

**IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – V**

CP No. 830/MB/2020

Under section 441 of the Companies Act, 2013

In the matter of

**GKB Hi-Tech Lenses Private
Limited,**

CIN: U33201GA198PTC000663

A company incorporated under the Companies Act, 1956 and having its registered office at 50, Tivim Industrial Estate Mapusa Goa, 403 507

.... Petitioner Company/ Petitioner

**Mr. Mahendra Kumar Gupta (Whole Time
Director)** residing at 785, Shantam Alto Betim
Porvorim Goa 403 501

..... Petitioner 2

Mr. Shobit Gupta (Whole Time Director),
residing at 785, Shantam Alto Betim Porvorim
Goa 403 501

..... Petitioner 3

Ms. Meera Gupat (Director)
residing at 785, Shantam Alto Betim Porvorim
Goa 403 501

..... Petitioner 4

Mr Ramachandra Parthasarathy(Director)
A-903, White Mist Brigade Omega 80 feet road,
Opp Thurahali Forest, Bnashankari 6th Stage,
Bangalore South, Subramanyapura, Bangalore-
560 061

..... Petitioner 5

Mr.Neeraj Gupta (Whole Time Director),
residing at 785,Shantam Alto Betim Porvorim
Goa 403 501

..... Petitioner 6

Mr. Narasimha Narayanan (Director)
residing at 785, Shantam Alto Betim Porvorim
Goa 403 501

..... Petitioner 7

Mr Hemant N. Desai(Director)
residing at Tower A-9/c, Viceroy Park, Thakur
Village Mumbai 400 101

.....Petitioner 8

Versus

Registrar of Companies, Goa

having registered office at Plot No.21/ Patto,
Panji Goa 403 001.

...Respondent

Order Dated: 08.05.2024

Coram:

Hon'ble Ms.Reeta Kohli, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearance:

For the Petitioner: Advocate Nand Kishore (PH)

For Respondent (ROC): Mr. Jayant Taria (VC)

ORDER

1. This present Company Petition has been filed by the **GKB Hi-Tech Lenses Private Limited** (hereinafter referred as “**Petitioner**”) under Section 441 of the Companies Act, 2013 (hereinafter referred as “**Act**”) for compounding the offence pertaining to failure in holding the Annual General Meeting in accordance with the Section 96 of the Companies Act, 2013 for the financial year 2016-2017.
2. The Company was incorporated on 14.02.1986, under the provisions of the Companies Act, 1956 vide CIN No. U33201GA1986PTC000662 as a Private Limited Company, within the jurisdiction of the Registrar of Companies, Goa. The Authorized Share Capital of the Company is Rs. 30,00,00,000/- (Thirty crores only) The Company is engaged in the business of optical and ophthalmic industry, particularly in the manufacturing, distribution, and sale of various optical products and equipment such as lenses, frames, spectacles, lens meters, and camera lenses. It also provides services like anodizing and job work related to making, grinding, and measuring equipment.
3. It is submitted that the Annual General Meeting of Financial Year 2016-2017 was convened on 30.07.2017. Due to technical problems with the accounting software and the time required for its restoration, the Petitioner Company sought a three-month extension from the ROC Goa to hold its Annual General Meeting (AGM) for the financial year 2016-2017. The extension, granted on 09.06.2017, allowed the AGM to be convened until 30.09.2017. However, the

Company faced a deadlock in conducting the AGM due to ongoing disputes and litigation among shareholders, involving issues such as payments to vendors, arbitration over option premiums, and a police complaint filed by a majority shareholder against executive directors. Consequently, due to technical and administrative issues, the Company failed to conduct its Annual General Meeting within the statutory period prescribed under the Companies Act, 2013 leading to non-compliance. The significant delay in convening the AGM were stated to be 514 days after the due date, despite excluding 3(three) Months which was granted by the ROC vide order dated 09.06.2017.

4. It is submitted that the Petitioner herein has filed a *Suo Moto* Application to the ROC, Goa wherein the Petitioner informed the Respondent vide Form GNL-1 under SRN No. R16355653 dated 26.11.2019, thereby admitting the violations of Section 166 of the Companies Act, 1956 and Section 96 of the Companies Act, 2013.
5. The Forms MGT 7 dated 09.01.2018 and AOC 4 dated 02.03.2019 in respect of the Financial Statements and Annual Returns, were filed for the Financial Years 2016-2017. As stated on page 5 of the Company Petition, the penalty for the delayed submission of the annual returns has also been paid.
6. It is further submitted by the Petitioner that the Petitioner have duly complied with the Statutory provision of the Companies Act,2013 by conducting the Annual General Meeting for the financial year 2016-2017 on 27.02.2019. Furthermore, The Petitioner submits that in the AGM held on 27.02.2019 the Petitioner no 8 was appointed as Director of the Petitioner Company.
7. The Petitioner has admitted the default in conducting the AGM for the financial year 2016-2017. The Petitioner further states that the default is not intentional and is not of such nature as to prejudice the interest of Members, employers or creditors or others dealing with the Company and has not affected the public interest in any manner as the subsequent compliances are within limitation.

