Kumar, one of the Directors of the Petitioner Company.

5. It is stated in the Petition, due to the disputes between the Directors of the Petitioner Company, the Company could not finalize its Balance Sheet for the year 2013-2014 in time and failed to obtain approval from the shareholders in the Annual General Meeting in time, but the Company had held its Annual General Meeting on 29th December, 2014.

6. The period of default, in this case, is from 30th September, 2014 to 29th December, 2014.

7. Section 129 came into force with effect from 1.4.2014. No doubt, Sub-section (7) of Section 129 provides imprisonment for a term which may extend to one year or with fine which shall not be less than Fifty Thousand rupees but which may extend to Five Lakh rupees or with both.

8. Section 441 of The Companies Act, 2013 is a relevant provision that governs the procedure regarding compounding of certain offences. It says, that the Tribunal can compound any offence punishable with fine only either before or after the initiation of prosecution. Section 441 of the Companies Act came into force with effect from 1.6.2016.

9. The period of violation is before 1st June, 2016. The petition for compounding was filed on 8th July, 2015, i.e., before 1.6.2016. This petition was forwarded to the Company Law Board under Section 621-A of the Act. Therefore, on the relevant date, the compounding procedure that has to be followed is the procedure laid down under Section 621-A of the Act. Moreover, Ministry of Corporate Affairs, by a Notification dated 1st June, 2016 SO 1936-E, stated that all matters which are transferred from Company Law Board to National Company Law Tribunal, shall be disposed of in accordance with the provisions of the Companies Act, 2013 or the Companies Act, 1956. For the above said reasons, this Tribunal has to follow the procedure laid down under Section 621-A of the Companies Act, 1956, in disposing of this petition.

10. The violation, in this case, is under Section 129 of the Companies Act, 2013 which relate to approval of Balance Sheet by the shareholders in the Annual General Meeting. The reason for the delay of 90 days in getting the approval of the Balance Sheet from the shareholders in the Annual General Meeting, according to the

Petitioner Company, is dispute amongst the Directors and the Audited Balance Sheet was received from the Auditors only on 12.11.2014.

11. It is stated by the learned Legal Representative appearing for the Petitioner Company that the Company is not doing any business now and it is in losses. Considering all the above said aspects, this Tribunal is of the view that, the violation of Section 129(2) of the Companies Act, committed by Mr. Ashok Kumar, Director of the Company, can be compounded on payment of Rs. 1,00,000/- (Rupees One Lakh).

12. The Petitioner-Company cannot be prosecuted for violation of Section 129. Therefore, the question of compounding the offence by the Company does not arise. The other Directors of the Company, if any, have not come forward for compounding.

13. Hence, contravention of Section 129(2) of the Companies Act, 2013, committed by Mr. Ashok Kumar, Director of the Petitioner Company, is compounded by this Tribunal on payment of Rs. 1,00,000 (Rs. One Lakh) by way of Demand Draft drawn on a Nationalised Bank in favour of Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai, within three weeks from the date of this order and the said Demand Draft shall be filed before the Registry of this Tribunal on or before 1st March, 2017.

14. In case, Mr. Ashok Kumar, Director of the Petitioner Company, fails to pay the said amount, as ordered above, the Registrar of Companies, Gujarat, Ahmedabad shall take action including the prosecution as per applicable law under intimation to this Tribunal forthwith.

15. This order shall not preclude the Registrar of Companies to initiate prosecution against the other Directors of the Company,

i.e., other than Mr. Ashok Kumar, Director of the Petitioner Company.

16. The petition is disposed of accordingly. Send copy of this order to Mr. Ashok Kumar, Director of the Petitioner Company for compliance, and the Registrar of Companies, Gujarat, Ahmedabad for reporting compliance of the order by Mr. Ashok Kumar, Director of the Petitioner Company. List the matter on 2nd March, 2017.

9/2/17

BIKKI RAVEENDRA BABU

MEMBER JUDICIAL

Pronounced by me in open court on this the 9th day of February, 2017.

By RMR, PS.