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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

T.P. No. 179/621A/NCLT/AHM/2016(New)
C.A. No. 215/621A/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 96 of the Companies Act, 2013

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

ORDER

None present for Petitioner.

Order pronounced in open court. Vide separate order attached.

9/2/17
BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 9th day of February, 2017.

NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

T.P. No. 179/621A/NCLT/AHM/2016 (New)

C.A. No. 215/621A/CLB/MB/2015 (Old)

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

OR

2. Mr. Ashok Kumar
Director of Shree Shrine Engineering & Marketing
Company Private Limited
Din No. 02001260

3. Mrs. Smriti Srivastava
Director of Shree Shrine Engineering & Marketing
Company Private Limited
Din No. 02001290

4. Mr. Amit Kumar
Director of Shree Shrine Engineering & Marketing
Company Private Limited
Din No. 06615739 : Petitioners.

Appearance:

Mr. Amitabh, learned Legal Representative for Petitioner Company.

FINAL ORDER

Pronounced on this 9th day of February, 2017

1. On 8th July, 2015, an Application under Section 621-A of the Companies Act, 1956, seeking compounding of the offence under

Section 96 of the Companies Act, 2013 has been filed by Shree Shrine Engineering & Marketing Private Limited (hereinafter be referred to as "the said Company") or its three Directors.

2. The Registrar of Companies, by his Report dated 6th July, 2015, forwarded the said Application to this Tribunal. The Registrar of Companies in his Report has stated that the period of default is from 30th September, 2014 to 29th December, 2014 and the violation is about not holding Annual General Meeting for the year 2013-2014 on or before 30.9.2014. The Registrar of Companies, in his Report stated that the violation of Section 96 is punishable under Section 99.

3. It is stated in the Petition that due to disputes between the Directors of the Company and as the Balance Sheet was received from the Auditors on 12th November, 2014, the Annual General Meeting for the year 2013-2014 could not be held on 30-9-2014 and it was held on 29.12.2014.

4. The violation is in respect of not holding Annual General Meeting for the year 2013-2014 on or before 30th September, 2014. The said violation comes under Section 166 of the Companies Act, 1956, which is made punishable under Section 168 of the Companies Act. In the case on hand, the period of violation is from 30.9.2014 to 29.12.2014. Section 96 of the Companies Act, 2013, came into force with effect from 1.4.2014. Therefore, the violation in this case comes within the scope of Section 96 of the Companies Act, 2013. The violation of Section 96 of the Companies Act is made punishable under Section 99 of the Companies Act, 2013. But Section 99 of the Companies Act came into force with effect from 1.6.2016, i.e., after the period of default. The Petition, in this case, was filed on 8th July, 2015, i.e., before Section 99 of the Companies Act came into force. Therefore, the punishment, provided under Section 99 of the

Companies Act for the violation of Section 96 of the Companies Act, cannot be applied. No punishment can be applied retrospectively is the settled law. Therefore, now it has to be seen whether the punishment, as provided under Section 168 of the Companies Act, 1956 has to be applied or the punishment, as provided under Section 450 of the Companies Act, 2013, has to be applied. Since the violation is under Section 96 of the Companies Act and as Section 99 of the Companies Act has not come into force during the period of violation of Section 96 of the Companies Act, 2013, it can only be said that no punishment is provided for the violation of Section 96 of the Companies Act in the New Act till 1.6.2016, on which date Section 99 of the Companies Act was notified. Therefore, it is necessary to fall back upon Section 450 of the Companies Act for the purpose of considering the punishment provided for the violation of Section 96 of the Companies Act.

5. Moreover, coming to the compounding procedure to be adopted, the period of violation is prior to 1.6.2016.

6. Section 441 of the Companies Act, 2013 deals with procedure for compounding of certain offences. It came into force only on 1.6.2016. It cannot be applied to this case. Therefore, the procedure, as contemplated under Section 621 A of the Companies Act, has to be followed for the purpose of compounding the offence under Section 96 of the Companies Act, 2013.

7. 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 dispose of this petition by

following the procedure laid down under Section 621-A of the Companies Act, 1956.

8. The learned Legal Representative appearing for the said Company has stated that the Company is not doing any business and it is in losses.

9. Considering the facts and circumstances of the case, this Tribunal is of the view that the said Company as well as its three Directors shall pay a compounding fee of Rs. 10,000 (Ten Thousand) each and to pay fine of Rs. 1,000 (One Thousand) each for every day's default, for a total period of 89 days, i.e., from 30th September, 2014 to 29th December, 2014. The compounding fee, that has to be paid by the said Company and its three Directors, shall be as follows;

Rs. 10,000 X 4 (Petitioners)	:	Rs. 40,000
Rs.1000 X 4 X 89 Days	:	Rs. 3,56,000
Total	:	Rs. 3,96,000

10. Hence, following the procedure, as contemplated under Section 621-A of the Companies Act, the offence committed under Section 96 of the Companies Act, 2013, by the said Company, namely Shree Shrine Engineering & Marketing Co. Pvt. Ltd., and three Directors of the said Company, namely (1) Mr. Ashok Kumar, (Din No. 02001260) (2) Mrs. Smriti Srivastava (Din No. 02001290) and (3) Mr. Amit Kumar (Din No. 06615739), is compounded by this Tribunal on payment of Rs. 3,96,000/- (Rs. Three Lakh Ninety-Six Thousand) 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.

11. In case, the said Company or the above said three Directors of the Company, fail 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.

12. The petition is disposed of accordingly. Send copy of this order to Petitioners 1 to 4 for compliance, and the Registrar of Companies, Gujarat, Ahmedabad. For reporting compliance of the order by the Petitioners, list the matter on 2nd March, 2017.

09/2/17

BIKKI RAVEENDRA BABU

MEMBER JUDICIAL

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

By RMR, PS.