

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT-V, MUMBAI BENCH

CP No. 157/MB/2022

Under Section 441 read with Section 96 and
Section 99 of the Companies Act, 2013

In the matter of

1. Arabian Hotels Private Limited

CIN: U55101MH2007PTC177179

having its registered office at 158, Dani
Corporate Park, CST Road, Kalina, Santacruz
(East), Mumbai-400098

.....Petitioner 1

2. Mr. Kirti Dhanpal Bhawsar

residing at 3/309, Shanti Niwas Building,
Firtwala Road, Elphinstone, Mumbai,
Maharashtra, India, 400013

.....Petitioner 2

3. Mr. Arrel Herald Furtado

residing at Rajvilla, C/1, B P Cross Road,
Mulund West, Mumbai, Maharashtra, India,
400080.

.... Petitioner 3

.... Petitioner Company/ Petitioner

Versus

The Registrar of Companies, Mumbai

100, Everest, Marine Lines, Mumbai-
400020.

...Respondent

Order Dated: 03.07.2024

Coram:

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

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

Appearance:

For the Petitioner: CS Neha Rajat (PH).

For Respondent (ROC): Rujuta Bankar (VC)

ORDER

1. This Company Petition has been filed by Arabian Hotels Private Limited (referred to as the "Company Petitioner No 1") along with its Directors, Mr. Kirti Dhanpal Bhawsar (referred to as the "Petitioner No 2"), who served as a Director from August 3, 2015, to July 18, 2016, and Mr. Arrel Herald Furtado (also referred to as the "Petitioner No 3"), who has been serving as a Director since July 18, 2016. The petition is made under Section 441 of the Companies Act, 2013 (referred to as the "Act"), seeking to compound the offence under Section 96 of the Act committed by the Company for the financial years 2010-11, 2011-12, 2012-13, 2015-16, and 2016-17.
2. The Company was incorporated on 31.12.2007, under the Companies Act, 1956 vide CIN No. U55101MH2007PTC177179 as a Private Company, within the jurisdiction of the Registrar of Companies, Maharashtra, Mumbai.
3. The Authorized 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. The paid-up share capital of the Company is Rs. 95,00,000 (Rupees Ninety-Five Lakh Only) divided into 9,50,000 (Nine Lakh Fifty Thousand) Equity shares of Rs. 10 (Ten) each. The Company is engaged in the business of running and maintaining of

Hotels & Resorts.

4. It is submitted by the Petitioner that the Annual General Meetings for financial years 2010-11, 2011-12, 2012-13, 2015-16, 2016-17 could not be held in time because the financial statements of the Company were not audited within the prescribed time, which resulted into delay in convening the AGM for the aforesaid financial years. The significant delay in convening the AGM is as specified hereunder:

Sr No.	Financial Year	Due Date for AGM	Date of AGM Held on	No. days delay in convening AGM
1.	2010-11	30.09.2011	28.01.2013	487
2.	2011-12	30.09.2012	05.08.2013	310
3.	2012-13	30.09.2013	19.02.2014	143
4.	2015-16	30.09.2016	20.11.2017	417
5.	2016-17	30.09.2017	21.06.2018	265

5. It is submitted that the Company has suo-moto applied for compounding the offences. The petitioner had received a Show Cause Notice from the Ministry of Corporate Affairs for financial year 2016-17 vide emails dated 4th November, 2019 and 28th November, 2019. The Petitioner/Defaulters herein have filed Form GNL-1 vide SRN No. T85907897 dated 11.03.2022 thereby admitting the violations of Section 168 of the Companies Act, 1956 and Section 96 of the Companies Act, 2013.
6. The Board of Directors in its meeting held on 29.07.2021 resolved to make an application under Section 441 of the Companies Act, 2013 for compounding of the said offences by the Company and officers in default. The latest Financial Statements of the Company for the financial year ended on 31.03.2021 is enclosed with the present petition.

