

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**C.P No.: 254/441/MB/MAH/2023**

Under section 441 of the Companies Act, 2013

In the matter of

**NGA HR (INDIA) PRIVATE LIMITED**

Having its Registered Office at:10<sup>th</sup> Floor,  
Vishwaroop IT Park, Plot no.34, 35 & 38,  
Sector-30A, Opp. Vashi International Info  
Tech Park, Navi Mumbai,  
Mumbai MH400705

**.... Applicant Company**

**V/s**

**REGISTRAR OF COMPANIES,  
MUMBAI, MAHARASHTRA**

Everest Building, 100, Marine Drive,  
Mumbai-400 002. **....Respondent**

**Order delivered on: - 07.02.2024**

**Coram:**

**Anil Raj Chellan  
Member (Technical)**

**Kuldip Kumar Kareer  
Member (Judicial)**

***Appearances:***

**For the Applicant Company: - Mr. Ketan S. Dand**

**For the Respondent: - Mr. Shivraj Ranjeri**

**ORDER**

*Per: - Coram.*

**Applicant/Defaulter Herein:**

1. Company - NGA HR (India) Private Limited

**Sections Violated:**

Section 303 of Companies Act, 1956 and Section 170 of Companies Act, 2013.

**Penalties Provided Under:**

Section 303(3) of the Companies Act, 1956 and Section 172 of the Companies Act, 2013.

1. This Compounding Application is filed by the Applicant under Section 621A of the Companies Act, 1956 and Section 441 of Companies Act, 2013 for compounding of the offence committed under Section 303 of Companies Act, 1956 and Section 170 of Companies Act, 2013 read with Section 303(3) of the Companies Act, 1956 and Section 172 of the Companies Act, 2013 (hereinafter referred to as “the Act”) wherein it was found that the Applicant Company have failed to file Form 32 and Form DIR-12 within due time and hence filed with delay on various occasions from 2007 to 2019, thereby committing an offence punishable u/s 303(3) of the Companies Act, 1956 and u/s 172 of the Companies Act, 2013 respectively.

2. The Applicant Company was incorporated and registered on September 26, 2007 under the provisions of Companies Act, 1956 in Mumbai vide CIN - U74900MH2007PTC174519. The Authorised Share Capital of the Company is Rs. 20,000,000/- (Rupees Two Crore Only) divided into 2,000,000 (Twenty Lakh) equity shares of Rs. 10/- (Rupees Ten Only) each. The subscribed, issued and paid-up share capital of the Company is Rs. 1,95,00,000/- (Rupees One Crore Ninety-Five Lac Only) divided into 19,50,000 (Nineteen Lakh Fifty Thousand) equity shares of Rs. 10/- (Rupees Ten Only) fully paid up.

3. The Main Objects of the Company is

*“to carry on the business of Business consultants offering consultancy in business process outsourcing, HR outsourcing services, management consulting services, payroll services, advisory services and providing human resource and knowledge based business process outsourcing (BPO) services such as knowledge processing outsourcing, human resource outsourcing, technical consultancy service for environmental management systems, TPM etc. and engaged in offering BPO services, back office BPO, accounts and finance BPO and engaged in providing HR services BPO, general accounting service, cash application, payroll, cash disbursement, financial accounting service and provides outsourcing services as indexing service, form processing, data conversion, input data conversion, output data conversion, database conversion, e-book conversion, imaging process,*

*management services, free project designing and administration services, customer interaction services, technical support services, procurement solutions & human resource consultancy services. CAD services, bulk CAD conversion and paper to CAD conversion and providing KPO services, market research services, business research services, business analysis services, technical analysis services, learning solutions, data analysis, financial services, etc”.*

4. The Applicant submits that a petition for these 6 different offences under section 441 read with section 170 of the Companies Act, 2013 was filed before the Hon'ble Regional Director, Western Region vide Form RD-I vide SRN R32978488 dated 13<sup>th</sup> Feb 2020 with an intimation to the Registrar of Companies, Mumbai in form GNL-I vide SRN R32837486 dated 11<sup>th</sup>Feb, 2020.

