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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

TP No. 161/621A/NCLT/AHM/2016 (New)
CA No. 163/621A/CLB/MB/2013 (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: Sugandh Estate & Investments Pvt. Ltd.

Section of the Companies Act: Section 211 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.

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. 161/621A/NCLT/AHM/2016 (New)

C.A. No. 163/621A/CLB/MB/2013 (Old)

In the matter of:

1.M/s. Sugandh Estate & Investments Pvt.Ltd.,
Having its Registered Office at 804,
Abhijeet-I, Mithakhali Circle,
Ellisbridge, Ahmedabad-380006

2. Shri Parag P. Jhaveri, Director, and

3.Mr. Suresh R. Karia, Director. : Petitioners.

Appearance:

Shri Pankaj Modi, learned Advocate for the Petitioners.

FINAL ORDER

Pronounced on 9th day of February, 2017

1. M/s. Sugandh Estate and Investments Pvt. Ltd., and its two Directors, filed an Application under Section 621-A of the Companies Act, 1956 for compounding the offence under Section 211 read with Part-I of Schedule VI of the Companies Act, 1956. The period of default was during the financial year 2002-2003. The allegation is, the Company has created fake equity and books prepared by it at the end of the financial year 2002-03 and thereby the financial statement does not give a true and fair view of the state of affairs of the Company. According to the Petitioners, as the

amount as well as entities from whom money was to be received for shares and money to be paid for investment were same and that too on the same day instead of receiving and paying simultaneously both the transactions were completed without movement of funds. According to the Petitioners, it amounts to constructive receipt and constructive payment by the Company as well as the corresponding entities and there are acknowledgments to that effect. However, it is further stated in this Petition that the alleged defaults are technical in nature and they occurred due to the circumstances beyond the control of the Company and its Directors. The Petitioners pray for compounding of the violation of Section 211 of the Companies Act, 1956.

2. The Registrar of Companies, in his Report dated 17.7.2013 has stated that the period of default is during the Financial Year 2002-03 and the violation is under Section 211 read with Part-I of Schedule VI of the Act. The Registrar of Companies, in his Report, also stated that no similar offence under Section 211 read with Part-I of Schedule VI of the Act was compounded during the last three years by the applicants. The Registrar of Companies also stated that the Company is not included in the list of vanishing companies. The Registrar of Companies also stated the Company has also filed its all Balance Sheets and Annual Reports up to the Financial Year 2002-2003. The Registrar of Companies in his Report has stated regarding investigation by Serious Fraud Investigation Office as follows;

> *"It is submitted that in terms of the Ministry's letter no. 3/97/2008-CL II dated 20.08.2008, this office vide letter no. ROC/Guj/Compounding/SFIO/2011/2179 dated 17.02.2012 has sought comments of O/o SFIO, Mumbai on the captioned Compounding application. The SFIO Mumbai vide their letter no. SFIO/Mum/IPO/CLV/2012-13/28865 dated*

26.09.2012 has conveyed the decision of SFIO, New Delhi vide their letter no. SFIO/61/Sugandh/Inv/2008/4056 dated 24.09.2012 that the compounding petition filed by the applicant may be considered by the compounding authority on merits. The copies of the letter issued by SFIO, Mumbai and SFIO Delhi are enclosed for the kind perusal of the Hon'ble CLB.

The applicant have admitted the default and filed this compounding application for compounding of offence for violation of Sec. 211 r.w. Part I Schedule VI of the Act, which may be considered by the Hon'ble CLB on merit, as may be deemed fit and proper."

The Registrar of Companies also enclosed the letter dated 26.09.2012 addressed by Senior Assistant Director (Inv.) of Serious Fraud Investigation Office to the Registrar of Companies. The said letter reads as follows;

"Kindly refer to your office letter vide F. No. ROC/Guj/Compounding/SFIO/2011/1585 & 2179 dated 21.11.2011 and 17.02.2012 forwarding Compounding Applications filed by M/s. Amadhi Investments Ltd. And M/s. Sugandh Estates & Investments Pvt. Ltd. respectively.

I have been directed by the Head Office, SFIO vide their letter F. No. SFIO/61/Sugandh/Inv./2008/4056 dated 24.09.2012 to communicate that the compounding petitions filed by the aforementioned companies may be considered by the Compounding Authority on merits. Copy of the letter dated 24.09.2012, detailing the directions at Sr.(ii) and (iv) in respect of M/s. Amadhi Investments Ltd. And M/s. Sugandh Estates & Investments Ltd., is enclosed, which is self-explanatory."

3. The period of violation was during the financial year 2002-2003. The violation is in respect of Section 211 of the Companies Act,

1956. Petitioners filed the Petition on 4th February, 2001. Section 441 of the Companies Act, 2013 came into force only on 1.6.2016. This matter is transferred from the Company Law Board, Mumbai to the National Company Law Tribunal. Therefore, this Petition has to be disposed of by this Tribunal following the procedure laid down under Section 621-A of the Companies Act, 1956 for violation of Section 211 of the Companies Act, 1956.

4. 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.

5. There is no impediment in Sec.621-A of the Companies Act 1956 for deciding the Compounding Application in case investigation is initiated or has been initiated into the affairs of the Company. Moreover, in this case, as can be seen from the Report of the Registrar of Companies and the letter of the Serious Fraud Investigation Office referred to above, it is clear that they have stated that the Compounding Application may be considered by the Compounding Authority on merits.

6. Sub-section (7) of Section 211 of the Companies Act provide punishment for violation of Sec.211 of Companies Act 1956 It provides imprisonment for a term which may extend to six months or fine of 10,000 Rupees or with both. The learned Advocate appearing for the Petitioners contended that the Company is not making any profits and the violation relates to the year 2002-2003;

It is also submitted that the Company is regular in filing the financial statements, and requested to take lenient view be taken in awarding compounding fee.

7. Considering the fact, that the Petitioners having incorrectly shown issuance of shares without actual flow of funds, it goes to show that no lenient view can be taken in awarding the compounding fee. Hence, the Petitioners No. 1 to 3 are directed to pay compounding fee of Rs. 10,000/- (Ten Thousand) each. The total fine comes to Rs. 30,000/- (Rs. 10,000 x 3). The Petitioners No. 1 to 3 shall pay a sum of Rs. 10,000/- each within three weeks from the date of this order by way of Demand Draft drawn on a Nationalised Bank in favour of Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai, and the Demand Draft shall be deposited before the Registry of this Tribunal on or before 2nd March, 2017.

8. In case, either the Petitioner Company or any of its two Directors 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.

9. This petition is disposed of accordingly. Send copy of this order to the Petitioners and the Registrar of Companies, Gujarat, Ahmedabad. For reporting compliance of the order by the Petitioners, list the matter on 3rd 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