

IN THE NATIONAL COMPANY LAW TRIBUNAL

ALLAHABAD BENCH

Company Application No.93/ALD/2016

(Under Section 96, 99 and 441 of the Companies Act, 2013)

IN THE MATTER OF

Uttarakhand Parvatiya Aajeevika Sanvardhan Company,
A Company incorporated under the Companies
Act, 1956, and having its registered office at
Uttarakhand Shilp Emporium, near IT park,
Sahastradhara Road, Dehradun, Uttarakhand.

1. Mr. S. Raju (Director)
2. Mr. Y.K. Pant (Managing Director)
3. Mr. A.K. Rajput (Director)

..... Petitioners

JUDGMENT/ORDER DELIVERED ON 08.12.2017

Coram:

Hon'ble Shri H.P. Chaturvedi, Member (J)

For the petitioner : Abhishek Mishra, PCS-
For the Central Govt. : Pradeep Singh Sisodia, CGSC.

As per Shri H.P. Chaturvedi, Member (Judicial)

Order/Judgement



The Present Application is filed before this Bench of NCLT by the Applicant company **UTTARAKHAND PARVATIYA AAJEEVIKA SANVERDHAN COMPANY** along with its Directors namely Mr. S. Raju (**Director**), Mr. Y.K. Pant (**Managing Director**) Mr. A.K. Rajput (**Director**) seeking for compounding of alleged offence for violation of Sections 96 and 99 of the Companies Act, 2013, therefore the petitioner prays for an appropriate relief under Section 441 for not holding of Annual General Meeting (AGM) of the Company in due time and to regularise the same by compounding the alleged violation of above stated provision of the Companies Act.

2. The averments of the present Company Petition in brief are stated as under;

I. The Applicant No.1, UTTARAKHAND PARVATIYA AAJEEVIKA SANVERDHAN COMPANY (hereinafter referred as "the Company" for the sake of brevity) was incorporated as a Non-profit company under Section 25 of Companies Act 1956 (previous company act) on 29/03/2006, in the State of Uttarakhand having its registered office Uttarakhand shilp emporium near IT Park Sahastradhara Road, Dehradun 248013.

II. The petitioner nos.1, 2 and 3 all are Government officials and in addition their regular official duty they also serve the society through this Company.

III. The Petitioner Company is primarily engaged in upliftment of the weaker section of society through generation of self-employment, primarily development of agriculture sector in Uttarakhand and it is assisting and Implementing the project aided by international funds for Agriculture Development (IFAD). All of its directors are nominated by the Uttarakhand State Government; who are mainly IAS officers. They are given some additional responsibility to run of the company on behalf of Uttarakhand State Government and manage its affair.

3. The Petitioner company is a company limited by guarantee and thus having no capital. The company is primarily involved in such activities as mentioned in its Memorandum of Association of company (clause IIIA, point 1,2,3,4,5, and for the sake of convenience the relevant Clause of its MOU eg. Clause IIIA, point 1,2,3,4 are reproduced herein below:

THE MAIN OBJECTS OF THE COMPANY TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION are:

1. *Without any motive to earn profit, to enhance and improve the livelihood for the poor in the State of Uttarakhand and*

(a) *To increase sustainable income generating cultivation system and establishment of micro and small scale non-farm enterprises.*

(b) *Enable project participation to select livelihood activities most suited to their resources, skills and interest.*



(c) Address the felt needs and priorities of women and increase their effective participation in local institution and decision making process.

(d) Emphasize microfinance, including saving and thrift, and micro insurance product.

(e) Increase awareness of the needs to preserve and regenerate natural resources, particularly water, forest and biodiversity, and

(f) Implement the project model in a highly participatory and democratic manner.

2. To enhance the livelihood opportunities for the poor by providing and enabling the provision of financial services, business development services and capability building as may help in improving the livelihood through an integrated approach.

3. To provide Business Development Services including demonstration, training, consultancy and advisory services on all matters and problems relating to technical industries, civil, administration, finance and organisation management, commencement and expansion of the enterprise, purchasing techniques, production, purchases, sales, material and cost control, quality control, marketing, advertising, publicity, personnel, information technology services, development and transfer, backward and forward business linkage promotion and horizontal linkages among enterprises export and import, to and for institutions, concerns, bodies, associations, corporations, public or local authorities, trusts, co-operative societies.

