

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT - II

CP No.: 174/NCLT/MB/MAH/2023

Under section 441 of the Companies Act, 2013

In the matter of

MGM PROGRAMMING SERVICE

INDIA PRIVATE LIMITED

Having its Registered Office at: - Station Plaza

Unit No. B/25 Station road, Bhandup (w)

Mumbai-400078

.... Applicant Company

V/s

REGISTRAR OF COMPANIES,

MUMBAI, MAHARASHTRA

Everest Building, 100, Marine Drive,

Mumbai-400 002.

.... Respondent

Order delivered on: - 21.02.2024

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Coram:

Anil Raj Chellan

Kuldip Kumar Kareer

Member (Technical)

Member (Judicial)

Appearances:

For the Applicant Company: - PCS, Siddharth Doshi

For the Respondent: - Ms. Rutuja Bankar

Per: - Coram.

Applicants/Defaulters Herein:

1. MGM Programming Service India Private Limited
2. Mr. Robert McDonald Stewart – Director
3. Mr. Harold Eugene Gronenthal – Director
4. Mr. Mukesh Chanchan – Director

Section Violated:

Section 166 of the Companies Act, 1956 and Section 96 of the Companies Act, 2013.

Penalty Provided Under:

Section 168 of the Companies Act, 1956 and Section 99 of the Companies Act, 2013.

ORDER

1. This Compounding Application is filed by the Applicant under Section 441 of the Companies Act, 2013 for compounding of the offence committed under Section 168 of the Companies Act, 1956 and 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 166 of the Companies Act, 1956 for the financial years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and Section 96 of the Companies Act, 2013 for the financial years 2015-16 and 2016-17, thereby committing an offence punishable under Section 168 of the Companies Act, 1956 and Section 99 of the Companies Act, 2013.
2. The Applicant 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 into

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1,598,751 (Fifteen Lakh Ninety-Eight Thousand Seven Hundred Fifty-One) Equity shares of Rs. 10 (Ten) each, fully paid up. The Applicant 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.

3. 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.
4. The Applicant/Defaulters herein have filed Form GNL-1 vide SRN No. R29601366 on 10.02.2020 and resubmitted on 07.11.2022 thereby admitting the violations Section 166 of the Companies Act, 1956 and Section 96 of the Companies Act, 2013.
5. The RoC has lodged prosecution against the Applicant before Honourable Metropolitan Magistrate Mumbai.
6. The Applicants/defaulters admit their default in conducting the AGM for the financial years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17. The Applicant Company submits that it had obtained all requisite approvals to conduct its business, however there has been no significant operations during the Financial years. The Applicants

submits that its Directors were frequently travelling due to Commercial and Buisness reasons. The approval of accounts could not be taken at a Board meeting and hence owing to the inability of such director to be present in the same venue for the requisite tenure in the financial year, the Board meeting could not be held physically within the prescribed timelines to approve the financial statements of the Company which led to delay in approval of accounts in the Board meeting and in Annual General Meeting.

7. The Applicant further submits that delay in filing occurred due to the Global Level restructuring for more than once, there was reshuffling, resignation and new appointments of various Senior executives and other officers, hence the Company was not in position to comply with this requirement.
8. 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. Hence, the Ld. Counsel for the Applicant submits that it is a fit case for grant of relief by compounding the offence.
9. 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 166 of the erstwhile Companies Act, 1956 and Section 96 of the Companies Act, 2013. The RoC report further states that

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the Applicant Company committed its first default in the FY 2009-10 and subsequently repeated it till 2016-17. The RoC report also states that the offences and defaults in compliances have been made good by the Applicant Company as the AGM for 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 on 17.03.2014, 22.03.2014, 26.03.2014, 20.07.2015, 28.03.2016, 28.02.2018, 10.03.2018 and 21.03.2018 Respectively. 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.

10. As per the ROC, the AGM was held in the following timelines: -

<u>Sr. No.</u>	<u>Financial Period</u>	<u>Due date of AGM</u>	<u>Actual Date of holding an AGM</u>	<u>Delay in not Convening AGM (in days)</u>
1.	01.10.2009 to 30.09.2010	31.03.2011	17.03.2014	1081
2.	01.10.2010 to 30.09.2011	31.03.2012	22.03.2014	720
3.	01.10.2011 to 30.09.2012	31.03.2013	26.03.2014	359
4.	01.10.2012 to 30.09.2013	31.03.2014	20.07.2015	475
5.	01.10.2013 to 30.09.2014	31.03.2015	28.03.2016	362
6.	01.10.2014 to 30.03.2015	30.09.2015	28.02.2018	881

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7.	01.04.2015 to 31.03.2016	30.09.2016	10.03.2018	525
8.	01.04.2016 to 31.03.2017	30.09.2017	21.03.2018	171

11. 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 166 of the Companies Act, 1956 and Section 96 of the Companies Act, 2013 and for the said violation, the punishment is provided Section 168 of the Companies Act, 1956 and Section 99 of the Companies Act, 2013. The extracts of the Sections which are relevant in this case are as follows:

Section 168 of the Companies Act, 1956 -

Sec.168- If default is made in holding a meeting of the company in accordance with section 166, or in complying with any directions of the Tribunal or the Central Government, as the case may be under sub-section (1) of section 167, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees and in the case of a continuing default, with a further fine which may extend to two thousand five hundred rupees for every day after the first during which such default continues.

