

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

**CP No. 266/MB/2023**

Under section 441 of the Companies Act, 2013

*In the matter of*

**Khare and Tarkunde  
Infrastructure Private Limited,**

CIN: U70102MH1997PTC110923

A company incorporated under the Companies Act, 1956 and having its registered office at 235 2<sup>nd</sup> Floor Shivaji Complex. Gokulpeth, West High Court Road, Nagpur 440 010,(Mah)

.... Petitioner Company/ Petitioner

**Mr. Nikhil Manohar Tarkunde (Managing Director)** residing at 29, Shivaji Nagar Cement Road, Shankar Nagar, Nagpur 440010, Maharashtra

..... Petitioner 2

**Mr. Makarand Shriram Bhagwat(Director),** residing at, Seema Plot No 1, Daga Layout, North Ambazari Road, Nagpur 440033,

..... Petitioner 3

**Mr. Jatin Manohar Tarkunde (Ex Director),** residing at, 29, Shivaji Nagar Shankar Nagar, Nagpur -440010, Maharashtra,

..... Petitioner 4

**Mr. Manohar Ramchandra Tarkunde (Ex Director)**

residing at, 29, Shivaji Nagar Shankar Nagar,  
Nagpur -440010, Maharashtra

..... Petitioner 5

Versus

**Registrar of Companies, Mumbai**

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

...Respondent

**Order Dated: 24.04.2024**

**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 **Khare and Tarkunde Infrastructure Private Limited** (hereinafter referred as "**Petitioner**") under Section 441 of the Companies Act, 2013 (hereinafter referred as "**Act**") for compounding the offence pertaining to failure in holding the Annual General Meeting in accordance with the Section 96 of the Companies Act, 2013 from

the financial year 2016-2017 to 2020-2021.

2. The Company was incorporated on 26.09.1997, under the provisions of the Companies Act, 1956 vide CIN No. U70102MH1997PTC110923 as a Private Limited Company, within the jurisdiction of the Registrar of Companies, Maharashtra, Mumbai. The Authorized Share Capital of the Company is Rs. 7,05,00,000/- (Seven crores five Lakh) divided into 70,50,000/- equity shares of Rs. 10 (Ten) each and preference share capital of Rs.50,00,000(Five Lakh) divided into 50,000(Fifty thousand) Preference share of Rs. 10 (Ten) each. The present subscribed and paid-up share capital of the Company is Rs. 6,04,85,500 (Rupees Six crores four lakhs Eighty-five Thousand Five Hundred Only) divided into 60,48,550(Sixty lakh Fourty Eight Thousand Five Hundred Fifty) Equity shares of Rs. 10 (Ten) each and preference share capital of the Company is 10,500(ten thousand five hundred) divided into 1050 (one thousand fifty) preference shares of 10 (Ten) each. The Company is engaged in the business of infrastructure development, construction, management, real estate development, hospitality, entertainment, utilities, and more. providing inspection acting as surveyors and classification of mercantile shipping.
3. It is submitted that the Annual General Meeting of Financial Year 2015-2016 was convened on 30.09.2016. However, the company faced a challenging period between 2015-16 to 2021-22, marked by the other bank in the consortium had withdrawal their interest from the consortium bank, leading to lack of funding and halted work at multiple sites. Continuous non-payment of staff dues resulted in key staff leaving, halting day-to-day operations. Coercive actions were taken by creditors, including the encashment of bank guarantees, leading to restrictions on banking operations and the classification of the company's accounts as non-performing assets. Legal actions, including the invocation of the SRFAESI Act, were initiated by banks, resulting in the seizure of company properties. This led to the cessation of all operations and the sale of director's properties to repay debts. However, the promoters of the Company had cleared all the outstanding debts of the Bank by selling their personal properties. Due

to Crisis issues the Company failed to conduct its Annual General Meeting of Financial Year 2016-2017 within the statutory period given under the Companies Act ,2013 and its compliance, which resulted into delay in convening the AGM till Financial Year 2021-2022. The Company even failed to seek extension before appropriate authority. The Default is as follows:

<b>Sr No.</b>	<b>Financial Year</b>	<b>Due Date for AGM</b>	<b>Date of AGM Held on</b>	<b>No. days delay in convening AGM</b>
1.	2016-2017	30.09.2017	30.09.2022	1826
2.	2017-2018	30.09.2018	30.09.2022	1461
3.	2018-2019	30.09.2019	30.09.2022	1096
4.	2019-2020	31.12.2020	30.09.2022	639
5	2020-2021	30.11.2021	30.09.2022	304

