

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-IV

CP No.65/MB-IV/2023

Under Section 441 of the Companies Act,
2013

In the matter of:

Mr. Arrel Herald Furtado,

Residing at Rajvilla, C/1, B P Cross Road,
Mulund (W), Mumbai, Maharashtra-400080,
As a Director of Opera Hotels Private Limited,
having its registered office at 158, Dani
Corporate Park, CST Road, Kalina, Santacruz
(East), Mumbai-400098.

... Petitioner

V/s.

The Registrar of Companies, Maharashtra
Mumbai, 100, Everest, Marine Lines,
Mumbai-400020

... Respondent

Order Dated: 10.11.2023

Coram:

Ms. Madhu Sinha

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Adv. Keta Chheda i/b Chirag Shah
& Associates, Advocate.

For the Respondent(s) : Mr. Shivaraj C. Ranjeri, AROC,
Mumbai.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed on 23.02.2023 under Section 441 of Companies Act, 2013 by Opera Hotels Private Limited (U55101MH2009PTC192101) for compounding the offence pertaining to failure in holding the Annual General Meeting in accordance with the Section 96 of the Companies Act, 2013 from the financial years 2010-11 to 2016-17.
2. Applicants before us:
 - a) Opera Hotels Private Limited
 - b) Kirti Dhanpal Bhawsar (from 03.08.2015 till 18.07.2016)
- Director
 - c) Arrel Herald Furtado
- Director

Section Violated:

Section 96 r/w Section 441 of the Companies Act, 2013 (corresponding to section 99 of the Companies Act, 2013).

Nature of Violation:

3. The Authorised Share Capital of the Company is Rs. 1,00,00,000 (Rupees One Crore only) divided into 10,00,000/-(Ten Lakh) equity shares of Rs.10 (Ten) each and the paid-up share capital of the company is Rs.32,60,000 (Rupees Thirty-Two Lakh Sixty Thousand only) divided into 3,26,000 (Three Lakh Twenty Six Thousand only) Equity shares of Rs.10 (Ten) each, fully paid up.

4. As per the submission made in the Report of Registrar of Companies, Mumbai and from the submissions made in the Compounding Application, it is observed that Company has not held the Annual General Meeting for the Financial Years from 2010-11 to 2012-13 and 2015-16 to 2016-17 under the provisions of Section 166/96 of the Companies Act, 1956/2013. The Opera Hotels Private Limited is a Private Limited company and the Petitioner is the Director of the Company. For the Financial years ended 31.03.2011, 31.03.2012 and 31.03.2013, the AGM could not be held within the period specified in Section 166 of the Companies Act, 1956 since the Financial Statements of the Company were not audited within the prescribed time limit under the Companies Act, 1956. The Financial Statements were audited and thereafter, the AGM were held on 28.01.2023, 05.08.2013 and 19.02.2014 respectively. For the Financial Years ended 31.03.2016 and 31.03.2017, the AGM could not be held within the period specified in Section 96 of the Companies Act, 2013 since the Financial Statements of the Company were not audited within the prescribed time limit under the companies Act, 2013. The Financial Statements of the said financial years were audited and thereafter, the AGM were held on 20.11.2017 and 21.06.2018 respectively. Hence, the Company and its Officer in default are liable for punishment u/s 168/99 of the Companies Act, 1956/2023.

4.1 The Period of the Offence are as under:

Financial Year	Statutory Due Date of AGM	Actual date of conducting AGM	No. of days of delay
2010-11	30.09.2011	28.01.2013	486
2011-12	30.09.2012	05.08.2013	309

2012-13	30.09.2023	19.02.2014	142
2015-16	30.09.2016	20.11.2017	416
2016-17	30.09.2017	21.06.2018	264

4.2 The offence u/s.166/96 of the Companies Act, 1956/2013 was first committed in the financial year 2010-11 and it was subsequently repeated in Financial years 2012-13, 2015-16 and 2016-17.

