

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
CHENNAI

Arguments heard on 11.11.2016

Orders passed on 20.03.2017

C.A. No.6/2016

Applicants : M/s.Galfar Engineering & Contracting (India) Pvt Ltd and
four of its officers

Represented by : Shri. Rishi Sood, Advocate

-- Vs --

Respondent : Registrar of Companies, Tamil Nadu, Chennai

CORUM

ANANTHA PADMANABHA SWAMY & CH MOHD SHARIEF
TARIQ, MEMBERS (JUDICIAL)

ORDER

CH MOHD SHARIEF TARIQ, MEMBER(JUDICIAL) :- (ORAL)

1. Under consideration is an application which has been filed by Applicants before the Registrar of Companies, Tamil Nadu and Andaman & Nicobar Islands, Chennai, for compounding of the offences u/s 621-A of the Companies Act, 1956. The Deputy Registrar of Companies, along with his report, has forwarded the Application to the Registry of this Bench which has been numbered as C.A.No.6 of 2016.

2. The applicants are the Company and its four officers who have filed e-form No.GNL-1 under SRN : G0358795 for violation of the provisions of Sub-section (1) of Section 96 of the Companies Act, 2013. The committal of offence relates to the period between 1st January 2015 and 19th March 2015. The offence arose when the company and its officers failed to hold the Annual General Meeting (AGM) within six months from the date of closing of the financial year or 15 months from the date of previous AGM whichever is earlier. The company has closed its accounting period on 31st March, 2014.

3. Meanwhile, the Applicants requested the Registrar of Companies for extension of time (EOT) by three months [vide SRN : C19608777 dated 10.09.2014] taking a plea that the Company is 100% subsidiary to M/s.Galfar Engineering Construction SAOG, Oman, which was unable to finalise their accounts since it is under the process of corporate management restructuring. The Registrar of Companies fairly conceded their request and enlarged the time with a condition to complete the process of holding the AGM on or before 31st December 2014. Sub-Section (1) of Sec.96 of the Companies Act, 2013 provides as follows:-

“Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next”

In the present case, the AGM was held only on 19.03.2015 after exhausting the extension of time, i.e. causing a delay of 77 days. Hence, the Company and its officers who are applicants have violated the provisions of Sub-Section (1) of Section 96 of the Companies Act, 2013.

4. The violation is punishable under section 168 of the Act, 1956 which provides that the offence shall be punishable with a *fine which may extend to fifty thousand rupees and in case of a continuing default, with a further fine which may extend to two thousand five hundred rupees for every day after the first during which such default continues.*

5. The Deputy Registrar of Companies, Tamilnadu, vide his first report dated 25.7.2016 in F.No. 71390/Galfar621A/2016, has recommended maximum fine of Rs.5,00,000/- to the Company and Rs.5,00,000/- to each of the errant officers. The Deputy Registrar of Companies indicated in his report that there is no prosecution pending for the above said offence and that he has no objection if the offence is compounded, but at the same time, has requested that the company may be directed to file e-form INC28 along with the compounding order, if passed. However, the Deputy Registrar of Companies, vide his revised report dated 6.3.2017 made changes in Sl.No.8D and sent modified calculation which is as follows :

Penalty u/s 168 of the Companies Act, 1956

Defaulter	Violation section	Period of violation	Maximum fine
M/s.Galfar Engineering & Contracting(India)Pvt Ltd.	96(1)	1 st January 2015 to 19 th March, 2015 (77 days)	Rs.2,40,000/-
Shri Villankant H.Ahmad Rayees, Director	96	1 st January 2015 to 19 th March, 2015	Rs.2,40,000/-
Shri Anilkumar Bhan, CEO	96	1 st January 2015 to 19 th March, 2015	Rs.2,40,000/-
Shri Nirajkumar, Company Secretary	96	1 st January 2015 to 19 th March, 2015	Rs.2,40,000/-
Shri Mahesh Kumar Rehan, Chief Financial Officer	96	1 st January 2015 to 19 th March, 2015	Rs.2,40,000/-

6. In the light of the above, the applicants (the company and the four officers mentioned above) are liable to be penalised under section 168 of the Companies Act 1956, for violation of the provisions of Sub-section (1) of Section 96 of the Companies Act, 2013.

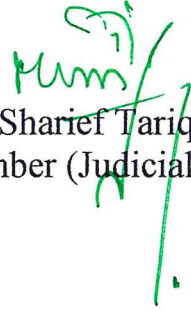
7. The Applicants pleaded for taking lenient view while imposing the fine as this the first offence committed by them. The ROC report also confirms the same being first offence. Therefore, the application of the Company and the officers in default is allowed and the offence committed under section 96(1) of the Act during the period from 1st January 2015 to 19th March of 2015 is compounded in exercise of the powers conferred under Section 621-A of the Companies Act, 1956, by imposing a fine of Rs.48,500/- on each of the Applicants (Rs.10,000/- plus Rs.38,500/-). While the penalty in respect of the Company is directed to be paid from the accounts of the entity, the four officers in default shall pay the penalty from their own resources. The applicants shall comply with the order

within three weeks from the date of passing the order. The company is directed to file a copy of this order along with the required form, with the Registrar of Companies, Chennai, within the time prescribed.

8. Accordingly, the application is disposed of. The copy of the order will be issued to the applicants forthwith for compliance and other necessary action.



(Anantha Padmanabha Swamy)
Member (Judicial)



(Mohd Sharief Tariq)
Member (Judicial)