5. The Applicant submits that on follow up with the officer of the Respondent, the Petitioner received a letter from the Office of the Respondent on 16<sup>th</sup> March 2023 by hand, which was issued on 01<sup>st</sup> July 2022 vide number ROC(M)/441/2022/442 directing Petitioner to file this petition before this Honourable court with the following reason -

*" The Application under consideration for violation u/s 303 of the Companies Act, 1956 and u/s 170 of the Companies Act, 2013 exceeds the abovementioned limit*

*of Rs. 25,00,000/- accordingly, you are directed to file the compounding application u/s 441 with the Honourable NCL T, Mumbai Bench”*

6. The Petitioner filed a reply with the Respondent on 16<sup>th</sup> March 2023 contesting that the penalty amount for any of these 6 offences is not exceeding INR 25,00,000/- and also requested to reconsider their calculation and submit their report to the office of the Hon’ble Regional Director, Western Region for their further consideration.
7. The Applicant submits that on follow up with the office of the Respondent, Petitioner again received a letter dated 19<sup>th</sup> May 2023 bearing number ROCM/STA/Compd441/NGA HR (170/303)04/2023 which invoked the provision of the Section 451 of the Companies Act, 2013 and direction was again issued to file compounding application for these 6 offences before this Tribunal.
8. In Compliance of the direction issued by the Registrar of Companies, Mumbai the Petitioner filed the present petition.
9. The Applicant/Defaulter herein have filed Form GNL-1 vide SRN No. R32837486 on 11.02.2020 thereby admitting the violation of Section 303 of Companies Act, 1956 and Section 170 of Companies Act, 2013 read with Section 303(3) of the Companies Act, 1956 and Section 172 of the Companies Act, 2013.

10. The Applicant/defaulters admit their default and submit that various changes in Directorships in the Company took place from time to time. Inadvertently and due to administrative oversight, 1 Form 32 and 5 Forms DIR 12 were not filed with the office of the Registrar of Companies in time. The same were filed, after a delay.
11. According to the provisions of section 303/172 of the Companies Act, 1956/2013, the Company has to file a return for appointment or resignation of Director within 30 (Thirty) days from the date of appointment or resignation with the Registrar of Companies in Form 32/DIR-12.
12. Further the Applicant states that due to some administrative reasons, the Company could not file the return for appointment or resignation of various directors and committed an unintentional default.
13. The RoC Mumbai have filed their report/comments. According to the RoC report, the Company is found to have violated the provisions of Section 303 of Companies Act, 1956 and Section 170 of Companies Act, 2013 read with Section 303(3) of the Companies Act, 1956 and Section 172 of the Companies Act, 2013. The RoC report further states that the Company has made good its default in complying with Section 303 of Companies Act, 1956 and Section 170 of Companies Act, 2013 by filing necessary Forms in the respective years.

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As per Roc, the Fine is to be calculated as given hereunder –

Sr. No.	Name of the Director	For the Financial year	Days of Default by the Director	Fine
1.	Malcolm Stewart Aldis	2007-2008	24.11.2007 to 22.02.2008 = 91 Days	Maximum Rs. 500/- per day for 91 days amounting to Rs. 45,500
	Anand Prabhakar Jhaveri	2007-2008	24.11.2007 to 22.02.2008 = 91 Days	Maximum Rs. 500/- per day for 91 days amounting to Rs. 45,500
2.	Kedar Vasudeo Barve	2014 -2015	27.09.2014 to 3.10.2014	Minimum Rs. 50,000/- x 2 = Rs. 1,00,000/- Maximum Rs. 5,00,000/- x 2 = Rs. 10,00,000/-
	Jayashree Prasadh	2014 -2015	31.10.2014 to 04.02.2015	Minimum Rs. 50,000/- x 2 = Rs. 1,00,000/- Maximum Rs. 5,00,000/- x 2 = Rs. 10,00,000/-
	John Robert Stier	2014 -2015	31.10.2014 to 04.02.2015	Minimum Rs. 50,000/- x 2 = Rs. 1,00,000/- Maximum Rs. 5,00,000/- x 2 = Rs. 10,00,000/-
	Rakesh Nagpal	2014 -2015	31.10.2014 to 04.02.2015	Minimum Rs. 50,000/- x 2 = Rs. 1,00,000/-

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				Maximum Rs. 5,00,000/- x 2 = Rs. 10,00,000/-
3.	Stuart Ross	2015-2016	31.10.2015 to 02.11.2015	Minimum Rs. 50,000/- x 2 = Rs. 1,00,000/- Maximum Rs. 5,00,000/- x 2 = Rs. 10,00,000/-
4.	Raghunandan Krishnamurthy	2015-2016	01.11.2015 to 07.02.2017	Minimum Rs. 50,000/- x 2 = Rs. 1,00,000/- Maximum Rs. 5,00,000/- x 2 = Rs. 10,00,000/-
5.	Raghunandan Krishnamurthy	2018-2019	24.06.2018 to 17.05.2019	Minimum Rs. 50,000/- x 2 = Rs. 1,00,000/- Maximum Rs. 5,00,000/- x 2 = Rs. 10,00,000/-
	Harish Nambiar	2018-2019	24.06.2018 to 12.10.2018	Minimum Rs. 50,000/- x 2 = Rs. 1,00,000/- Maximum Rs. 5,00,000/- x 2 = Rs. 10,00,000/-
6.	Harish Nambiar	2018-2019	30.10.2018 to 11.12.2019	Minimum Rs. 50,000/- x 2 = Rs. 1,00,000/- Maximum Rs. 5,00,000/- x 2 = Rs. 10,00,000/-



