

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT – 1

ITEM No.310
CP No. 21/AHM/2022

Order under section 441 r.w. 203 of Co. Act, 2013

IN THE MATTER OF:

Gopi Synthetic Private Limited & Ors.
v.
Registrar of Companies

.....Applicant

.....Respondent

Order delivered on: 17/05/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant : Mr. Ashish C. Doshi, PCS
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

Sd/

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/

SHAMMI KHAN
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
(COURT-I)**

CP No. 21/AHM/2022

*(Application under Section 441 read with Section 203
of Companies Act, 2013)*

IN THE MATTER OF:

1. Gopi Synthetics Private Limited

(CIN: U17119GJ1981PTC004187)

Registered office at:

S. No. 302, Isanpur, Gopi Compound,
Narol - Vatva Road, Narol
Ahmedabad-380015, India

2. Sumit Champalal Agarwal

Director

699, PF 101, Saraswati Darshan Society,
B/h Hira Rupa Hall, Bopal-Ambli Road,
Bopal, Ahmedabad-380058 India

3. Champalal Gopiram Agarwal

Director

699, PF 101, Saraswati Darshan Society,
B/h Hira Rupa Hall, Bopal-Ambli Road,
Bopal, Ahmedabad-380058 India

....Petitioners

VERSUS

Registrar of Companies

Registered office at:

ROC Bhavan, Opp Rupal Park,
Nr. Ankur Bus Stand,
Naranpura, Ahmedabad – 380013

....Respondent

CORAM:

MR. SHAMMI KHAN (MEMBER JUDICIAL)

MR. SAMEER KAKAR (MEMBER TECHNICAL)

APPEARANCE:

For the Petitioner: Mr. Ashish C. Doshi, PCS

For the ROC : Ms. Vipal Solanki, Company Prosecutor

O R D E R

1. This Application is filed on 27.07.2022 by Gopi Synthetics Private Limited along with its Directors Mr. Sumit Champalal Agarwal and Mr. Champalal Gopiram Agarwal under section 441 read with Section 203 of Companies Act, 2013 and Rule 8A of the Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014 seeking following reliefs:

a) *That the company and every officer of the company may be who is in default mentioned herein as applicants may be discharged as if no offence has been committed or allow composition of offence by imposing minimum possible compounding fees under the provisions of the Companies Act, 1956/2013 as indicated in the Show Cause Notice.*

b) *Any other consequential, incidental or other order(s) as this Hon'ble Tribunal may deem fit.*

2. Facts of the Case: -

2.1. The Petitioner Company is a private limited company

registered under the Companies Act, 1956 having CIN: U17119GJ1981PTC004187. The registered office of the Company is situated at S.No. 302, Isanpur, Gopi Compound, Narol-Vatva Road, Narol, Ahmedabad-380015, India.

2.2. As per the provisions contained in Section 203(1) of the Companies Act, 2013, Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel, —
(i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; (ii) company secretary; and (iii) Chief Financial Officer. It is further provided in Subsection 2 that every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

2.3. It is stated that, a show cause notice was received from the Registrar of companies, Gujarat, Dadra and Nagar Haveli Vide Ref No. ROC-GJ/STA (V)/u/s 203/2021-22/6487 dated 12th January, 2022, in the name of the applicants for

alleged violation of Section 203 of the Companies Act, 2013 r.w. Rule 18A of The Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014, for not appointing a Company Secretary on full time basis for a period of 20.03.2008 to 31.03.2019 however, in view of amendment in penal provisions under section 203 of the companies Act, 2013 vide Companies (Amendment) Act. 2019 w.e.f. 02.11.2018, two separate notices were issued i.e. one for the period consisting of default after amended provisions and another notice for the period prior to amendment i.e. the present notice for period 20.03.2008 to 01.11.2018 as per details mentioned in the notice attached to this application more specifically described hereunder.