4. To help in promoting sustainable enterprises at micro, small and medium level, comprising the poor by means of joint ownership, equity, debt financing, leasing, hiring and such other means and mechanism by actively searching for investment opportunities.

5. To rotate and utilize the resources of the company for ongoing building up of new enterprises by exiting the enterprises that have achieved the sustainable scale and viability, through appropriate mechanism.

6. To act as catalyst in mobilizing financial resources of the banks and financial institutions to Micro, Small and Medium Scale Enterprises to benefit the poor.



As, it is stated that the Annual General Meeting of the Company for the financial year ending 31st March, 2015 was required to be convened and held on or before 30th September, 2015, which could not be held.

5. Thus, the company committed default under Section 96 of the Companies Act, 2013, which attracts criminal liability against the applicants under the provision of Companies Act, 2013.

[Handwritten signature]

6. It is contended that the company or its officers/directors have not deliberately and wilfully made such offence and contravened the provisions of and Section 96 of the Companies Act, 2013. It is explained that the Annual General meeting was due in 30th September 2015, but it could not be convened due to such reason that earlier consultant of the company Mr. G.S Butola (Practicing Company Secretary, Dehradun), was not attending to the company's office despite repeated reminders issued by the management of the company. He did not keep inform to the Directors about the relevant provision of the Companies Act for convening its Annual General Meeting. Subsequently, when a new Consultant Company Secretary took over the assignment of the Company, he actually informed pointing out that the Board of Company that such default is occurred for not convening/ holding the AGM for the FY 2014-15 by the due date 30th September 2015 under the provision's of Companies Act. Therefore, such AGM of company could be held after the delay of 158 days, thus it became default for FY 2014-15.

7. That the petitioner company fairly concedes with this fact that, it failed to comply with the statutory provision of the Section 96 of the Company Act and is liable to pay penalty determined under the provision of Section 99 of the Act. The Section 99 of the Companies Act, 2013 reads as under;

99. Punishment for default in complying with provisions of sections 96 to 98.

If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.



8. That the Company has already filed an application to the Registrar of Companies, Uttarakhand in Prescribed format in GNL 1 (Annexure -4), and all statutory documents have been filed physically in the office of ROC, Kanpur.

9. It is further submitted that the compounding fee would be remitted by the Applicants, when the offence alleged and stated in the petition is

compounded through the order of this Court and by forwarding a copy thereof to the Registrar of Companies, Kanpur for appropriate action.

10. The Respondent Registrar of the Company, Kanpur opposing the present petition has filed its reports informing that there is admitted default on behalf of the Company in not holding its statutory AGM in time in accordance provision of Section 96 of the Companies Act, 2013, which is a punishable Act/ offence under Section 99 of the Companies Act. It further contended that all the Directors of the Company are nominated by the State Govt. of Uttarakhand and they are Govt. Officers who are assigned additional responsibility of managing the affair of the Company on behalf of the Uttarakhand State. It is matter of record that the petitioner Company itself suo moto submitted the present petition / application before this Tribunal for making the default condoned and regularised and for compounding the alleged offence.
11. As per the report of the ROC, Kanpur, the applicants Company and its Officer are liable to pay fine for compounding such offence, which is impossible upto Rs. 1 lakh and for committing recurring offence a fine can be imposed 5,000/- per day.
12. We have gone through the contents of the pleadings of both parties. It is matter of record that the petitioner company is wholly owned subsidiary by the State Govt. Its Directors are full time Govt. Servant, who were been assigned additional charge/ responsibility to conduct the activities and to manage the affairs of the Company.
13. During the course of hearing and on being enquired from this court, the Director of the Company Mr. S.Raju, retired Additional Chief Secretary, Mr. Yugal Kishore Pant, Additional Secretary, Rural Development, Mr. Arun Rajput, Dy. Commissioner and have filed their respective affidavits explaining the circumstances, the Company was not able to conduct its Annual General Meeting of the Company within stipulated period and it is delayed by another 158 days. These Directors/ Officers of the State Govt. mainly submitted this reason that due to various other responsibilities as assigned by the State Govt./Central Govt. they pay due interest in the affairs of the Company to be managed properly but could not notice such



