

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

CP NO. 229/Chd/Hry/2017

**Under Section 139 (6) and
147 (1) read with Section 441
of the Companies Act, 2013**

In the matter of:

Graco India Private Limited having its
registered office at 295, 4th Floor,
Udyog Vihar, Phase IV, Gurgaon,
Haryana-122016 and Ors.

...Petitioners

Date of order: 24.10.2017

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

For the petitioners : Ms. Rekha Mittal, Practising Company Secretary.
For the Registrar of : Dr. Raj Singh, Registrar of Companies, Punjab &
Companies, NCT of Chandigarh & Himachal Pradesh.
Delhi & Haryana

ORDER (ORAL)

This is a *suo motu* petition under Section 441 of the Companies Act, 2015 (for short, the 'Act') for composition of offence under Section 139 (6) of the Act punishable under sub-section (1) of Section 147 of the Act *ibid.* Notice of this petition was issued to the Registrar of Companies, NCT of Delhi and Haryana who is represented by Dr. Raj Singh, Registrar of Companies, Punjab & Chandigarh and Himachal Pradesh.

2. The admitted facts are that the petitioner-company was incorporated on 18.11.2015 with the present paid up capital of ₹ 1,63,55,000/- divided into 16,35,500 equity shares of ₹ 10/- each. The petition has been filed by the company as petitioner No. 1 and three of its Directors claiming themselves to be the officers of the company.

3. The main object of the company is to carry on the business as manufacturers, assemblers, facilitators, coordinators, sellers, distributors, stockists, processors, advisors, consultants, representatives, collaborators, agents, traders and marketers of all kind and forms of fluid handling equipment and systems used in the constructions, manufacturing, processing and maintenance industries including but limited to pumps, injectors, sprayers, applicators, controllers, and other related equipment and to provide training, demonstration and other services in relation to such equipment and systems. Annexure A-1 is the Memorandum and Articles of Association of the company.

4. I have heard the authorised representative of the petitioners and the Registrar of Companies, Punjab & Chandigarh & Himachal Pradesh representing the Registrar of Companies, NCT of Delhi and Haryana and perused the record.

5. Sub-section (1) & (6) of Section 139 of the Companies Act, 2013 reads as under:-

“ (1) Subject to the provisions of this Chapter, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed:

Provided that the company shall place the matter relating to such appointment for ratification by members at every annual general meeting:

Provided further that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him

or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor:

Provided also that the certificate shall also indicate whether the auditor satisfies the criteria provided in section 141:

Provided also that the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.

“Explanation.—For the purposes of this Chapter, —“appointment” includes re-appointment.

(6) Notwithstanding anything contained in sub-section (1), the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting. ”

6. The Registrar of Companies in his report attached the calculation of penalty (Annexure A) for the period from 19.12.2015 to 19.08.2016. Ultimately the auditors of the company were appointed in the EOGM held on 19.08.2016. However, it is an admitted proposition of fact that the default in this case commenced on 16.02.2016 as laid down in sub-section (6) of Section 139 of the Act. So there is a delay of six months in appointing the statutory auditors in the EOGM held on 19.08.2016 and not from 19.12.2015 as reported by the Registrar of Companies. Learned Registrar of Companies has submitted that the maximum and minimum penalty for the offence

committed by the company is ₹ 5,00,000/- and ₹ 25,000/- respectively and for the officers, the penalty is ₹ 1,00,000/- and ₹ 10,000/-, each respectively.

7. Authorised representative for the petitioners referred to the judgement of Hon'ble National Company Law Tribunal **M/s. Cinepolis India Pvt. Ltd & Ors. Vs. Registrar of Companies, NCT of Delhi & Haryana, New Delhi** in Company Appeal (AT) No. 137 of 2017 decided on 29.08.2017 that it is well within the jurisdiction of the Tribunal to compound the offence where alternative punishment is prescribed in place of imprisonment where no case is pending before the special court. In this case, the Registrar of Companies, NCT of Delhi and Haryana has not still issued notice to the company regarding the offence and the petitioners have prayed *suo motu* for composition of offence. I thus find the present case fit for allowing the composition of offence as the company has since complied with the requirement of provisions of law by appointing company's auditors though with a delay of six months. The authorised representative has further contended that the company started its operations only with effect from 31.03.2017 and, therefore, a leniency may be exercised whereas the Registrar of Companies submits that the petitioner-company is a subsidiary of a very big multinational company and the composition fee should be equal to the maximum amount of penalty.

8. I am of the view that appointment of auditors of the company is a very sensitive issue where the amount of penalty should not be on much lower side but reasonable one.

9. Keeping in view the aforesaid facts, it shall be in the fitness of things if the offence is compounded with the imposition of penalty of ₹ 2.5 lacs on petitioner No. 1 company and ₹ 50,000/- each on petitioner Nos. 2 to 4.

The amount of penalty be deposited with the Pay & Accounts Officer, Ministry of Corporate Affairs, New Delhi within a period of one month from the date of receipt of certified copy of this order. It is further directed that amount of composition fee shall be paid by petitioner Nos. 2 to 4 from their pocket and not from the funds of the petitioner-company. The instant petition is allowed on the above terms.

Sd/-

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

October 24, 2017
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