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

“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.”

12. Hence, the penalty u/s 168/99 of the 1956/2013 Act for the defaulters in respect of the default occurring in the financial years 2009-10,2010-11, 2011-12, 2012-13, 2013-2014, 2014-15, 2015-16 and 2016-17 is computed in the table hereinbelow:

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Applicant No. 01: M/s MGM Programming Service India Private Limited

<u>Sr. No.</u>	<u>Financial Year</u>	<u>Applicable Section</u>	<u>Period of Default</u>	<u>Maximum Penalty</u>
<u>1.</u>	01.10.2009– 30.09.2010	Section 168 of the Companies Act, 1956.	1081 days (from 31.03.2011 to 17.03.2014)	One-time default- Rs.50,000/- and for continuing default- Rs. 2500/- per day for 1081 days amounting to Rs. 27,02,500 /- Total- Rs. 27,52,500 /-
<u>2.</u>	01.10.2010– 30.09.2011	Section 168 of the Companies Act, 1956.	720 days (from 31.03.2012 to 22.03.2014)	One-time default- Rs.50,000/- and for continuing default- Rs. 2500/- per day for 720 days amounting to Rs. 18,00,000 /- Total- Rs. 18,50,000 /-
<u>3.</u>	01.10.2011– 30.09.2012	Section 168 of the Companies Act, 1956.	359 days (from 31.03.2013 to 26.03.2014)	One-time default- Rs.50,000/- and for continuing default- Rs. 2500/- per day for 359 days amounting to Rs. 8,97,500 /- Total- Rs. 9,47,500 /-
<u>4.</u>	01.10.2012- 30.09.2013	Sec. 168 of the Companies Act, 1956 r/w Sec. 451 of Companies Act, 2013.	475 days (from 31.03.2014 to 20.07.2015)	One-time default- Rs.50,000/- x 2 = Rs. 1,00,000/- and for continuing default- Rs. 2500/- x 2

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				= 5,000 per day for 475 days amounting to Rs. 23,75,000 /- Total- Rs. 24,75,000 /-
<u>5.</u>	01.10.2013 - 30.09.2014	Sec. 168 of the Companies Act, 1956 r/w Sec. 451 of Companies Act, 2013.	362 days (from 31.03.2015 to 28.02.2016)	One-time default- Rs.50,000/- x 2 = Rs. 1,00,000/- and for continuing default- Rs. 2500/- x 2 = 5,000 per day for 362 days amounting to Rs. 18,10,000 /- Total- Rs. 19,10,000 /-
<u>6.</u>	01.10.2014 - 31.03.2015	Sec. 168 of the Companies Act, 1956 r/w Sec. 451 of Companies Act, 2013.	881 days (from 30.09.2015 to 28.02.2018)	One-time default- Rs.50,000/- x 2 = Rs. 1,00,000/- and for continuing default- Rs. 2500/- x 2 = 5,000 per day for 881 days amounting to Rs. 44,05,000 /- Total- Rs. 45,05,000 /-
<u>7.</u>	2015-2016	Sec. 96 r/w Sec. 451 of Companies Act, 2013.	525 days (from 30.09.2016 to 10.03.2018)	One-time default- Rs.1,0,000/- x 2 = Rs. 2,00,000/- and for continuing default- Rs. 5,000/- x 2 = 10,000 per day for 525 days amounting to Rs. 52,10,000/- Total- Rs. 54,10,000 /-

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8.	2016-2017	Sec. 96 r/w Sec. 451 of Companies Act, 2013.	171 days (from 30.09.2017 to 21.03.2018)	One-time default- Rs.1,0,000/- x 2 = Rs. 2,00,000/- and for continuing default- Rs. 5,000/- x 2 = 10,000 per day for 171 days amounting to Rs. 17,10,000/- Total- Rs. 19,10,000 /-
	<u>Total</u>			Rs. 2,17,60,000 /-

13. The Applicants No. 2, 3 and 4 were Directors of the Company from the following dates: -

- Applicant No. 2 - Mr. Robert McDonald Stewart – Director from 28.12.2017 till date.
- Applicant No. 3 - Mr. Harold Eugene Gronenthal - Director from 28.12.2017 till date.
- Applicant No. 4 - Mr. Mukesh Chanchan - Director from 30.06.2022 till date

As Applicant No. 2,3 and 4 were not directors during the Period of Offence hence, are not Liable for Punishment. However, they have applied for Compounding Application under this offence.

