

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, COURT - II**

**CP No.: 223/MB /2023**

**Under section 441 of the Companies Act, 2013**

In the matter of

**GRA INDIA PRIVATE LIMITED**

**CIN No. U0112PN2013PTC149140**

Having its Registered Office at: - 611, 6<sup>th</sup>  
Floor, Global Square, Deccan College Road,  
Yerwada, Pune - 411016

**.... Applicant Company**

**V/s**

**REGISTRAR OF COMPANIES,**

**Pune, MAHARASHTRA**

**PCNTDA Green Building, Block A, 1st and  
2<sup>nd</sup> Floor, Akurdi, Pune, 411044**

**.... Respondent**

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Order delivered on: - 17.05.2024

**Coram:**

**Anil Raj Chellan**

**Kuldip Kumar Kareer**

**Member (Technical)**

**Member (Judicial)**

*Appearances (in physical mode):*

**For the Applicant Company: - Adv. Omkar V. Deosthale i/b CS, Satyajeet  
Joshi**

*Per: - Coram.*

**Applicants/Defaulters Herein:**

1. M/s. GRA India Private Limited – Company.
2. Mr. Shu Watanabe - Director.
3. Mr. Hiroki Iwasa - Director.
4. Mr. Sanjay Madhavrao Jagtap - Director

**Section Violated:**

Section 96 of the Companies Act, 2013.

**Penalty Provided Under:**

Section 99 of the Companies Act, 2013.

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**ORDER**

1. This Compounding Application is filed by the Applicants under Section 441 of the Companies Act, 2013, for compounding of the offence Section 99 of the Companies Act, 2013. The Applicant Company has not held its Annual General Meeting within the time stipulated under the provisions of Section 96 of the Companies Act, 2013 for the financial years 2016-17, 2017-18 and 2018-19 thereby committing an offence punishable under Section 99 of the Companies Act, 2013 respectively.
2. The Applicant Company was incorporated on 14.10.2013 under the provisions of the Companies Act, 1956 vide CIN No. U0112PN2013PTC149140 as a private company limited by shares within the jurisdiction of the Registrar of Companies, Pune. The Authorized Share Capital of Rs. 30,00,000 /- (Rupees Thirty Lakhs only) divided into 3,00,000 Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid up Share Capital is Rs. 3,60,000/- (Rupees Ninety-Three Lakhs and Fifty Thousand Only) divided into 36,000 equity shares of Rs. 10/- each, fully paid-up.

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3. The copies of the Minutes of Annual General Meetings for the Financial Years ending as on 31<sup>st</sup> March 2017, 31<sup>st</sup> March 2018, 31<sup>st</sup> March 2019, have been annexed to the petition. The Company has also filed its accounts and annual returns as on 31.03.2022 as per the records of Company Master Data on MCA portal and held the AGM for the aforesaid year on 14.01.2022. Thus, the Company is regular in filing its Annual Accounts with the Registrar of Companies (RoC) and conducting its annual general body meetings.
4. The main object of the Applicant Company is stated as follows: -
  - a. *Cultivation and horticulture of agriculture produces under controlled conditions, processing and sale of agriculture produces.*
  - b. *Manufacture and sale of processed products made from agriculture produces; Storage, transport and sale of agriculture produces; and Manufacture and sale of materials required for agriculture production.*
  - c. *Any and all other business activities incidental to each of the foregoing.*
5. The Applicant Company herein has filed the Compounding Application vide Form GNL-1 having SRN No. F40825473 dated 07.11.2022 thereby admitting the violations of Section 96 of the Companies Act, 2013.

