

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT - II

CP No.: 112/MB/2022

Under section 441 of the Companies Act, 2013

In the matter of

**Zenith Knowledge Institution Private
Limited**

CIN: U45202MH2008PTC188816

Having its Registered Office at: - Plot No. 158,
Dani Corporate Park, CST Road, Kalina,
Santacruz (East), Mumbai-400098.

.... Applicant Company

V/s

REGISTRAR OF COMPANIES,

MUMBAI, MAHARASHTRA

Everest Building, 100, Marine Drive,

Mumbai-400 002.

.... Respondent

Order delivered on: - 03.05.2024

Coram:

Anil Raj Chellan

Kuldip Kumar Kareer

Member (Technical)

Member (Judicial)

Appearances:

For the Applicant Company: - CS. Surabhi Shewaramani i/b PCS Ashish

O Lalpuria

For the Respondent: - Ms. Rujuta Bankar (through VC)

Per: - Coram.

Applicants/Defaulters Herein:

1. Zenith Knowledge Institution Private Limited – Company.
2. Mr. Kirti Dhanpal Bhawsar, Ex-Additional Director.
3. Mr. Arrel Herald Furtado - 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 Applicants 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 2010-11, 2011-12, 2012-13 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 11.12.2008 under the provisions of the Companies Act, 1956 vide CIN: U45202MH2008PTC188816 as a private company limited by shares within the jurisdiction of the Registrar of Companies, Maharashtra, Mumbai. The Authorized Share Capital of Rs. 1,00,00,000 /- divided into 10,00,000 Equity shares of Rs. 10/- each. The Issued, Subscribed and Paid up Share Capital is Rs. 94,75,000 /- (Ninety-Four Lakh Seventy-Five Thousand) divided into 9,47,500 (Nine Lakh Forty-Seven Thousand Five Hundred) equity shares of Rs. 10/- each, fully paid-up.

3. The copies of the Minutes of the Annual General Meetings, and Challans in respect of the Financial Statements and Annual Returns, filed for the Financial Years ending as on 31st March 2011, 31st March 2012, 31st March 2013, 31st March 2016 and 31st March 2017 have been annexed to the petition. The Company has also filed its accounts and annual returns for the financial year ending as on 31.03.2020. Thus, the Company is regular in filing its Annual Accounts with the Registrar of Companies (RoC) till the date of filing this Petition.
4. The main object of the Applicant Company is briefly stated as follows: -
“To carry on the business of constructors, designers, architects, decorators, consultants, financiers of all types of educational and training Institutes, hotels and other educational infrastructure, to promote education and to establish education training institutions to run, to take over adopt, support, manage education institutions for the benefit of all people irrespective of caste, and community, dissemination of learning and knowledge through various education programs to a large segment of the population and to organize its activities by a diversity of means of distance and continuing education in cooperation with the existing universities and institutions of higher learning and by making full use of the latest scientific knowledge and new educational technology in order to offer a high quality of education.”

5. The Applicant Company herein has filed the Compounding Application vide Form GNL-1 having SRN No. R49617897 on 13.08.2020, Applicant No.02 Mr. Kirti Dhanpal Bhawsar has filed separate compounding application on 20.08.2020 vide SRN No. R50585058 for FY 2016-17 only and the Applicant No.03 Mr. Arrel Herald Furtado has filed separate compounding application on 24.08.2020 vide SRN No. R51115988 for FY 2016-17; thereby admitting the violations of Section 166 of the Companies Act, 1956 and Section 96 of the Companies Act, 2013.
6. The RoC, Mumbai issued a Show Cause Notice dated 04.11.2019 and 28.11.2019 to the Company and its Directors for violation of Section 166 of the Companies Act, 1956 and Section 96 of the Companies Act, 2013 where the Company filed the reply on MCA portal.
7. As the offence is punishable with fine only, the RoC has not lodged any prosecution against the Applicant Company and its directors.
8. The Applicants/defaulters admit their default in conducting the AGM for the financial years 2010-11, 2011-12, 2012-13, 2015-16 and 2016-17. The Applicant Company submits that the Annual General Meetings for the above financial years could not be held in time because the financial statements of the Applicant Company were not audited within the prescribed time. 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, but for the circumstance beyond the control of the Applicant. 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 the Applicant Company committed its first default in the FY 2010-11 and thereafter, it was subsequently repeated in financial years 2011-12, 2012-13, 2015-16 and 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 F.Y. 2010-11, 2011-12, 2012-13, 2015-16 and 2016-17 was duly held on 28.01.2013, 05.08.2013, 19.02.2014, 20.11.2017 and

21.06.2018 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. 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.”

13. 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 2010-11, 2011-12, 2012-13, 2015-16 and 2016-17 is computed in the table hereinbelow:

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Applicant No. 01: Zenith Knowledge Institution Private Limited

<u>Financial Year</u>	<u>Applicable Section</u>	<u>Period of Default</u>	<u>Maximum Penalty</u>
2010-11	Sec. 168 of the Companies Act, 1956.	486 days (from 30.09.2011 to 28.01.2013)	For one-time default- Rs. 50,000/- And For Continuing Default- Rs. 2,500/- per day for 486 days amounting to Rs. 12,15,000/- Maximum- Rs.12,65,000/-
2011-12	Sec. 168 of the Companies Act, 1956.	309 days (from 30.09.2012 to 05.08.2013)	For one-time default- Rs. 50,000/- And For Continuing Default- Rs. 2,500/- per day for 309 days amounting to Rs. 7,72,500/- Maximum- Rs.8,22,500/-
2012-13	Sec. 168 of the Companies Act, 1956.	142 days (from 30.09.2013 to 19.02.2014)	For one-time default- Rs. 50,000/- And For Continuing Default- Rs. 2,500/- per day for 142 days amounting to Rs. 3,55,000/- Maximum- Rs.4,05,000/-
2015-16	Sec.99 of the Companies Act, 2013	416 days (from 30.09.2016 to 20.11.2017)	For one-time default- Rs. 1,00,000/- And