4. It is submitted that the Petitioner herein has filed a *Suo Moto* Application to the ROC, Mumbai wherein the Petitioner informed the Respondent vide Form GNL-1 under SRN No. F59975839 dated 28.03.2023, thereby admitting the violations of Section 166 of the Companies Act, 1956 and Section 96 of the Companies Act, 2013.
5. The copies of the GNL 7 for the financial year 2016-2017 to 2020-2021, and Receipt of AOC 4 and GNL 7 in respect of the Financial Statements and Annual Returns, filed for the Financial Years 2016-2017 to 2020-2021, have been annexed to the petition.
6. It is further submitted by the Petitioner have duly complied with the Statutory provision of the Companies Act,2013 by conducting the Annual General Meeting for the financial year 2021-2022 within stipulated time, which as follows.
7. The Petitioner has admitted the default in conducting the AGM's for the financial years from 2016-2017 to 2020-2021. The Petitioner further states that the default is not intentional and is not of such nature as to prejudice the

interest of Members, employers or creditors or others dealing with the Company and has not affected the public interest in any manner as the subsequent compliance is within limitation. The default happened due to unforeseen events and circumstances which were beyond the control of management of the Petitioner Company. The Petitioner further declared that he had not made any application for compounding of the offences relating to these section before any Tribunal of Law or any other authority or any other Tribunal. Hence, the Ld. Counsel for the Petitioner submitted that it is a fit case for grant of relief by compounding the offence.

8. The ROC Mumbai have filed its report bearing serial no. R.O.C/441/KA/2023/03. According to the ROC report, the Company has failed to hold its Annual General Meeting within a period of Six Months from the Date of Closing of the Financial years ended i.e. on or before 30.09.2017, 30.09.2018,30.09.2019,31.12.2020,30.11.2021 respectively and the Company is found to have violated the provision of Section 96 and Section 451 of the Companies Act, 2013. The ROC report states that the Board of Director of the Petitioner Company has passed the resolution for Compounding of Offence in Board Meeting held on 20.02. 2023. The ROC report further stated that the Company committed its first default in the FY 2016-2017 and thereafter, it was subsequently repeated in financial years 2017-2018 till 2020-2021. The RoC report also states that only Mr Nikhil Manohar Tarkunde, managing director may be considered as officer in default though all the other directors have filed application for compounding offences. The ROC report further states that the offence u/s 96 of the 2013 Act and Section 98 of the 1956 Act are compoundable by the Hon'ble NCLT.

### **Findings:**

9. 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 99 & 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.”*

10. Having regard to the facts and circumstances of the case and the fact that the offence was made good by duly Conducting the AGM's in the year 2021-2022, the offence committed under Section 96 of the Companies Act, 2013, has been made good already and thus the same is compounded against the Petitioner No. 1, Khare and Tarkunde Infrastructure Private Limited. It further deserves to be taken note of in terms of Section 2(60) of the Companies Act 2013 which is stated as under:

*“officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely: —*

- (i) whole-time director;*
- (ii) key managerial personnel;*
- (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;*
- (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;*
- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity; 20*
- (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;*
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to*

*the issue or transfer.”*

11. From the perusal of the documents submitted by the Petitioner Company it is, evident that the Petitioner company is having the Managing Director as its KMP (Key Managerial Personnel). Since the Petitioner Company is having Petitioner No. 2 as KMP thus, it is he who deserves to be made liable for the default having been committed. Thus we deem it appropriate to impose the following penalties upon the Petitioner No.1 and also the Petitioner No.2. The liability of the Petitioner to pay the fine is tabulated hereunder:

Sr. No.	Financial year	Amount Payable by Petitioner Company in Default (Khare and Tarkunde Infrastructure Private Limited) in Rs.	Amount Payable by Officer in Default(Mr. Nikhil Tarkunde Managing Director) in Rs.	Total Amount Payable
1.	2016-2017	25,000/-	25,000/-	50,000/-
2.	2017-2018	25,000/-	25,000/-	50,000/-
3.	2018-2019	25,000/-	25,000/-	50,000/-
4.	2019-2020	25,000/-	25,000/-	50,000/-
5.	2020-2021	25,000/-	25,000/-	50,000/-
<b>Total</b>		<b>1,25,000/-</b>	<b>1,25,000/-</b>	<b>2,50,000/-</b>

- 12. Therefore, after compounding of offence/offences the total amount to be deposited by the Petitioner No. 1(i.e Petitioner Company) is Rs.1,25,000 /-(One lakh Twenty-Five Thousand only) and the total amount to be deposited by the Petitioner No. 2(i.e Mr. Nikhil Manohar Tarkunde, Managing Director) is Rs.1,25,000/- (One lakh Twenty-Five Thousand only).**

13. 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.

14. Accordingly, the Company Petition bearing No. **266/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. Post it on 12.06.2024 for Compliance.

**Sd/-**  
**Madhu Sinha**

**MEMBER (TECHNICAL)**

/Priyanka/

**Sd/-**  
**Reeta Kohli**

**MEMBER (JUDICIAL)**