14. The Applicant Company has no turnover in the year 2022. As Applicants No. 2,3 and 4 were not a director during the period in which

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the offence was committed, they are not liable to any penalty or punishment and therefore, we are not imposing any fine upon them, though they had preferred an application for compounding the offence. We are of the considered view that the Compounding Fee should be calculated as mentioned in the table below:

Applicant No. 01: M/s MGM Programming Service India Private Limited

<u>Sr. No.</u>	<u>Financial Year</u>	<u>Applicable Section</u>	<u>Period of Default</u>	<u>Compounding Fee</u>
<u>1.</u>	01.10.2009 – 30.09.2010	Section 168 of the Companies Act, 1956.	1081 days (from 31.03.2011 to 17.03.2014)	One-time default- Rs.50,000/- and for continuing default- Rs. 100/- per day for 1081 days amounting to Rs. 1,08,100 /- Total- Rs. 1,58,100/-
<u>2.</u>	01.10.2010– 30.09.2011	Section 168 of the Companies Act, 1956.	720 days (from 31.03.2012 to 22.03.2014)	One-time default- Rs.50,000/- and for continuing default- Rs. 100 /- per day for 720 days amounting to Rs. 72,000 /- Total- Rs. 1,22,000 /-
<u>3.</u>	01.10.2011– 30.09.2012	Section 168 of the Companies Act, 1956.	359 days (from 31.03.2013 to 26.03.2014)	One-time default- Rs.50,000/- and for continuing default- Rs. 100/- per day for 359 days amounting to Rs. 35,900 /- Total- Rs. 85,900 /-

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<u>4.</u>	01.10.2012- 30.09.2013	Sec. 168 of the Companies Act, 1956 r/w Sec. 451 of Companies Act, 2013.	475 days (from 31.03.2014 to 20.07.2015)	One-time default- Rs.50,000/- x 2 = Rs. 1,00,000/- and for continuing default- Rs. 100 /- x 2 = 200 per day for 475 days amounting to Rs. 95,000/- Total- Rs. 1,95,000 /-
<u>5.</u>	01.10.2013 - 30.09.2014	Sec. 168 of the Companies Act, 1956 r/w Sec. 451 of Companies Act, 2013.	362 days (from 31.03.2015 to 28.02.2016)	One-time default- Rs.50,000/- x 2 = Rs. 1,00,000/- and for continuing default- Rs. 100/- x 2 = 200 per day for 362 days amounting to Rs. 72,400 /- Total- Rs. 1,72,400 /-
<u>6.</u>	01.10.2014 - 31.03.2015	Sec. 168 of the Companies Act, 1956 r/w Sec. 451 of Companies Act, 2013.	881 days (from 30.09.2015 to 28.02.2018)	One-time default- Rs.50,000/- x 2 = Rs. 1,00,000/- and for continuing default- Rs. 100/- x 2 = 200 per day for 881 days amounting to Rs. 1,76,200 /- Total- Rs. 2,76,200 /-
<u>7.</u>	2015-2016	Sec. 96 r/w Sec. 451 of Companies Act, 2013.	525 days (from 30.09.2016 to 10.03.2018)	One-time default- Rs.1,00,000/- x 2 = Rs. 2,00,000/- and for continuing default- Rs. 250 /- x 2 = 500 per day for 525 days amounting to Rs. 2,62,500 /- Total- Rs. 4,62,500 /-

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8.	2016-2017	Sec. 96 r/w Sec. 451 of Companies Act, 2013.	171 days (from 30.09.2017 to 21.03.2018)	One-time default- Rs.1,00,000/- x 2 = Rs. 2,00,000/- and for continuing default- Rs. 250/- x 2 = 500 per day for 171 days amounting to Rs. 85,500 /- Total- Rs. 2,85,500 /-
	<u>Total</u>			Rs. 17,57,600 /-

15. 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 17,57,600 /- (Rupees Seventeen Lakh Fifty-Seven Thousand Six Hundred Only)** by the Applicant Company shall be sufficient as a deterrent for not repeating the alleged and admitted default in future. The Applicant Nos. 2,3 and 4 were not directors during the period of default hence are not liable to any penalty for the said Offence. The imposed remittance shall be paid by way of Demand Draft drawn in favour of **“Pay and Accounts Office, Ministry of Corporate Affairs, Mumbai”** within 30 days from the receipt of this order.

16. This Compounding Application vide Company Petition No. **174/441/NCLT/MB/MAH/2023** is, therefore, **disposed** of on the terms directed above. Needless to mention, the offence shall stand compounded

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subject to the remittance of the Compounding Fee imposed. A compliance report, therefore, shall be placed on record.

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

Sd/-

**ANIL RAJ CHELLAN
MEMBER TECHNICAL**

Sd/-

**KULDIP KUMAR KAREER
MEMBER JUDICIAL**