The default happened due to unforeseen events and circumstances which were beyond the control of management of the Petitioner Company. The Petitioner further declares that he had not made any application for compounding of the offences relating to these sections before any Tribunal of Law or any other authority or any other Tribunal etc. Hence, the Ld. Counsel for the Petitioner submitted that it is a fit case for grant of relief by compounding the offence.

8. The ROC Goa have filed its report bearing serial no. ROCGDD/441/GHTLPL/3797 dated 06.20.2020. According to the ROC report, the Company has failed to hold its Annual General Meeting within a period of Six Months from the Date of Closing of the Financial years ended i.e. on or before 30.06. 2017. The ROC report further states that on an account of a technical problem, the Company had sought an extension of 3 months from the ROC Goa and this extension was granted upto 30.09. 2017. Thereafter the Petitioner Company did not receive any further sanction for extension from the registrar for holding the AGM.
9. The ROC report further states that the offence u/s 96 of the 2013 Act and Section 98 of the 1956 Act are compoundable by the Hon'ble NCLT.

Findings:

10. We have gone through the Petition and the report submitted by the Ld. Registrar of Companies, Goa and also the submissions made by the Ld. Counsel at the time of hearing. We are of the considered opinion that the petition made by the petitioner for compounding of offence committed under Section 99 of the Companies Act, 2013, merits consideration. The extracts of the Sections which are relevant in this case are as follows:

Section 99 of the Companies Act, 2013 applicable w.e.f. 01.06.2016

“Section 99- If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98, or in complying with any directions of the Tribunal, the company, and every officer of the company who is in default shall be punishable with fine which may extend

to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.”

11. Having regard to the facts and circumstances of the case and the fact that the offence was made good by duly Conducting the AGM's in the year 2018-2019, the offence committed under Section 96 of the Companies Act, 2013, has been made good already and thus the same is compounded against the Petitioner No. 1, GKB Hi-Tech Lenses Private Limited. It further deserves to be taken note of in terms of Section 2(60) of the Companies Act 2013 which is stated as under:

“officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely: —

(i) whole-time director;

(ii) *key managerial personnel;*

(iii) *where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;*

(iv) *any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;*

(v) *any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a*

professional capacity; 20

- (vi) *every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;*
- (vii) *in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.”*

12. From the perusal of the documents submitted by the Petitioner Company it is, evident that the Petitioner company is having the Whole Time Directors. Since the Petitioner Company is having Petitioner No.2(i.e. **Mr. Mahendra Kumar Gupat**). Petitioner No. 3 (i.e. **Mr. Shobit Gupta**) and Petitioner No.6 (**Mr. Neeraj Gupta**) as Whole Time Directors thus, it is they also who deserves to be made liable for the default having been committed by the Petitioner Company. Thus we deem it appropriate to impose the following reasonable penalties upon the Petitioner No.1 and also the Petitioner No.2, Petitioner No. 3 and Petitioner No.6.The liability of the Petitioner to pay the fine is tabulated hereunder:

Sr. No	Particulars of Applicants' Company/Officers in Default	Amount Payable for Financial Year 2016-17
1.	GKB Hi-Tech Lenses Private Limited	25,000/-
2.	Mr. Mahendra Kumar Gupat	25,000/-
3.	Mr. Shobit Gupta	25,000/-
4.	Mr. Neeraj Gupta	25,000/-
Total		1,00,000/-

13. Therefore, after compounding of offence/offences the total amount to be deposited by the Petitioner No. 1(i.e Petitioner Company) is Rs. 25,000 /-(Twenty-Five Thousand only), the total amount to be deposited by the Petitioner No. 2(i.e Mr. Mahendra Kumar Gupat, Whole time Director) is Rs. 25,000/- (Twenty-Five Thousand only), the total amount to be deposited by the Petitioner No. 3(i.e Mr. Shobit Gupta, Whole time Director) is Rs. 25,000/- (Twenty-Five Thousand only) and Petitioner No. 6(i.e Mr. Neeraj Gupta, Whole time Director) is Rs. 25,000/- (Twenty-Five Thousand only).

14. The remittance shall be made to the “*PM Relief Fund*” through ‘*Bharat Kosh*’ account in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai". The director should pay the penalty from his personal account. The Registrar of Companies, Mumbai is hereby directed to take further action as provided under Section 621A(3)(c)(d) of the Companies Act, 1956 read with Section 441 (3)(c) (d) of the Companies Act, 2013. The RoC shall give effect to this Order only after perusal of the Compliance report with respect to the cost imposed.

15. Accordingly, the Company Petition bearing No. **830/MB/2020** is hereby **allowed** on the terms directed above. Needless to mention, the offence shall stand compounded subject to the remittance of the Compounding Fee imposed. A compliance report, shall be placed on record within **30 days** of passing this Order. Post it on 12.06.2024 for Compliance.

Sd/-
Madhu Sinha

MEMBER (TECHNICAL)

/Priyanka/

Sd/-
Reeta Kohli
MEMBER (JUDICIAL)