[Handwritten signature]

fact that Annual General Meeting was not conducted in time as per them. The Consultant Petitioner Company Secretary, who was assigned to look after the day today affair of the Company/ business was not attending the affair of the company, despite repeated reminders issued to him. Therefore, a conscious decision was taken by replacing him by another Consultant Company Secretary. It is only ~~letter~~ ^{later on} after his replacement, it was pointed out to the Board of the Company to conduct the annual meeting and for filing necessary application for compounding the delay caused.

14. We have carefully gone through the above stated contents of the pleading of the and petition affidavits of Directors of the petitioner Company as well as we heard the rival submissions made by the counsel /PCS for both parties e.g. of Shri Abhishek Mishra, learned PCS for the petitioner Company and Shri Pradip Singh Sisodia, learned CGSC for the Central Govt. ROC, Kanpur.
15. It is now a settled position under the provisions of Companies Act that an offence punishable under the Companies Act, 2013, whether offence committed by the Company itself or by its Officer which attract the punishment with fine only can be compounded by this Tribunal, either before or after the institution of any prosecution. It is also provided that while compounding such offence the Tribunal may impose a fine for such offence, which does not exceed to Rs. One Lakh and there is further proviso that sum of such fine imposed shall not exceed to the amount of maximum penalty can be imposed against violation of such offence, which is being sought for to be compounded.



16. A plain reading of Section 96 of the Companies Act, 2013 stipulates such condition that an Annual General (Body) Meeting of the Company to be within 9 months from the closing date of its First Financial Year and it should not elapse more than 15 months between the date of Annual General Meeting to be convened and actually convened, failing which, such violation attracts punishment for default in complying with the provision of Sections 96 and 98 which is punishable with fine, which may extend to Rs. 1 Lakh and in case of continuing default with further fine, which may extend Rs. 5000/ for every day.

17. We have duly considered such submissions made by the learned PCS for the petitioner Company that the petitioner Company properly explained the causes and circumstances for not being able to convene the meeting of AGM, as a bonafide omission on the part of Company. Hence, it can not be construed as a deliberate attempt or sheer negligence for not convening such meeting. Hence, such needs to be condoned by this court and alleged offence can be compounded because the petitioner company being the State Govt. subsidiary took suo moto step for filing this petition and adopted corrective measures by convening the AGM at the earliest.
18. The relevant provision of Section 441 of the Companies Act reads as under;

"441- Compounding of certain offences- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2) of 1974) any offence punishable under this Act (Whether committed by a company or any officer thereof) with fine only, either before or after the institution of any prosecution, be compounded by-

(a) The Tribunal; or

(b) Whether the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any Officer authorised by the Central Government, on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, may specify;

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account.

Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the



investigation against such company has been initiated or is pending under this Act.

(2) Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section."

19. Further, the legal position in respect of jurisdiction and power of this court or the Company Law Board seems to have been well settled by the Apex Court and others judicial Fora, wherein it is held that the Company Law Board can compound an offence prescribed under section 621 (A)(1) of the Companies Act, 1956, whether before institution of criminal proceeding or after the institution of Criminal proceeding and the power so conferred or parallel power to be exercised by prescribed and competent authority . The Hon'ble Supreme Court in the matter of **VLS Finance Ltd. Vs Union of India & Others** has held that under section 621(A) (1), it is evident that any offence punishable under the Act not being an offence punishable with imprisonment only or with imprisonment and fine may be compounded by the Company Law Board either before or after institution of the prosecution.

The relevant portion of the above mentioned ^{decision} ~~direction~~ of the Hon'ble Supreme Court may be reproduced hereinbelow;

" From the conspectus of what we have observed above, it is more than clear that an offence committed by an accused under the /Act, not being an offence punishable with imprisonment only or imprisonment and also with fine, is permissible to be compounded by the Company Law Board either before or after the institution of any prosecution. In view of sub-Section (7) of Section 621A, the criminal court also possesses similar power to compound an offence after institution of the prosecution.

