

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

CP No. 168/MB/2023

Under section 210 of the Companies Act,
1956 corresponding to Section 129 and
Section 441 and other applicable
provisions of the Companies Act, 2013

In the matter of

MGM Programing Service India

Private Limited

Having its Registered Office at Station
Plaza Unit No.B/25 Station Road, Bhandup
(w) Mumbai 400 078

.... Petitioner Company/ Petitioner

Mr. ROBERT MCDONALD STEWART

(Director) residing at 123, Estcote Road,
Ruislip Greater Britain HA48BG

..... Petitioner 2

Mr. HARLOD EUGENE (Director),

residing at 15, Twin Oakhs Dr. Lawrence
TWP New Jersey, USA 086483111

..... Petitioner 3

Mr. MUKESH CHANCHAN (Director)

residing at Ward No. 18, Geeta Bhawan
Gali, Hanuman Garh Town, Haumangarh
Rajasthan 335 512

..... Petitioner 4

Versus

Registrar of Companies, Mumbai

having registered office at Everest, 5th Floor, 100
Marine Drive, Mumbai- 400 002.

...Respondent

Order Dated:15.05.2024

Coram:

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

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

Appearance:

For the Petitioner: PCS Dhrumil M. Shah (VC) Advocate.

For Respondent (ROC): Rujuta Bankar (VC)

ORDER

1. This present Company Petition has been filed by the **MGM Programming Service India Private Limited** (hereinafter referred as "**Petitioner**") under section 441 of the Companies Act, 2013 for compounding of the offence committed under section 210 of the erstwhile Companies Act, 1956 and section 129 of the Companies Act, 2013 (hereinafter referred to as 'the Act').
2. The Petitioner Company was incorporated on 08.06.2007 under the provisions of the Companies Act, 1956 vide CIN: U63040MH2007PTC1426 as a private company limited by shares within the jurisdiction of the Registrar of Companies, Maharashtra, Mumbai. The Authorised Share Capital of the Company is Rs. 16,000,000/- (Rupees One Crore Sixty Lakhs only) divided into 16,00,000/- (Sixteen Lakh) equity shares of Rs. 10 (Ten) each and the paid-up

share capital of the company is Rs. 15,987,510 (Rupees One Crore Fifty-Nine Lakh Eighty-Seven Thousand Five Hundred and Ten only) divided in 1,598,751 (Fifteen Lakh Ninety-Eight Thousand Seven Hundred Fifty-One) Equity shares of Rs. 10 (Ten) each, fully paid up. The Petitioner Company is engaged in the business of developing, programming, marketing and distributing of Subscription and/or advertising supported television channels and/or services to subscribers of television systems in India. The Petitioner Company is governed by a board of three directors, specifically:

- 1) Mr. Robert Mcdonalad Stewart possessing DIN:07959347, appointed on, 28.12.2017
- 2) Mr. Harold Eugene Gronenthal possessing DIN:07820795, appointed on, 28.12.2017
- 3) Mr. Mukesh Chanchan possessing DIN:07773871, appointed on, 30.06.2022

3. Petitioner No. 2 and Petitioner No. 3, pursuant to a Consent cum Authority Letter executed on 22nd September 2022, have conferred full authorization upon Petitioner No. 4 to act on their behalf, both individually and collectively. This authorization encompasses the submission of petitions, the filing of affidavits, the appointment of an attorney, and the making of submissions in all matters relevant to Company interests.

4. The Copies of the Notices and Minutes of the Annual General Meetings filed for the Financial Years ending as on 2009-10 to 2016-17 have been annexed to the petition. The Company has also filed its accounts and annual returns for the Financial year ending as on 31.03.2022 and annexed the same. It is submitted that the Annual General Meeting of Financial Year 2015-2016 was convened on 30.09.2016.

5. The Board of Directors of the Company have fixed and then changed the Financial year of the Company since incorporation in the following manner:

Sr No.	Date of Board Meeting	Financial year tenure fixed by the Company	Effective financial year of the Company
1.	11.06.2007	1 April to 31 March	8 June 2007 to 31 July 2008
2.	27.02.2008	1 August to 31 July	
3.	31.03.2009	1 August to 31 July	1 August to 30 September 2009
4.	29.09.2009	1 October to 30 September	1 August to 30 September 2010
			1 August to 30 September 2011
			1 August to 30 September 2012
			1 August to 30 September 2013
			1 August to 30 September 2014
5.	18.06.2015	1 April to 31 March	1 October 2014 to 31 March 2015
			01 April 2015 to 31 March 2016
			01 April 2016 to 31 March 2017

6. The Petitioner/Defaulters herein have filed Form GNL-1 vide SRN No. R29601481 on 08.01.2020 thereby admitting the violations of Section 168 of the Companies Act, 1956 and Section 96 of the Companies Act, 2013. The Company has suo-moto applied for compounding the offences.
7. As per section 96 of the Companies Act, 2013 read with section 166 of the Companies Act, 1956, the Company was required to lay its financial statements every year at the Annual General Meeting and the Company had defaulted in laying the financial Statements for the financial years from 2009-2010 to 2016-2017.
8. Petitioners submitted that laying of financial statements before the AGM was delayed due to Limited operations during the relevant financial years, leading to a lack of significant activity that would necessitate filing, Frequent travel by directors for commercial reasons, impacting the ability to convene board meetings and AGMs within the specified timeframes and several factors, including global restructuring, reshuffling of executives, and delayed approval

of financial statements were the reasons of the default . They argue that these circumstances led to inadvertent contravention of the relevant provisions of the Companies Act 1956 and 2013. They specifically mention difficulties in complying with Section 210 of the 1956 Act, which corresponds to Section 129 of the 2013 Act.

