

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

CP No.171/Chd/Hry/2017

**Under Section 621A,
629A 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

Dipali Mittal
Whole Time Director
TG-2B/4 Garden Estate Mehrauli
Gurgaon Road, Gurgaon-122002, Haryana.

...Petitioner/Applicant No.3

Atul Kumar Agarwal
Company Secretary
706, Alankar Apartment, Plot No.48
Sector-56, Gurgaon-122001, Haryana.

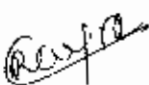
...Petitioner/Applicant No 4

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, its Managing Director Mr. Amit Mittal [Anil Mittal (*sic*)] and two others (Petitioner No.3 the Whole Time Director and Petitioner No.4 the Company Secretary) 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 it was observed from the Books of Accounts and the financial statements for the financial years 2011-12, 2012-13 and 2013-14 that the auditors M/s Walker, Chandlok & Co. Chartered Accountants have been appointed at the AGM held on 29.09.2012, 28.09.2013 and 29.09.2014. However, on examination of the minutes recorded by the company, it was revealed that in the said general meetings it has not been decided the remuneration to be paid to the auditors but was left to be decided by the Board of Directors. The company has paid to the auditors as fee for the said years amounting to Rs.26,77,843/-, Rs.18,85,224/- respectively which is not decided/recorded in the Board Meetings also. As per requirement of provisions of Section 224(8) of the Act the remuneration of auditors should be fixed by the company in the general meeting or in such manner as the company in general meeting may determine. Hence, there is violation of 224(8) of the Companies Act, 1956 read with Section 142 of the Companies Act, 2013 for the financial year 2012-13 and company is liable for penal action.

AND WHEREAS, the matter was taken up with the 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 629A of the Companies Act, 1956 and its corresponding section 147 of the Companies Act, 2013 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

(Signature)

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 NCT 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 224(8) of the Companies Act, 1956 (for short hereinafter to be referred to as ('Act')). 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 2011-12 to 2013-14 and this fact is not disputed in the report sent by the Deputy Registrar of Companies.

Section 629-A of the Act, reads as under:-

"If a company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one,



with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues."

The persons who committed default as referred to in section 629A are the petitioners to whom the Deputy Registrar of Companies has issued show cause notice.

Deputy Registrar of Companies in his report has mentioned the name of Managing Director as Anil Mittal but the name of petitioner No.2 is Mr. Amit Mittal. The Deputy Registrar of Companies has proposed that for 731 days of default each of the petitioner is liable for penalty of ₹3,70,000/- as defaulters.

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."

Q. a. p. v. k.

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 was Company Appeal No.104(AT)/2017 for offence under sections 255 and 256 r/w section 629A of the Act. The Hon'ble Appellate Tribunal held that such an offence was compoundable.

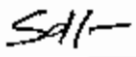
However, a very low amount of composition fee cannot be permitted in this case because the company is a listed company having huge turn over. In any case, the learned counsel for petitioner contended that for all these years there was a net loss to the company as per the audited Balance Sheets filed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

The ROC has also referred to the statement made by the company that it has now complied with the provisions of Section 224(8) of the 'Act'. Keeping in view the report of the ROC ; that this is a suo moto petition; there is no prosecution launched so far; that the default was committed continuously for 3 financial years and the fact that the compliance is since been made, it would be in the interest of justice if the offences are allowed to be compounded on Petitioner Nos.1 to 3 deposit an amount of ₹1.00 lakh (Rupees one lakh) each and Petitioner No.4, who is the Company Secretary, an amount of Rs.60,000/- within a period of 30 days of receipt of certified copy of the order with the Pay & Accounts Officer of

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Ministry of Corporate Affairs. It is made clear that the amount is to be deposited from the personal account of the defaulters 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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