

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

CP No.170/Chd/Hry/2017

**Under Section 621A of
the Companies Act,
1956.**

In the matter of:

A2Z Infra Engineering Limited
Having its registered office at
O-116 1st floor, DLF Shopping Mall,
Arjun Marg, DLF Phase-1, Gurgaon-122002

...Petitioner/Applicant No.1

And

Amit Mittal
Managing Director
TG-2B/4 Garden Estate Mehrauli
Gurgaon Road, Gurgaon-122002

...Petitioner/Applicant No.2

Order delivered on: 21.07.2017

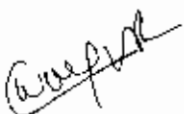
Coram: Hon'ble Mr.Justice R.P. Nagrath, Member(Judicial)

For the petitioner : Mr. Pankaj Jain, Advocate for petitioners

For Registrar of Companies NCT of Delhi and Haryana : Dr. Raj Singh, Registrar of Companies, Punjab & Chandigarh and Himachal Pradesh

Order (Oral)

This is a *suo moto* petition filed by the Petitioner No.1 company and its Managing Director Mr.Amit Mittal [Anil Mittal (*sic*)] for composition of the offences for which the Dy.Registrar of Companies, NCT of Delhi and Haryana



has issued a Show Cause Notice dated 08.07.2016 (Annexure A-2) which is reproduced as under: -

WHEREAS, during the course of inspection of books of accounts and other records of the company, the following discrepancies were observed which are as under:

1. It has been observed that the Balance sheet as at 31.03.2012, 31.03.2013, 31.03.2014 that the sales are shown net of taxes/VAT whereas AS-9 required the disclosures of turnover as under:-
Turn Over (Gross)
Less: Excess/VAT
Turnover (Net)

Thus, the disclosures are not as per AS-9. Hence, there is violation of section 211(3A), 211(3B) and 211(3C) of the Act read with AS-9 issued by ICAI.

2. Further, it has been observed from Balance Sheets as at 31.03.2011 and 31.03.2012 and that the company has not complied with the AS-9 "accounting for revenue recognition in the financial statements" issued by ICAI in respect of dividends from non-trade investment in shares. Whereas as per the requirements of AS-9, the company was required to disclose the revenue recognition is postponed, the disclosure of the circumstances necessitating the postponement should be made. Hence the dividend from investment in shares should be recognised only on, when the owner's right to receive payment is established. Hence there is a violation of AS-9 issued by ICAI read with Section 211(3A) read with 211(3B) and 211(3C) of the Companies Act, 1956 for which the company and officers in default are liable for penal action.

AND WHEREAS, the matter was taken up with company by inspecting officer but the reply of the company was not satisfactory.

NOW THEREFORE, you are hereby called upon to show cause within 15 days from the date hereof as to why penal action as provided under Section 211(7) of the Companies Act, 1956 should not be initiated against you."



Notice of this petition was issued to the Registrar of Companies, NCT of Delhi and Haryana and report dated 16.01.2017 has been sent by the Deputy Registrar of Companies, NCT of Delhi and Haryana. I have heard the learned counsel for petitioner, Dr. Raj Singh, Registrar of Companies Punjab, Chandigarh and Himachal Pradesh who is representing Registrar of Companies, NCT of Delhi and Haryana and perused the record.

The petitioner-company was incorporated on 07.01.2002 and with its Registered Office at Gurgaon (now Gurugram) and therefore, the matter falls within the territorial jurisdiction of this Tribunal. As per report of the Deputy Registrar of Companies, NCT of Delhi and Haryana, the Paid-up Capital of the company is ₹1,29,62,19,800/- and the opening revenue as per the Profit & Loss Account for the year 2015 is ₹45,67,16,44,999/-. The petitioner is a listed company.

The petitioner-company did not comply with the provisions of sections 211(3A) read with 211(3B) and 211(3C) of the Companies Act, 1956 read with AS-9 issued by ICAI. However, Deputy Registrar of Companies has reported that the company has since filed Balance Sheets and Annual Returns as on 31.03.2015 and the compliance with regard to the defaulting years have been made. Along with this petition, the company has also attached audited Annual Accounts for the years in question i.e. from the years 2010-11 to 2013-14 and this fact is not disputed in the report sent by the Deputy Registrar of Companies.

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Section 211(7) of the Companies Act, 1956 (for short hereinafter to be referred to as 'Act') reads as under:-

"If any such person as is referred to in sub- section (6) of section 209 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both."

The person who committed default is referred to in section 209(6) of the Act. Sub-section (6) of section 209 prescribes the persons who can be found guilty for non-compliance. They are, -

- "a) where the company has a managing director or manager, such managing director or manager and all officers and other employees of the company; and*
- b) ****
- c) ****
- d) where the company has neither a managing director nor manager, every director of the company.*
- e)*** "*

Deputy Registrar of Companies in his report has mentioned the person who defaulted as Mr. Anil Mittal but the Managing Director of the Company is Mr. Amit Mittal (P-2). The Deputy Registrar of Companies has proposed that for 4 years of default the total amount of penalty would be ₹40,000/- @ ₹10,000/- per year of default. It is not disputed by Dr. Raj Singh, Registrar of Companies that for the offence under section 211(7) of the Act, the company itself may not be liable, but only the Managing Director.



The offence under sub-section (7) of section 211 of the Act is punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both. The *suo moto* request has been made by filing this petition for composition of offence in terms of section 621A of the Act which reads as under : -

- "(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), not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by-
- (a) the Company Law Board; or
- (b) where the maximum amount of fine which may be imposed for such offence does not exceed fifty thousand rupees, by the Regional Director, on payment or credit, by the company or the officer, as the case may be, to the Central Government of such sum as that Board or the Regional Director, 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 611 shall be taken into account."

The Hon'ble National Company Law Appellate Tribunal in **Shri Subhinder Singh Prem Vs. Union of India Through ROC in Company Appeals (AT) No.101 to 105 of 2017** decided on 17.05.2017 has held that such an offence can be lawfully compounded. In the said case, one of the appeals

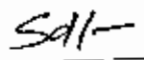
before the Hon'ble Appellate Tribunal was Company Appeal 103(AT)/2017 in which the offence alleged against the company was 211(7) of the Act. The Hon'ble Appellate Tribunal held that such an offence was compoundable.

However, a very low amount of composition fee cannot be permitted in this case because the company is a listed company having huge turn over. In any case, the learned counsel for petitioner contended that for all these years there was a net loss to the company as per the audited Balance Sheets filed along with the petition as at Annexure A-3.

Keeping in view the report of the ROC and that this is a *suo moto* petition there being no prosecution launched so far, the offence is compounded on deposit of ₹28,000/- i.e. ₹7,000/- for each year as the Composition Fee against Petitioner No.2. The amount be deposited within a period of 30 days from the date of receipt of certified copy of this order, with the Pay & Accounts Officer of Ministry of Corporate Affairs. It is made clear that the amount shall be deposited from the personal account of the defaulter and not from the Company's account.

Failing to deposit the amount aforesaid within the stipulated period, the Registrar of Companies will be at liberty to launch prosecution against the defaulter(s).

The petition is therefore disposed of on these terms.


(Justice R.P. Nagrath)
Member(Judicial)

July 21, 2017
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