7. The Petitioner submitted that, he had not made any application for compounding of the offences relating to these Sections in last three years and thus it is a fit case for grant of relief by compounding of the offence. No one will be prejudiced by the compounding of the offences and it is just and equitable that the compounding may be allowed. No public interest shall be affected if compounding of above offence is made by the Hon'ble Bench.
8. The ROC Mumbai have filed its report bearing serial no No/ROC/441/KA/1 dt. 08.06.2022. According to the ROC report, the Company has failed to hold its Annual General Meeting for the Financial year 2010-11 to 2013-13 and 2015-16 to 2016-17 under the provisions of Section 166/96 of the Companies Act, 1956/2013 within prescribed time. The ROC report further states that the Company committed its first default in the FY 2010-11 and thereafter, it was subsequently repeated in financial years 2012-13, 2015-16 and 2016-17. The RoC report also states that the offences u/s 96 of the 2013 Act and Section 166 of the 1956 Act are compoundable by the Hon'ble NCLT.
9. The ROC report also states that Mr. Kirti Dhanpal Bhawsar, Ex Director(Petitioner No 2) 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. Further, Mr. Arrel Herald Furtado, Director and Officer in default has made separate applications for the relevant period of offence in GNL-1 under same SRN.

Findings:

10. 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 96 & 451 of the Companies Act, 2013, merits consideration and for the said violation, the punishment is provided under Section 451 of the Companies Act, 2013 and Section 99 of the Companies Act, 2013. 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.”

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.”

11. Having regard to the facts and circumstances of the case the Suo Moto Application filed by the Petitioner, and the fact that the offence was made good by duly Conducting the AGM's of financial years i.e 2010-11, 2011-12, 2012-13, 2015-16, 2016-17.the offence committed under Section 96 of the Companies Act, 2013 as stated and explained above, the offence/offences are compounded against the Petitioners on

payment of the cost Imposed. The liability of the Petitioner Company to be paid is tabulated hereunder:

Sr No.	Financial Year	Amount Payable by Petitioner Company (petitioner No 1) in Default
1.	2010-2011	11,000/-
2.	2011-2012	11,000/-
3.	2012-2013	11,000/-
4.	2015-2016	11,000/-
5.	2016-2017	11,000/-
Total		55,000/-

12. We are of the considered opinion that the Petitioner No.2 herein was an Additional Director of the Company from 03.08.2015 to 18.07.2016. The due date for holding the AGM for FY 2015-16 and 2016-2017 was till 30.09.2016 and 30.09.2017, whereas the Petitioner No.2 was an additional director of the Company only uptill 18.07.2016 meaning thereby, he left the Company when there was still time to hold the AGM. The Petitioner No.2 thus cannot be blamed or held liable for the defaults or non-compliances of the Company committed during the period in which the Petitioner was not a director of the Company.

13. The Petitioner No 3 **Mr. Arrel Herald Furtado**, is held liable for the financial year **2015-2016** and **2016-2017** as the Petitioner was appointed as Director on **18.07.2016**. The liability of the Petitioner (i.e. Mr. Arrel Herald Furtado, Director) to be paid is tabulated hereunder:

Sr No.	Financial Year	Amount Payable by Petitioner No 3, Mr. Arrel Herald Furtado, Director in Default
1.	2015-2016	11,000/-
2.	2016-2017	11,000/-

Total	22,000/-
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14. Therefore, after compounding of offence/offences the total amount to be deposited by the Petitioner No1(i.e Company) is Rs. 55,000/- and Rs. 22,000/- to be paid by Petitioner No 3(i.e. Mr. Arrel Herald Furtado, Director of the Company). Petitioner No.2 stands exonerated.

15. The remittance shall be made to the "Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai". The Jurisdictional Registrar of Companies, is hereby directed to take further action as provided under Section 441 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 Petition bearing No. 157/MB/2022 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.

Sd/-
MADHU SINHA
MEMBER (TECHNICAL)
/Priyanka/

Sd/-
REETA KOHLI
MEMBER (JUDICIAL)