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6. The Applicants submit that the Company was struck off by the ROC on 25.10.2019, stating grounds that the Company had not carried on any business or operations for a period of two immediately preceding financial years. The Company filed petition under section 252 of the Companies Act, 2013 praying to the Tribunal to order restoration. As a result, Tribunal vide order dated 09.12.2021 restored the name of Company.
7. The Applicant submits that the Company was required to hold AGM's for financial years 31<sup>st</sup> March 2017, 31<sup>st</sup> March 2018 and 31<sup>st</sup> March 2019 on or before 30<sup>th</sup> November 2017 (extension for holding AGM was obtained from ROC, Pune vide Form GNL- SRN G53990982), 30<sup>th</sup> September 2018 and 30<sup>th</sup> September 2019 respectively. However, the AGMs for above mentioned financial years were conducted on January 14, 2022. The delay period for not conducting the AGMs within the timeline prescribed is as follows:

Financial Year ended	Due Date of AGM	Date on which the AGM was held	Delay in number of days (Excluding the period when the status of the Company was struck off)
31.03.2017	30.11.2017	14.01.2022	730
31.03.2018	30.09.2018	14.01.2022	426
31.03.2019	30.09.2019	14.01.2022	61

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8. The Applicants further submit that as the name of the company was Struck off on 25 October 2019, it was not in a position to conduct Annual General Meetings for financial years ended 31<sup>st</sup> March 2020 and 31<sup>st</sup> March, 2021. Consequently, the Company prays to condone the delay for conducting the Annual General Meetings for the financial years ending 31<sup>st</sup> March 2020 and 31<sup>st</sup> March 2022 on 17.01.2022 as the Company was struck off with effect from 25.10.2019 and restored only vide order dated 09.12.2021 by the Tribunal.
9. The Company, through Additional documents, clarifies that it qualified as a Small Company under the Companies Act, 2013. Accordingly, in accordance with Section 446B of the Companies Act, 2013, the Company and its Directors shall not be liable to a penalty more than one-half of the specified penalty subject to maximum of two lakh rupees in case of a Company and One lakh rupee in case of Directors.
10. As the offence is punishable with fine only, the RoC has not lodged any criminal prosecution against the Applicant Company and its directors.
11. The Applicant/defaulters admit their default in conducting the AGM for the financial years 2016-17, 2017-18 and 2018-19. The Applicant Company submits that the Annual General Meetings for the above

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financial years could not be held in time because the shareholders of the Company were not able to travel to Pune, India.

12. The Applicant Company further submits that the defaults committed by the Applicant Company have not caused any harm or injury or loss to any person including the Applicant Company, its Directors and investors. The Applicant Company declares that they have not filed any application, suit or application regarding the matter in respect of which this application is made. The Applicant Company further declares that they have not made any application for compounding of the offences relating to these sections in the last three years. Further, the Counsel for the Applicant submits that the default was not intentional. Hence, the Ld. Counsel for the Applicant Prays that it is a fit case for grant of relief by Compounding the offence for financial years 2017, 2018 and 2019 and seeks condonation of delay in conducting AGM's for financial years 2020 and 2021.

13. The RoC Mumbai have filed their report/comments. According to the RoC report, the Company and its Directors are found to have violated the provisions of Section 96 of the Companies Act, 2013. The RoC report further states that the Applicant Company committed its default for financial years 2016-17, 2017-18 and 2018-19. The Report further states that no similar offence was compounded during the last three years and

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the offence was made good by duly holding the AGM for financial years 2016-17, 2017-18 and 2018-19 on 14.01. 2022. The RoC report states that the Company was under the status of strike off for 776 days (25.10.2019 to 09.12.2021) and therefore this period is to be excluded for calculating the defaulting days for each financial year. Further, the Company has failed to file as per the NCLT order for restoration of name of Company with the RoC in e-form INC-28. The RoC report also states that the offences u/s 96 of the 2013 Act are compoundable by the Hon'ble NCLT.