4.3 The Comments of the Registrar of Companies, reads thus:

1. *Mr. Esam Yusuf Abdulla Abdulkarim Janahi, Ex-Director (from 26.08.2009 to 13.12.2012), Mr. Mohamed Ameen Ahmed Ali Hasan, Ex-Director (from 05.04.2012 to 27.03.2017), Mr. Mazin Abdulrahim Alghareeb, Ex-director from (23.03.2017 to 21.06.2018) and Mr. Hazem Abdulkarim, Ex-director (from 29.03.2012 to 23.03.2017) being officers in default have not applied the Compounding Application for their respective period of Directorship with the Applicant Company and prosecution may be filed after logical end of compounding application.*
2. *Mr. Kirti Dhanpal Bhawsar, Ex-Additonal Director (from 03.08.2015 till 18.07.2016) was not a director during the period of offence and hence is not liable to punishment, however, he has applied for compounding of offence in a separate application in GNL-1 under same SRN.*
3. *Mr. Arrel Herald Furtado, Director (from 18.07.2016 till date) and Officer in default has made separate applications for the relevant period of offence in GNL-1 under same SRN.*

4.4 For ready reference Section 96 of the Companies Act, 2013 reproduced below:

96. Annual general meeting:-

- (1) *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:*

Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year:

Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:

Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

- (2) *Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate:*

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by

electronic mode by all the members in advance:

Provided further that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

Explanation:- *For the purposes of this sub-section, "National Holiday" means and includes a day declared as National Holiday by the Central Government.*

- 4.5 As per the provisions of Section 96, the Company was required to hold the AGM within a period of 6 months from the date of closing of the Financial Year. However, company has conducted the AGM for the Financial year 2016-17 on 21.06.2018 whereas the due date for holding the AGM was 30.09.2017. Thus, there is a delay of 264 days in holding the AGM for the year 2016-17.
- 4.6 The Applicant further states that the aforesaid default committed inadvertently and without any *mala-fide* intentions on the part of the Petitioners, and it is not likely to cause any prejudice to either the Company, or to its members or creditors. Further, the petitioner undertakes to take due care in future to ensure that there is no default in compliance with the provisions of the Companies Act, 2013.
- 4.7 In the circumstances mentioned hereinabove, the petitioners filed this Petition seeking appropriate directions of this Tribunal allowing the Petition for compounding of offence under Section 441 read with Section 96 of the Companies Act, 2013.
5. On perusal of the report, we have noticed that the offence of the company has been made good by adopting AGM for the Financial

Years from F.Y.2010-11, 2011-12, 2012-13, 2015-16 & 2016-17 was duly held on 28.01.2013, 05.08.2013, 19.02.2014, 20.11.2017 and 21.06.2018, respectively. This Bench finds that the AGM for the financial years 2016-17 was held on 21.06.2018. Thus, the offence has been made good by the Petitioner.

5.1 We have gone through the Petition of the Petitioner and the report submitted by the Registrar of Companies, Mumbai and also the submissions made by the Ld. Counsel for the Petitioner at the time of hearing and noted that petition made by the petitioner for compounding of offence committed under Section 96 of the Companies Act, 2013, merits consideration.

5.2 Section 99 of the Companies Act, 2013 provides that-

“If any default is made in holding a meeting of the company 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 default continues.”

5.3 Having regard to the facts and circumstances of the case, the offence committed under Section 96 of the Companies Act, 2013, as stated and explained above in first para is compounded against the Petitioners, on payment of Rs. 50,000/- by the company i.e. Opera Hotels Private Limited and Rs.10,000/- by the Arrel Herald Furtado, the director of the company totalling to Rs.60,000/- (Rupees Sixty Thousand only).

- 5.4 The remittance shall be made to the “Bharatkshosh” account in favour of “Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai”. The director should pay the penalty from their respective 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 of this Order only after perusal of the Compliance report of cost imposed.
6. Accordingly, the Company Petition bearing No.: CP/65(MB)2023 is hereby **allowed** and **disposed of**.

Sd/-
MADHU SINHA
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)

10.11.2023