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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

TP No. 162/621A/NCLT/AHM/2016 (New)
CA No. 164/621A/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 147 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. 162/621A/NCLT/AHM/2016 (New)

C.A. No. 164/621A/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. Tushar H. Shah, 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 & Investments Pvt. Ltd., and its two Directors, filed Application under Section 621-A of the Companies Act, 1956 on 4th February, 2012 seeking compounding of violation of Section 147 of the Companies Act, 1956. The said Application had been forwarded to the Company Law Board, Mumbai along with Report of Registrar of Companies dated 5.7.2013. The Hon'ble Company Law Board, Mumbai Bench, registered the same as CA No.164 of 2013. Thereafter, the said petition was transferred to this Tribunal and it is numbered as 'TP No. 162 of 2016'.

2. First Petitioner is a 'Company' registered under the Companies Act having its Registered Office in Ahmedabad. Petitioners No. 2 and 3 are the Directors of the 1st Petitioner Company.

3. During the course of investigation by Serious Fraud Investigation Office, it was found that the Company does not paint or affix its name and address of its Registered Office or keep the same painted or affixed in the manner required by Clause (a) of Sub-section (1) of Section 147 of the Companies Act, 1956.

4. As per the Report of the Registrar of Companies, the period of default was from 3.8.2004 to 11.2.2010, i.e., 2017 days.

5. It is stated in the petition that the Registered Office of the 1st Petitioner Company is situated at 804, Abhijeet-I, Mithakhali Circle, Ellisbridge, Ahmedabad-38006. It is further stated that up to October 2015 the business of the Company was carried out from that office only. It is also stated that subsequent to the stoppage of business administrative affairs are carried out from the office at Mithakhali Circle, Ahmedabad. It is further stated that Inspector inspected the office of the Company on 11.02.2010. It is further stated that all the letters received from the Office of the Registrar of Companies also received on that address and replied. It is further stated that the contravention is only technical in nature and it was beyond the control of the Company and its Directors. It is further stated that in the Petition that there was no deliberate intention to violate Section 147 of the Companies Act. However, the Petitioners stated that in order to avoid litigation they are admitting for compounding.

6. The Registrar of Companies, in his Report dated 05.7.2013 stated 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 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. 147 of the Act, which may be considered by the Hon'ble CLB on merit, as may be deemed fit and proper."*

The letter dated 26th September, 2012, addressed by the Serious Fraud Investigation Office to the Registrar of Companies is also enclosed to the Report of the Registrar of Companies. It reads as follows;

> *"Kindly refer to your office letters vide F. No.ROC/Guj/Compounding/SFIO/2011/585 & 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."*

7. The violation in this case is under Clause (a) of sub-section (1) of Section 147. The punishment provided for violation of Clause (a) of sub-section (1) of Section 147 is 'fine' which may extend to Rs. 500/-. Section 147 (2) says, that the Company and its officers are liable for punishment with fine which may extend to Rupees 500 per every day during which the offence continues.

8. The Registrar of Companies, in the Report, calculated the maximum fine as follows: -

"Fine per applicant at the rate of Rs. 500 per day (w.e.f. 3.8.2004 to 11.2.2010)

Fine for three applicants comes to 30,25,500
Rs. 500 x 3 x 2017 Days
= Rs. 30,25,500/-."

9. The violation relates to the period from 3.8.2004 to 11.2.2010. Therefore, this Tribunal has to deal with this matter under Section 147 of the Companies Act, 1956. The Petition is filed before 1.6.2016. In that view of the matter also, the procedure contemplated under Section 621-A for compounding of certain offences has to be followed by this Tribunal. Moreover, this is a matter transferred from Company Law Board.

10. 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.

11. The Registrar of Companies, in his Report stated that no similar offence under Section 147 of the Act was compounded during the last 3 years by the Petitioners.

12. There is no prohibition in Section 621-A for compounding the offence if an investigation is initiated or has been conducted. Moreover, the Report of the Registrar of Companies and the letter dated 26.9.2012 written by the Senior Assistant Director (Inv.) of Serious Fraud Investigation Office clearly shows that the Compounding Application may be considered by the Compounding Authority on merits. Therefore, there is no impediment to deal with this petition by this Tribunal under Section 621-A of the Companies Act, 1956.

13. The violation of Section 147(1)(a) is purely technical in nature. It is not brought to the notice of this Tribunal either in the Petition or in the Report of the Registrar of Companies that some other violations except violation of Sec.147 of companies Act have also been committed by the Petitioner Company and its Directors. The corresponding provision to Section 147 of the Companies Act, 1956 is 'Section 12' in the Companies Act, 2013. Sub-section (8) of Section 12 of the Companies Act, 2013, provides penalty of 1000 Rupees for every day during which the default continues but not exceeding Rupees One lakh, that means in the new Act, a cap of

Rupees one lakh is contemplated for violation of Section 12(3) of the Companies Act, 2013 which is similar to Section 147 of the Companies Act, 1956. Therefore, this Tribunal, considering the averments in the petition; the technical nature of the violation; and considering the fact that the violation took place about 6 years back; and taking the guidance cap of Rs. One Lakh provided under sub-section (8) of Section 12 of the Companies Act, 2013, has thought it fit to direct the Petitioners to pay compounding fee at the rate of Rs. 50/- (Fifty) per day. Therefore, the compounding fee, which is ordered to be paid is Rs. 50 x 3=150. The total number of days according to the ROC Report is 2017 Days. But if the days are calculated from 04.08.2004 to 11.02.2010 taking into consideration the leap year in 2008, the days come to 2018. Therefore, the compounding fee to be paid by the Petitioners is 50 x 3 x 2018, i.e., Rs. 3,02,700/ (Rupees three lakhs two thousand seven hundred) and Rupees 50 X 3= 150. The total compounding fees is Rs. 3,02,850(Rupees Three Lakhs Two Thousand Eight Hundred and Fifty Only).

14. Hence, the Petitioners No. 1, 2 and 3 are directed to pay a sum of Rs. 1,00,950/- each totalling to Rs. 3,02,850/- within three weeks from the date of this order. The payment of compounding fee shall be made 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 Demand Draft shall be filed before the Registry of this Tribunal on or before 2nd March, 2017.

15. 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.

16. The petition is disposed of accordingly. Send copy of this order to the Petitioners for compliance, 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.