14. This Bench has gone through the pleadings on record and the submissions made by the Representative for the Applicant / Defaulter herein and is accordingly of the considered view that, the Applicants/Defaulters herein have violated Section 303 of Companies Act, 1956 and Section 170 of Companies Act, 2013 read with Section 303(3) of the Companies Act, 1956 and Section 172 of the Companies Act, 2013. The extracts of the Sections which are relevant in this case are as follows:

**Section 303(2) of the Companies Act, 1956:**

*"The company shall, within the periods respectively mentioned in this sub-section, send to the Registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors, managing directors, managers or secretaries, specifying the date of the change, The period within which the said return is to be sent shall be a period of thirty days from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be thirty days from the happening thereof."*

**Section 170 (2) of the Companies Act, 2013:**

*"A return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within thirty days from the appointment of every director and key managerial personnel, as the case may be, and within thirty days of any change taking place."*

**Section 303(3) of Companies Act, 1956**

*“If default is made in complying with, sub- section (1) or (2), the company, and every officer of the company who is in default, shall/ be punishable with fine which may extend to five hundred rupees for every day during which the default continues.”*

**Section 172 of the Companies Act, 2013**

*“If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall/ be punishable with fine which shall/ not be less than fifty thousand rupees but which may extend to five lakh rupees.”*

**Section 451 of 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.”*

15. Further, as to the issue with regards to restriction on the power of the ‘Regional Director’ and the ‘authorized officers of the Central Government’ permitting to compound the offences wherein the maximum amount of fine does not exceed Rupees Twenty-Five Lakhs, Hon’ble NCLAT in the matter of *“Magnon Solutions Pvt. Ltd & Ors. V/s Registrar*

*of Companies”* vide Judgment dated 27<sup>th</sup> September, 2018 in Company Appeal (AT) No. 116 of 2018 has held at Para 11 of the Judgment that the Tribunal has the powers to compound all the offences irrespective of any pecuniary limit as evident from a bare perusal of Section 441 of the Companies Act, 2013. The aforesaid provision makes it clear that Section 441 only puts a restriction on the power of the ‘Regional Director’ and ‘the authorized officers of the Central Government’ permitting them to compound the offences wherein the maximum amount of fine does not exceed five lakh rupees {now upto twenty-five lakhs rupees by virtue of the Companies (Amendment) Act, 2019} and is punishable with ‘fine only’. No such fetter has been put on powers of the Tribunal, which is the main forum for such compounding of offences, the other forum of ‘Regional Director’ and ‘Officer of the Central Government’ being alternative but restricted by extent of quantum of punishment. Hence, the present Petition can be allowed.

16. Considering the circumstances as stated hereinabove, we are of the considered view that the Compounding Fee calculated in the table below shall be sufficient as a deterrent for not repeating the alleged and admitted default in future:

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Sr. No.	Name of the Director	Compounding Fee
1.	Malcolm Stewart Aldis	<b>Rs. 9,100</b>
	Anand Prabhakar Jhaveri	<b>Rs. 9,100</b>
2.	Kedar Vasudeo Barve	<b>Rs. 50,000</b>
	Jayashree Prasadh	<b>Rs. 1,00,000</b>
	John Robert Stier	<b>Rs. 1,00,000</b>
	Rakesh Nagpal	<b>Rs. 1,00,000</b>
3.	Stuart Ross	<b>Rs. 1,00,000</b>
4.	Raghunandan Krishnamurthy	<b>Rs. 1,00,000</b>
5.	Raghunandan Krishnamurthy	<b>Rs. 1,00,000</b>
	Harish Nambiar	<b>Rs. 1,00,000</b>
6.	Harish Nambiar	<b>Rs. 1,00,000</b>
	<b>Total</b>	<b>Rs. 8,68,200</b>

17. This Compounding Application vide Company Petition No. **254/441/NCLT/MB/MAH/2023** is, therefore, disposed of by fixing a **Compounding Fee of INR 8,68,200 /-** (Rupees Eight Lakh Sixty-Eight Thousand Two Hundred only). Needless to mention, the offence shall stand compounded subject to the remittance of the Compounding Fee imposed. The imposed compounding fee shall be paid by way of Demand

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Draft drawn in favour of **“Pay and Accounts Office, Ministry of Corporate Affairs, Mumbai”** within 30 days from the receipt of this order.

18. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, Maharashtra. A compliance report, therefore, shall be placed on record.
19. Ordered accordingly. File be consigned to Records.

Sd/-

**ANIL RAJ CHELLAN**  
**MEMBER TECHNICAL**

Sd/-

**KULDIP KUMAR KAREER**  
**MEMBER JUDICIAL**