

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO.
CA. NO. 16/134/2015

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 10.04.2017**

NAME OF THE COMPANY: M/s. Tetra Tech India 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. Inder Raj Gill, Advocate for the petitioner

ORDER

The petitioner company, which was incorporated on 04.04.1997, failed to hold its AGM for the Financial Years 2011-12, 2012-13 & 2013-14 and consequently has not filed its Annual Returns and Audited Financial Statement with the RoC, resulting in non compliance of the statutory requirements u/s 166, 210, 200 & 168 of the Companies Act, 1956.

The period of default is stated to be for 1123 days in holding the AGM with the consequential delay in uploading the statements with the office of the RoC.

2. The petitioner submits that the delay was occasioned on account of shifting its accounting software from Tally to Oracle and because of changes in the management, accounting staff being reduced which also affected the timely preparation of books of accounts in Tally. It is also submitted that this was their first default and did not cause prejudice to

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the interest of its members or other stakeholders, nor did it impact the financial strength of the company. The applicant has made good the default by holding AGM for the F.Y 2011-12 & 2012-13 on 15.09.2014 and for the F.Y. 2013-14 on 20.11.2014. The company has filed Annual Return (Form 20B) and Audited Financial Statements for the F.Y 2011-12 & 2012-13 on 10.11.2014 and for the F.Y 2013-14 on 31.12.2014.

3. As per the report of the RoC, the fine applicable till the notification of the Companies Act was one u/s 162(1) of the Companies Act 1956 which could extend to Rs.500/- for each day's delay, while after notification of the Companies Act, 2013, i.e. w.e.f. 01.04.2014, the offence attracts a minimum fine of Rs.50,000/- but which could extend to Rs.5lacs as per the provisions of Section 92(5) of the Companies Act, 2013. Accordingly, the office of the RoC has calculated and recommended the imposition of the maximum aggregate fine of Rs. 49,80,500/- on the petitioner company as Rs.5,56,500/- and Rs. 44,000/- and Rs.39,000/- on each of the defaulting officers.

As per the report, prosecution has not been initiated.

4. The calculation recommended by the RoC is by way of imposition of penalty on prosecution holding the defaulter guilty. Under such circumstances, the sentencing provided under the act cannot be below the minimum. However, the principle of imposing minimum fine on compounding matters is not mandatory, as compounding of an offence can be accepted by a Court even by admonishing the defaulter or issuing a warning. Further it is noticed that a single default of not holding the AGM on time has a rippling effect on non compliances of other statutory requirements for which the RoC has recommended fine for every separate act of non compliance. The imposition of such a draconian fine is neither just nor equitable. The principle of natural justice requires fines or the compounding fees to be of a reasonable parameter, making the process more rationale. Since the period of default for the company was for about



three years, it would be just and equitable to impose the compounding fees as under. The petitioner submits that the said delay was beyond their control and not on account of any malafide intentions. Accordingly, this Bench deems it just and sufficient to impose the compounding fees as below:

Name of the Applicants	Penalty
M/s. Tetra Tech India Ltd.	9,00,000/-
Mr. Mark Fedrick	50,000/-
Mr. Jacob Alexander	25,000/-

5. Fine imposed on the officials shall be paid from their personal accounts.

6. Subject to the remittance of the aforesaid fees 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.

7. Petition stands disposed off in terms of the above and consigned to Record Room.

Id/-
(Ina Malhotra)
Member Judicial