Now the question is whether in the aforesaid circumstances, the Company Law Board can compound offence punishable with fine or imprisonment or both without permission of the court. It is pointed out that when the prosecution has been



[Handwritten signature]

laid, it is the criminal court which is in seisin of the matter and it is only the magistrate or the court in seisin of the matter who can accord permission to compound the offence. In any view of the matter, according to the learned counsel, the Company Law Board has to seek permission of the court and it cannot compound the offence without such permission. This line of reasoning does not commend us. Both sub-section (1) and sub-section (7) of Section 621A of the Act start with a non-obstante clause. As is well known, a non-obstante clause is used as a legislative device to give the enacting part of the section, in case of conflict, an overriding effect over the provisions of the Act mentioned in the non-obstante clause.

Ordinarily, the offence is compounded under the provisions of the Code of Criminal Procedure and the power to accord permission is conferred on the court excepting those offences for which the permission is not required. However, in view of the non-obstante clause, the power of composition can be exercised by the court or the Company Law Board. The legislature has conferred the same power to the Company Law Board which can exercise its power either before or after the institution of any prosecution whereas the criminal court has no power to accord permission for composition of an offence before the institution of the proceeding. The legislature in its wisdom has not put the rider of prior permission of the court before compounding the offence by the Company Law Board and in case the contention of the appellant is accepted, same would amount to addition of the words "with the prior permission of the court" in the Act, which is not permissible.



As is well settled, while interpreting the provisions of a statute, the court avoids rejection or addition of words and resort to that only in exceptional circumstances to achieve the purpose of Act or give purposeful meaning. It is also a cardinal rule of interpretation that words, phrases and sentences are to be given their natural, plain and clear meaning. When the

language is clear and unambiguous. It must be interpreted in an ordinary sense and no addition or alteration of the words or expressions used is permissible. As observed earlier, the aforesaid enactment was brought in view of the need of leniency in the administration of the Act because a large number of defaults are of technical nature and many defaults occurred because of the complex nature of the provision.

From what we have observed above, we are of the opinion that the power under sub-section (1) and sub-section (7) of Section 621A are parallel powers to be exercised by the Company Law Board or the authorities mentioned therein and prior permission of court is not necessary for compounding the offence, when power of compounding is exercised by the Company Law Board. In view of what we observed above, the order impugned does not require any interference by this court."

20. In the light of above stated legal proposition, we find that this court possesses necessary jurisdiction to grant permission for compounding of such offence in those cases wherein no punishment of imprisonment or punishment with fine alone. Which is not the case of present petitioner as the contravention of the provision of Sections 96 and 99 of the Companies Act are not attracting punishment of imprisonment and imprisonment with fine. It is a statutory violation in technical nature attracting penalty of fine simplicitor.

21. Therefore, we find that the ground made for and submission put forth before us for compounding the alleged offence of contravention of Sections 96 and 99 of the Companies Act, 2013 appears to be reasonable and the court in exercise of its power conferred under section 441 of the Companies Act, 2013 can grant permission for compounding.

In the light of the above discussion, the present application deserves to be allowed. However, the permission for compounding such offence is granted with such condition, that the petitioner Company shall make payment of fine of Rs. 20,000/- (Rs. Twenty Thousand) and further



individual Directors/Applicants shall have to pay fine of Rs. 10000/- (Rs. Ten Thousand). Such amount of fine shall be payable to Central Govt. through the office of the ROC, from the account of petitioner company and or individually by it's the then Director, which may be practicable for implementation of this courts direction. That apart, the petitioner company make payment of additional fine of Rs.100 per day for causing delay in convening of its AGM to regularised the delay cause in convening of the AGM for 2016.

Such amount of fine shall also be payable to the Central Government though the office of ROC, Kanpur.

23. With the aforesaid directions, the present petition is conditionally allowed, the amount of cost/ fine is payable within six weeks from the date of receipt of the authentic copy of this order. Cost to be paid to the Central Govt. to the office of Registrar of the Company. The Company Petition is allowed and accordingly stands finally disposed of.



Dated 08.12.2017

Typed by
Jyoti
Stenographer

— Sd —

Hon'ble Shri H.P. Chaturvedi, Member (J)