“It is observed from the record available under the MCA portal that the paid-up share capital of the company was increased to Rs.5,50,00,000 w.e.f. 20.03.2008. However, the company has failed appoint Full Time Qualified Company Secretary during the period from 20.03.2008 to 31.03.2019 as per requirements of section 203 Rule 8A of The Companies

(Appointment & Remuneration of Managerial Personnel) Rules, 2014.

It is observed that the company has appointed Ms. Virangi Pushpendra Shahi Shah as Company Secretary w.e.f. 01.04.2019 under the provisions of section 203 Rule BA of The Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014. As such there is a default from the period from 20.03.2008 to 01.11.2018 (Penalty provisions has been substituted by Companies (Amendment) Act, 2019 w.e.f. 01.11.2018 under section 203 (5) of The Companies Act, 2013.)”

- 2.4. It is stated that against the above query raised for alleged violation of section 203. the company wishes to submit that it had made genuine efforts for appointment of a qualified Company Secretary suitable to size and structure of the company however in view of the scarcity of qualified Company Secretaries, the company could not appoint a Company Secretary as required under the provisions of the Act.

- 2.5. It was further submitted that after continuous efforts of searching a qualified Company Secretary, the company could find a suitable candidate and appointed CS Virangi Pushpendra Shahi Shah w.e.f. 01/04/2019 who resigned on June 06, 2019 and thereafter Mr. Raj Tharu was appointed as Company secretary on September, 28, 2019 who continues to be Company secretary till date. Thus, the default was made good. A copy of Form DIR 12 showing appointment of Company Secretary is attached to this application for reference.
- 2.6. It is submitted that the company was operating in Textile Sector and was struggling for survival and was earning a marginal profit of just 1% therefore, financial position of the company did not permit the company to appoint a full time company Secretary.
- 2.7. Further adding to the statement, the company being a private limited company, special privileges and exemptions from compliances under majority of the sections of The Companies Act was given by the statute however, for the purpose of doing proper compliances, the company was taking services of an expert outside consultant Practicing

Company Secretary from time to time and was complying with all provisions of the Companies Act.

2.8. Thus, it is averred by the Applicants that, non-compliance was unintentional and for an interim period as indicated in the notice however with genuine efforts, the default was made good and the applicants would further like to state that present non-compliance was not a willful default on the part of the applicants.

2.9. It is further asserted that the period of default is covered under provisions of section 383A of the Companies Act, 1956 for a period from 20.03.2008 to 31.03.2014 and under the provisions of section 203 of the companies Act, 2013 for a period of 01.04.2014 to 01.11.2018 and the penal provisions prescribed before implementation of Companies (Amendment) Act, 2019 under both the period is mentioned further ahead which is relevant for the present application.

2.10. It is submitted that, lapse of not appointing a full-time company secretary was unintentional and was bona fide. Further adding to the submission, that there was no fraudulent intention or improper motive of the applicants behind lapse in compliance of provisions of section 203 of

the Companies Act, 2013 and the act may be considered as an act without any malicious motive to prejudice the interest of the creditors and the shareholders of the company and the general public at large to adversely affect the right of any person.

3. Therefore, the applicants have approached this Tribunal for compounding of the alleged violation of the provisions of 203 of the Companies Act, 2013 (Section 383A of the 1956 Act) and have preferred the present application under Section 441 of the Companies Act, 2013.

4. To this, a response dated 1st September, 2022 was filed by the Registrar of Companies, where it was submitted by the respondent RoC that:

4.1. The Company had filed this application after receiving notice from ROC vide its letter ROC- GJ/STA (V)/ u/s 203/2021-22/6487 dated 12.01.2022, wherein this office had observed that the paid-up share capital of the company was increased to Rs. 5,50,00,000/- w.e.f 20.03.2008 The company had

failed to appoint full time Qualified Company Secretary during period from 20.03.2008 to 31.03.2019.