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			For Continuing Default- Rs. 5,000/- per day for 416 days amounting to Rs. 20,80,000/- Maximum- Rs.21,80,000/-
2016-17	Sec.99 of the Companies Act, 2013 read with Section 451 of the Companies Act, 2013	264 days (from 30.09.2017 to 21.06.2018)	For one-time default- Rs. 2,00,000/- And For Continuing Default- Rs. 10,000/- per day for 264 days amounting to Rs. 26,40,000/- Maximum- Rs.28,40,000/-
		GROSS TOTAL	Maximum Rs. 75,12,500/-

Applicant No.02: Mr. Kirti Dhanpal Bhawsar

<u>Financial Year</u>	<u>Applicable Section</u>	<u>Period of Default</u>	<u>Maximum Penalty</u>
2016-17	Sec.99 of the Companies Act, 2013	264 days (from 30.09.2017 to 21.06.2018)	For one-time default- Rs. 1,00,000/- And For Continuing Default- Rs. 5,000/- per day for 264 days amounting to Rs. 13,20,000/- Maximum- Rs.14,20,000/-

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Applicant No.03: Arrel Herald Furtado

<u>Financial Year</u>	<u>Applicable Section</u>	<u>Period of Default</u>	<u>Maximum Penalty</u>
2016-17	Sec.99 of the Companies Act, 2013 read with Section 451 of the Companies Act, 2013	264 days (from 30.09.2017 to 21.06.2018)	For one-time default- Rs. 2,00,000/- And For Continuing Default- Rs. 10,000/- per day for 264 days amounting to Rs. 26,40,000/- Maximum- Rs.28,40,000/-
		GROSS TOTAL	Maximum Rs. 50,20,000/-

14. The Applicant Company has incurred a loss of Rs. 4,06,984 for the Financial year 2019-20 and the turnover of the Applicant Company is NIL as on 31.03.2020. Considering the circumstances, as stated hereinabove, we are of the considered view that the Compounding Fee should be calculated as mentioned in the table below:

Applicant No. 01: Zenith Knowledge Institution Private Limited

<u>Financial Year</u>	<u>Reference to the Provision of Law</u>	<u>Period of Default</u>	<u>Compounding Fee</u>
2010-11	Section 168 of the Companies Act, 1956.	486 days (from 30.09.2011 to 28.01.2013)	One-time default- Rs.10,000/- and for continuing default- Rs. 500/- per day for 486 days amounting to Rs. 2,43,000/-

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			Total- Rs. 2,53,000/-
2011-12	Section 168 of the Companies Act, 1956.	309 days (from 30.09.2012 to 05.08.2013)	One-time default- Rs.10,000/- and for continuing default- Rs. 500/- per day for 309 days amounting to Rs. 1,54,500/- Total- Rs. 1,64,500/-
2012-13	Section 168 of the Companies Act, 1956.	142 days (from 30.09.2013 to 19.02.2014)	One-time default- Rs.10,000/- and for continuing default- Rs. 500/- per day for 142 days amounting to Rs. 71,000/- Total- Rs. 81,000/-
2015-16	Sec.99 of the Companies Act, 2013	416 days (from 30.09.2016 to 20.11.2017)	One-time default- Rs.20,000/- and for continuing default- Rs. 750/- per day for 416 days amounting to Rs. 3,12,000/- Total- Rs. 3,32,000/-
2016-17	Sec.99 read with Section 451 of the Companies Act, 2013	264 days (from 30.09.2017 to 21.06.2018)	One-time default- Rs.40,000/- and for continuing default- Rs. 750/- per day for 264 days amounting to Rs. 1,98,000/- Total- Rs. 2,38,000/-
		TOTAL	Rs. 10,68,500/-

For Applicant No.02 Mr. Kirti Dhanpal Bhawsar

<u>Financial Year</u>	<u>Offence Punishable under the Provision of Law</u>	<u>Period of Default</u>	<u>Compounding Fee</u>
2016-17	Sec.99 of the Companies Act, 2013	264 days (from 30.09.2012 to 05.08.2013)	One-time default- Rs.40,000/- and for continuing default- Rs. 750/- per day for 264 days amounting to Rs. 1,98,000/-

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			Total- Rs. 2,38,000/-
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For the Applicant No. 03- Mr. Arrel Herald Furtado

<u>Financial Year</u>	<u>Provision of Law</u>	<u>Period of Default</u>	<u>Compounding Fee</u>
2016-17	Sec.99 read with Section 451 of the Companies Act, 2013	264 days (from 30.09.2012 to 05.08.2013)	One-time default- Rs.40,000/- and for continuing default- Rs. 750/- per day for 264 days amounting to Rs. 1,98,000/- Total- Rs. 2,38,000/-

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 10,68,500/- (Rupees Ten Lakhs, Sixty-Eight Thousand and Five Hundred Only) by the Applicant Company and a fee of INR 2,38,000/- (Rupees Two Lakh Thirty Eight Thousand Only) by the each Director named hereinabove, thus, the **Compounding Fee** totalling to **INR 15,44,500/-** (Rupees Fifteen Lakhs, Fourty Four Thousand and Five 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. We make it hereby clear that offence committed by the Applicant No.02 and Applicant No.3 are compounded only in respect of Financial Year 2016-17 as their application for compounding the offence is confined only to the Financial Year 2016-17.

16. This Compounding Application vide CP No.112/MB/2022 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.
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