9. The ROC Mumbai has filed its report bearing serial no. R.O.C/441/KA/2023/09. According to the ROC report the Company has failed to hold its Annual General Meeting and lay before such meeting the Financial Statements for the Financial year 2009-2010 to 2016-2017. Thus the Company is found to have violated the provisions of Section 210 r/w section 166 of the Companies Act 1956 and Section 129 r/w section 96 of the Companies Act, 2013. The ROC report states that the Board of Director of the Petitioner Company have passed the resolution for Compounding of Offence in Board Meeting held on 07.09.2022. The ROC report further stated that the Company committed its first default in the FY 2009-2010 and thereafter, it was subsequently repeated in financial years till 2016-2017. No prosecution has been initiated against the Petitioners for the aforesaid default and an application was filed with the Registrar of Companies, Mumbai who referred the matter to NCLT in view of the pecuniary limits prescribed for compounding of such offense.

10. The RoC further states that the RoC has lodged prosecution against the Petitioner before Honorable Metropolitan Magistrate 40TH Court, Girgoan Mumbai Hence the present Petition.

Findings:

11. We have gone through the Petition and the report submitted by the Ld. Registrar of Companies, Mumbai 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 210(5) & 451 of the Companies Act, 2013, merits consideration. and for the said violation, the punishment is provided under Section 451 and Section 129(7) of the Companies Act, 2013. and Section 210(5) of the Companies Act, 1956. The extracts of the Sections which are relevant in this case are as follows:

Section 210(5) of the Companies Act, 1956

“If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to 1 [ten] thousand rupees, or with both : Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty : Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.”

Section 451 of the Companies Act, 2013 applicable w.e.f. 12.09.2013

“Section 451- If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.”

Section 129(7) of the Companies Act, 2013

“If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying

with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.”

12. Based on the evidence, it's clear that Petitioner No. 4 became a Director on 30.06.2022, while the offense in question is pertaining to period from 2009 to 2017. Therefore, it's evident that Petitioner No. 4 cannot be held responsible for the offences having been committed by the Petitioner Company during that period. This Bench has concluded that Petitioner No. 4 is not accountable for the offences attributed to the Petitioner Company from 2009-2010 to 2016-2017.

13. From the perusal of the documents submitted by the Petitioner Company it is, evident that the offence committed under Section 210 of the Companies Act, 1956 as stated and explained above, the offence/offences are compounded against the Petitioners Company (i.e. Petitioner no 1), Petitioner No 2 and Petitioner No 3 on payment by Petitioner about with the delay, the liability of the Petitioner to be paid is tabulated hereunder:

The fine is calculate under section 210(5) of Companies Act 1956

Sr no.	Financial Year	Amount Payable by Petitioner Company in Default(MGM Programming Service India Private Limited) in Rs.	Payable by Officer in Default(Harlod Eugene (Director) in Rs.	Amount Payable by Officer in Default(Mr. Mukesh Chanchan Director) in Rs.
1	2009-2010	10,000/-	10,000/-	10,000/-
2	2010-2011	10,000/-	10,000/-	10,000/-
3	2011-2012	10,000/-	10,000/-	10,000/-
4	2012-2013	10,000/-	10,000/-	10,000/-
Total		40,000/-	40,000/-	40,000/-

The fine is calculate under section 129(7) of Companies Act 2013

Sr no.	Financial Year	Amount Payable by Petitioner Company in Default(MGM Programming Service India Private Limited) in Rs.	Payable by Officer in Default(Harlod Eugene (Director) in Rs.	Amount Payable by Officer in Default(Mr. Mukesh Chanchan Director) in Rs.
1	2013-2014	50,000/-	50,000/-	50,000/-
2	2014-2015	50,000/-	50,000/-	50,000/-
3	2015-2016	50,000/-	50,000/-	50,000/-
4	2016-2017	50,000/-	50,000/-	50,000/-
Total		2,00,000/-	2,00,000/-	2,00,000/-

14. Therefore, after compounding of offence/offences the total amount to be deposited by the Petitioners is as follows:

Sr No.	Petitioner in default	Amount Payable for Financial Year 2009-2013	Amount Payable for Financial Year 2014-2017	Total
1	Petitioner No. 1(i.e. MGM Programming Service India Private Limited	10,000 x 4 years = 40,000/-	50,000 x 4 years = 2,00,000/-	2,40,000/-
2	Petitioner No. 2(i.e. Mr. Robert Mcdonald Stewart Director	10,000 x 4 years = 40,000/-	50,000 x 4 years = 2,00,000/-	2,40,000/-
3	Petitioner No. 3(i.e. Mr. Harlod Eugene Director	10,000 x 4 years = 40,000/-	50,000 x 4 years = 2,00,000/-	2,40,000/-

15. 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 the cost imposed.

16. Accordingly, the Company Petition bearing No. **168/MB/2023** 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.

Sd/-

Madhu Sinha

MEMBER (TECHNICAL)

/Priyanka/

Sd/-

Reeta Kohli

MEMBER (JUDICIAL)