- 4.2. The company had failed to appoint whole time Company Secretary w.e.f. 20.03.2008 to 01.11.2018 in spite of its paid-up capital exceeding Rs. 5.00 Crore and therefore the company has contravened the provisions of section 203 of the Companies Act 2013 read with Rule 8A of the Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014 (erstwhile Section 383A of the Companies Act, 1956) accordingly the company and the officers of the company are liable for penal action in terms of section 203/383A of the Companies Act, 2013/1956.
- 4.3. The company had appointed CS Virangi Puspendra Shah w.e.f. 01/04/2019 who resigned on June 06, 2019 and thereafter Mr. Rajesh Tharu was appointed as Company Secretary on September 28, 2019 who continues to be Company Secretary till date.
- 4.4. As per the office of RoC, show cause notice as penal provision has substituted by companies (Amendment) Act 2019 w.e.f 02.11.2018 under section 203 (5) of the Companies Act 2013,

the company is in default period in terms of section 203/383A of the Companies Act, 2013/1956 as per below:

(i) 20.03 2008 to 31 03.2014 = 2203 Days

(ii) 01. 04. 2014 to 01.11 2018 = 1676 Days

4.5. The maximum fine leviable with detailed calculation as per both the provisions of 1956 Act as well as 2013 act is as under:

(A) Fine as per provisions of Section 383A(1A) of the Companies Act, 1956:

(i) For Company & each director/M.D.:

Rs. 500 x 2203 Days = **Rs. 11,01,500/-**

(B) Fine as per the provisions of Section 203(5) of the Companies Act, 2013:

(i) For Company:

Minimum = Rs. 1,00,000/-

Maximum = Rs. 5,00,000/-

(ii) For each Director/M.D. (Min. and max. Fine):

Rs. 50,000 + Rs. 1000 x 1676 Days

= **Rs. 17,26,000/-**

- 4.6. Thus, the applicants have filed this compounding application after receiving notice from this for compounding of offence committed section 203/383A of the Companies Act, 2013/1956 which may be considered by the tribunal on its merits.
5. According to **Section 383A of the Companies Act, 1956**, if a company fails to comply with the provisions of sub-section (1), the company and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues: Provided that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defense to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole- time secretary.
6. Whereas, as per **Section 203(5) of the Companies Act, 2013** that if any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a

penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.

7. We have heard the Counsel for the Applicants, perused the report filed by the ROC and the precedence filed by the Applicants.
8. Admittedly, the Petitioners have contravened the provisions of section 203 of the Companies Act, 2013 r.w. Rule 8A of The Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014 and even as per Report of ROC, as per the Show Cause Notice dated 12th January 2022, the Applicants are found to have violated the provisions of section 203 of the Companies Act, 2013 r.w. Rule 8A of the Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014. However, it is observed that the Petitioners have made the default good and the same is also confirmed from the report of ROC.
9. The Hon'ble NCLAT in the matter of ***Viavi Solutions India Private Limited & Ors Vs. Registrar of Companies, NCT Delhi***

and Haryana have given certain parameters for deciding a compounding application. We proceed to examine the present petition on the basis of parameters laid down by Hon'ble NCLAT.

Sr. No.	Points to be considered as per NCLAT Judgment	Remarks
1.	The gravity of offence	It does not prejudice the interest of public. The Company is a Private Company.
2.	The act is intentional or unintentional	The Act is unintentional.
3.	The maximum punishment prescribed for such offence, such as fine or imprisonment or both fine and imprisonment	As prescribed under the law.
4.	The report of the Registrar of Companies.	Submitted by Registrar of Companies which is itself explanatory.
5.	The period of default	From 20.03.2008 to 31.03.2014 = 2203 days. And From 01.04.2014 to 01.11.2018 = 1676 days. From 20.03.2008 to 01.11.2018.
6.	Whether petition is suo moto before or after notice from Registrar of Companies or after imposition of the punishment or during the pendency of a proceeding	Petition filed after the Show Cause Notice issued by RoC which is dated 12 th January 2022.

