

NATIONAL COMPANY LAW TRIBUNAL

COURT ROOM NO. 1,

MUMBAI BENCH

Item No. 51

CP 99(MB)2023

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON **26.04.2024**

NAME OF THE PARTIES: **ARREL HERALD FURTADO V/s**
REGISTRAR OF COMPANIES MUMBAI

Section 441 of the Companies Act, 2013

ORDER

CP 99(MB)2023

- 1) Both sides present and the Report filed by the Respondent is also available on record. In that view of the matter, we have perused the Company Petition.
- 2) This is a Company Petition filed under Section 441 of Companies Act, 2013 by **the Petitioner** for compounding the default u/s Section 96 of the Companies Act, 2013 committed by the Company and its Director.

Applicants in Default:

Twilight Sports Complex Private Limited - Company

Preeti Shah

- Director

Arrel Herald Furtado

- Director

Section Violated:

Section 96 of the Companies Act, 2013.

Nature of Violation:

- 3) 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 the Company has not held its Annual General Meeting for the F.Y. 2010-11 to 2012-13 and 2015-16 to 2016-17 under the provisions of Section 166/96 of the Companies Act, 1956/2013, within prescribed time. The Company has not complied with the above provision for the F.Y. ended 2016-17, in which the Applicant was a Director and there is a delay 265 days.
- 4) It is further submitted that for the Financial Year ended 31.03.2017, the Annual General Meeting could not be held within the period specified above since the Financial Statements of the Company were not audited within the prescribed time limit under the Companies Act, 2013. Post the Annual General Meeting, the filing of the Financial Statements and the Annual Return for the financial year ended 31.03.2017 were filed within the respective deadlines specified under the Companies Act, 2013.

- 5) A Show Cause Notice has been served to the Applicant by the Ministry of Corporate Affairs vide their mail dated 04.11.2019 titled "show cause notice under Section 99 for the contravention of Section 96 of the Companies Act, 2013 for the financial year 2016-17". The Applicant has also received another Notice vide mail dated 28.11.2019 with the same title for the financial year 2016-17. The Applicant replied to the aforesaid Show Cause Notices and specified therein that the Applicant would file the Application for compounding of application under Section 441 of Companies Act, 2013.
- 6) Hence, this Compounding Petition is being filed.
- 7) We have perused the Report filed by the Registrar of Companies. The comment has been made by the Registrar of Companies contending that **Mr. Mazin Abdulrahim Alghareeb, Mr. Mohamed Ameen Ahmed Ali Hasan and Mr. Hazem Abdulkarim** being Ex-directors and officers in default have not applied for compounding of offence for the relevant period of offence. Further **Ms. Preeti Shah, Ex-Additional Director was not a Director during the period of offence and hence she is not liable to punishment**; however, she has applied for compounding of offence in a separate Application. The said submissions are noted.
- 8) As per Section 451 of the Companies Act, 2013, *"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”.

- 9) The Company has thereby violated the provisions of Section 96 of the Companies Act, 2013.
- 10) The Registrar of Companies, Mumbai forwarded the compounding application vide his letter No. ROC(M)/441/2022/174 dt. 27.06.2022, and the same is accompanied to the Company Petition No. 99/441/NCLT/MB/2023.
- 11) **We have gone through the Petition and the Report submitted by the Registrar of Companies, Mumbai and noted that Petition for compounding of offence committed under Section 96 of the Companies Act, 2013, merits consideration.**
- 12) Having regard to the facts and circumstances of the case, the offence committed under Section 166 of the Companies Act, 1956 & 96 of the Companies Act, 2013, as stated and explained above is compounded against Petitioners herein, on payment of the fine imposed to the extent of Rs. 50,000/- to be paid by the Company and to the tune of Rs. 10,000/- to be paid by Director/Officer of the Company, **Mr. Arrel Herald Furtado**. No cost has been imposed against **Ms. Preeti Shah**, Ex-Additional Director as she was not a Director during the period of offence.

- 13) Further, after taking into consideration the comment of the Registrar of Companies, this Bench compounds an offence against **Mr. Mazin Abdulrahim Alghareeb, Mr. Mohamed Ameen Ahmed Ali Hasan and Mr. Hazem Abdulkarim**, being Ex- Directors and officers in default, thereby imposing fine to the extent of Rs. 10,000/- each, to meet the logical end of this Compounding Application.
- 14) Needless to say, the Company shall inform **Mr. Mazin Abdulrahim Alghareeb, Mr. Mohamed Ameen Ahmed Ali Hasan and Mr. Hazem Abdulkarim**, being Ex- Directors and officers in default, to pay the above stated fine, for their Respective period of Directorship with the Petitioner No. 1 Company.
- 15) The remittance shall be made in the “**Bharatkhoosh**” account in favour of “**Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai**”. **Directors should pay the penalty from their respective personal accounts.**
- 16) **The Jurisdictional Registrar of Companies** 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.
- 17) **The Jurisdictional Registrar of Companies** shall give effect of this Order only after perusal of the Compliance report of compounding fine imposed.

18) Accordingly, the Company Petition bearing CP No. 99/(MB)/2023 is hereby **Allowed and Disposed of.**

19) Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**

Vedant Kedare