14. The RoC, Pune in its report dated 27.04.2023 have calculated and levied the following penalty for the default occurred in the Financial years 2016-17, 2017-18 and 2018-19 -

<b><u>Financial Year</u></b>	<b><u>Applicable Section</u></b>	<b><u>Period of Default</u></b>	<b><u>Maximum Penalty</u></b>
2016-17	Sec.99 of the Companies Act, 2013	730 days (From 30.11.2017 to 14.01.2022)	Fine - Rs. 1,00,000/- And For Continuing Default- Rs. 5,000/- per day for 730 days amounting to Rs. 36,50,000 /- <b>Maximum-Rs. 37,50,000/-</b>
2017-18	Sec.99 of the Companies Act, 2013	426 days (From 30.09.2018 to 14.01.2022)	Fine- Rs. 1,00,000 /- And



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			For Continuing Default- Rs. 5,000 per day for 426 days amounting to Rs. 21,30,000 /- <b>Maximum-Rs. 22,30,000/-</b>
2018-19	Sec.99 of the Companies Act, 2013	61 days (From 30.09.2019 to 14.01.2022)	Fine - Rs. 1,00,000 /- And For Continuing Default- Rs. 5,000 per day for 61 days amounting to Rs. 3,05,000 /- <b>Maximum-Rs. 4,05,000/-</b>
Total			<b>Maximum Penalty – Rs. 63,85,000/- each Applicant</b>

15. This Bench has gone through the pleadings on record and the submissions made by the Representative for the Applicants / Defaulters herein and is accordingly of the considered view that the Applicants/Defaulters herein have violated Section 96 of the Companies Act, 2013 and for the said violation, the punishment is provided in 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*

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*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.”*

16. The Applicants prayed for imposing lesser penalties on the ground that Applicant No.1 Company is a small company within the meaning of section 2(85) of the Companies Act, 2013. However, it is observed that the benefit of Section 446 cannot be extended to a default/offence under section 96 and 99 of the Companies Act 2013. Further, there is no provision for condoning the delay in holding AGM after the prescribed time.
17. The Applicant Company have filed their financial statements for Financial Year 2022-2023. Further, on perusal of the RoC Report, it is seen that the Applicant Company has incurred losses of Rs. 6,000/- for the financial year 31.03.2022. Thus, considering the facts and circumstances of the case and the provisions of law, as discussed hereinbefore, we are of the considered view that the offences committed by the Applicants herein should be compounded by imposing Compounding Fee as under:

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<u>Financial Year</u>	<u>Applicable Section</u>	<u>Period of Default</u>	<u>Compounding Fee (each Applicant)</u>
2016-17	Sec.99 of the Companies Act, 2013	730 days (From 30.11.2017 to 14.01.2022)	Fine- Rs. 5,000/- And For Continuing Default- Rs. 100/- per day for 730 days amounting to Rs. 73,000 /-  <b>Total – 78,000 /-</b>
2017-18	Sec.99 of the Companies Act, 2013	426 days (From 30.09.2018 to 14.01.2022)	Fine- Rs. 5,000/- And For Continuing Default- Rs. 100 /- per day for 426 days amounting to Rs. 42,600 /-  <b>Total – 47,600 /-</b>
2018-19	Sec.99 of the Companies Act, 2013	61 days (From 30.09.2019 to 14.01.2022)	Fine- Rs. 5,000/- And For Continuing Default- Rs. 100 /- per day for 61 days amounting to Rs. 6,100 /-  <b>Total – 11,100 /-</b>
<b>Total</b>			<b>Compounding Fee – 1,36,700 each Applicant.</b>

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18. On examination of the facts and circumstances of this case and in view of the findings, as discussed above, this Tribunal is of the view that a Compounding Fee of INR 1,36,700/- (Rupees One Lakh Thirty-Six Thousand Seven Hundred Only) by each Applicant, hence aggregating to amount of Rs. 5,46,800 /- (Five Lakh Forty-Six Thousand Eight Hundred Only) shall be sufficient as a deterrent for not repeating the alleged and admitted default in future. The imposed remittance shall be paid by way of Demand Draft drawn in favour of **“Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai”** within 30 days from the receipt of this order.
19. This Compounding Application vide CP No.: 223/MB /2023 is, therefore, disposed of 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, therefore, shall be placed on record.

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20. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, Maharashtra.
21. Ordered accordingly. File be consigned to Records.

**Sd/-**

**ANIL RAJ CHELLAN  
MEMBER TECHNICAL**

**Sd/-**

**KULDIP KUMAR KAREER  
MEMBER JUDICIAL**