7.	The defaulter has made good of the default	The applicants have stated in its application that the company had appointed CS Virangi Puspendra Shah w.e.f. 01/04/2019 who resigned on June 06, 2019 and thereafter Mr. Rajesh Tharu was appointed as Company Secretary on September 28, 2019 who continues to be the Company Secretary till date.
8.	Financial condition of the Company and other defaulters	The company is in Textile Sector and was struggling for its survival due to paucity of finance. The company was having marginal profit ranging between 0.62% to 1.9% of the turnover during the period of 2008 to 2018. In absolute terms it was 1.27 Cr against the turnover of 90 Cr. (1.40%) during the year 2008 and similar situation persisted during the entire period of default.
9.	Offence is continuous or one-time	The default was made during 2008 to 2018 and was made good by appointing a qualified CS as mentioned in application.
10.	Similar offence earlier committed or not	No similar offence is compounded during last three years.

11.	The act of defaulters is prejudicial to the interest of the members or company or public interest or not	The Petitioner Company is a private limited company and it is stated in the petition that no prejudice is caused to the interest of the members of the Company or to public interest.
12.	Paid-Up Share Capital of the Company, etc.	As per the financial statements as at 31.03.2020 the paid-up capital of the company is Rs. 37,15,00,000/-.

10. The computation as per the provisions of Section 203(5) of the Companies Act, 2013 and the provisions of Section 383A(1A) of the Companies Act, 1956 is mentioned here under:

(A) Fine as per Section 383A(1A) of the Companies Act,

1956:

Company: Rs. 500 x 2203 days = Rs. 11,01,500/-

Sumit Champalal Agarwal (Director 1): Rs. 500 x 2203 days = Rs. 11,01,500/-

Champalal Gopiram Agarwal (Director 2): Rs. 500 x 2203 days = Rs. 11,01,500/-

(B) Fine as per Section 203(5) of the Companies Act, 2013:

Company: Minimum – Rs. 1,00,000

Sumit Champalal Agarwal (Director 1): Rs. 50,000 + Rs. 1000 x 1676 days, however maximum fine not to exceed beyond Rs. 5,00,000/-, hence = Rs. 5,00,000/-

Champalal Gopiram Agarwal (Director 2): Rs. 50,000 + Rs. 1000 x 1676 days, however maximum fine not to exceed beyond Rs. 5,00,000/-, hence = Rs. 5,00,000/-

(C) (A) + (B):

Total Fine on Company: Rs. 12,01,500

Total Fine on Sumit Champalal Agarwal: Rs. 16,01,500/-

Total Fine on Champalal Gopiram Agarwal: Rs. 16,01,500/-

Grand Total: Rs. 44,04,500/-

11. The Petitioners have filed the application for compounding of offences after the notice from RoC but before imposition of punishment, for the default committed under section 203 of the Companies Act, 2013. The said default committed has been made good by the Petitioners and they have ensured the compliance of the relevant provision. Therefore, by considering the facts, report of ROC and evaluation conducted on the basis of judgment of NCLAT it can be said that the default committed was not intentional and steps are being taken by the Petitioners for

correcting their mistake. Hence, this Tribunal takes a lenient view by compounding the offence and reducing the fine. After compounding of offence, we hereby direct the Applicant Company Gopi Synthetics Private Limited; and its Directors Sumit Champalal Agarwal and Champalal Gopiram Agarwal to pay **Rs. 5,00,000/-** each which aggregates to a sum of **Rs. 15,00,000/-**.

12. The offence committed by the Petitioners stands compounded subject to payment of fine. The Petitioners are directed to deposit the amount into Pay & Accounts Office, Ministry of Corporate Affairs, New Delhi within a period of three weeks from the date of this order.
13. The Petitioners are directed to serve copy of this order along with proof of compliance of order upon Registrar of Companies.
14. Accordingly, **C.P. No. 21 (AHM) of 2022** stands disposed of.

Sd/

SAMEER KAKAR
MEMBER (TECHNICAL)

HG-LRA/

Sd/

SHAMMI KHAN
MEMBER (JUDICIAL)