NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

C. P. NO. 16/27/2015
CA. NO.

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 05.10.2016

NAME OF THE COMPANY: M/s. Vaishnavi Advisory Services Pvt Ltd.

SECTION OF THE COMPANIES ACT: 621A

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
1.	JASMEET SINGH	CGSC	SFIO	
2.	ASTHA SHARMA	ADV.		
	AK Gorchtz	AC	Co	
1.	Manju	CS	Co.	
	Rohit Khurana	Adv.	Co.	

5. Saud Ahmad, Joint Director (Law & Prosecution)
6. Ajeet kumar Srivastva, Prosecutor
7. S.K. Nanda, Assistant Director
8. Sanjay kumar Chabey, Law Consultant / Adv.

} S.F.I.O.

ORDER

Certain violations of the Companies Act were observed during the course of investigation conducted by the SFIO against the Company and its concerned Directors. These ranged from non-disclosure of related party transactions and other irregularities in respect of their Financial Statements. Accordingly prosecution has been initiated against the petitioners. The present petition is for compounding of the offences as it is submitted that the same were inadvertent and remedial measures have since been taken.

2. The office of the RoC has pointed out the various violations under sec. 211(1) of the Companies Act which were on account of the following:

a. The company failed to disclose the details of long terms investment in the F.Y. 2008-09.
b. The Company failed to bifurcate the amount of Sundry Debtors in the Balance Sheet of F.Y. 2008-11.
c. The company failed to disclose all related party transactions for the Financial Years 2008-09.
d. The Amount reflected as Professional Services was in fact rent paid for the FY 2009-11.

3. The penalty which can be imposed for the aforesaid violations is envisaged u/s 211(7) which provides for imprisonment which may extend upto 6 months, or with fine which may extend upto Rs.10,000/-, or with both. However, the said provision specifically provides that no person shall be sentenced to imprisonment unless the offence was wilfully committed. Accordingly, the ROC has recommended the imposition of the maximum fine as computed below for the various defaults u/s 211 for the years 2009-11.

Name of Defaulter	Amount (in Rs.)*
1.Nira Radia	90,000/-
2.Ms. Karuna Menon	90,000/-
3.Mr. Vishal Bhushan Mehta	90,000/-
4. Mr. Akshay Radia	90,000/-

3. A notice was also issued to the office of SFIO who have opposed the compounding of the offences tooth and nail. It is stated that the technical scrutiny of the Balance Sheets and other relevant documents collected from various Government agencies reflected that the directors had wilfully defaulted in complying with the mandatory provisions of the Companies Act and hence prosecution of Criminal Cases had been initiated against the concerned directors. Suggestions have been given about the involvement of Ms. Niira Radia, who is the Managing Director of the Vaishnavi Group of Companies (which also includes the present company under its umbrella), in criminal scams. These companies provided PR Consultancy for Tata Group of Companies and United Ltd. The business dealings between Tata Group of Companies and United Ltd., are a subject matter of the 2G Scam case. It is stated that the defence given by the company is imaginary, an afterthought, and that the non-compliance of the statutory provisions were deliberate and malafide.

4. The petitioners on the other hand contended that the defaults have been made good. It is argued by the ld. Counsel that the defaults were purely technical in nature and even as per the investigation report no loss of revenue has occurred either to the Government, the exchequer or any other stakeholder whatsoever. It is further stated that the applicants are not charged with any offence under the Indian Penal Code and no mens rea has been attributed. Reliance has also been made in the matter of M/s.

Neucom Consulting Pvt. Ltd., wherein the Mumbai Bench of the CLB considered similar defaults detected by the office of the SFIO in the balance sheets of the previous years, and were duly permitted to be compounded.

5. Given the vehement opposition by the office of the SFIO, this bench granted various opportunities to substantiate as to how compounding of the present offence would be prejudicial to the scams they were insinuating. Except for vague and general averments, no involvement of the petitioner company or its Directors was shown, muchless the effect of the violations of the Companies Act for which compounding is prayed for. The technicalities and adherence to the complicated requirements under the law may not be understood by many, and the competence of the professional Company Secretaries, Auditors, Chartered Accountants also comes into play. Therefore negligence or inadvertent errors in adhering to the provisions cannot always be attributed to wilful omissions. The SFIO has failed to substantiate how the default in this case is stated to be wilful or in what way the petitioners stand to gain by such errors or omissions. No doubt this Tribunal is vested with the discretion of refusing the relief under sec. 621 A of the Act, but refusal to compound offences has to be for just and valid reasons and not based on a mere bogey raised by the department. The SFIO was finally asked to file his affidavit to show the relevance of these errors / omissions on other cases so as to conclude that these were deliberate and malafide and vitiated. They were specifically asked to satisfy this Bench as to how compounding of the present offences would prejudicially affect the alleged other cases. Needless to say that no cogent answers were given. Even the alleged involvement of Ms. Niira Radia was not cited. Mr. Jasmeet Singh, ld counsel for the SFIO fairly conceded that the offences sought to be compounded do not have any bearing nor would hamper or affect the cases pertaining to the 2 G scam as alluded. Under such circumstances, it is observed that the raising objections to these applications under sec.621A by the office of the SFIO were baseless with no application of mind and which only resulted in wasting the precious time of the Tribunal and loss of interest to the exchequer. Their resistance was wholly extraneous and irrelevant to the aspects required to be taken into

consideration while exercising such discretion for compounding of the offences in question. The government machinery is supposed to act with responsibility and cannot be an instrument to cause unwarranted impediments. The various orders on record only go to show the extreme indulgence granted by this Bench to the SFIO by affording opportunity after opportunity to justify their resistance, but their obdurate and recalcitrant attitude reeks of either malafide or total inefficiency. The legal department handling the affairs of the SFIO should shoulder the responsibility in giving proper assistance to Courts in opposing a petition but not deliberately derailing proceedings in which relief is legally permissible. It is their equal responsibility to ensure just and proper dispensation of justice and not oppose a relief for the sake of winning kudos for themselves. Their attitude is inexplicable, moreso, when a similar bogey raised by them before the Mumbai bench of the CLB in the matter of M/s. Neucom Consultancy Pvt. Ltd. was rejected and no appeal impugning the decision to compound the offences was preferred. Further, their attitude reeks of malafide, as to their own knowledge the offences neither gave advantage to the company or to any person, to be termed as wilful nor were subject matters of the 2 G scam as alleged. Law provides for compounding of the offences, and unless legally impermissible, relief should be granted by the courts in normal course. Withholding the same on arbitrary grounds would in itself be a travesty of justice.

6. The default of violating the provisions of sec. 211(1) of the Companies Act is stated to be for 3 years. The petitioners claim that the default has been made good. The SFIO and the RoC have not been able to repudiate the same. Since there is no legal impediment in compounding the offence of sec. 211 as prayed for in the present petition, I deem it sufficient to impose a composite fine for the various omissions over the period under consideration on each of the following petitioners as under:-

Name of Defaulter	Amount (in Rs.)*
1.Nira Radia	20,000/-
2.Ms. Karuna Menon	20,000/-
3.Mr. Vishal Bhushan Mehta	20,000/-
4. Mr. Akshay Radia	20,000/-

7. Subject to the remittance of the aforesaid fine within 30 days, the offence shall stand compounded. Copy of the order be sent to the office of the RoC. Compliance Report be placed on record.

8. Petition stands disposed off in terms of the above.

(Ina Malhotra)
Member Judicial