NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 17.03.2023 AT 10.30 AM

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP/4/441/AMR/2023		441 (compounding of offence committed u/s 96 of Companies Act)	Sansidh Agro Industries Pvt Ltd & 2 others

ORDER

Mr.D.Venkateswarlu, Ld.PCS for the Petitioners present. Orders pronounced. Company Petition (CP/4/441/2023) is allowed, vide separate orders.

Sd/-
JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

RSN

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI

CP/4/441/AMR/2023

Under Section 441 of the Companies Act, 2013 read with Rule 77 of the National Company Law Tribunal Rules 2016 for compounding of Offence for violation of Section 96 read with Section 99 of the Companies Act, 2013

In the matter of
M/s. **SANSIDH AGRO INDUSTRIES PRIVATE LIMITED**
(CIN: U01112AP2011PTC076691)

BETWEEN:

1. Sansidh Agro Industries Private Limited,
   Municipal Door No.6-382, Flat No.241, KAC Avenue,
   Eswara Pragadavary Street, Pappula St.,
   Stonehousepet, Nellore- 524002

2. Mrs.Saroja Udatha (DIN:03587710)
   D/o.Ramachandraiah Bojja,
   Aged about 70 Years, Occ: Director,
   R/o.3-5-212, Lakshmipuram, Opp.BSNL Office,
   Stonehouse Peta, Nellore -524002

3. Mrs.Sireesha Gumma (DIN: 09496236)
   D/o. Krishnaiah Uduta,
   Aged about 46 Years, Occ: Director,
   R/o.204, Green Court Apartment,
   Opp. Kolan Raghavareddy Function Hall,
   Nizampet Road, Nizampet, Qutubullapur,
   K.V., Telangana-500090

..... Petitioners

AND

Registrar of Companies, Andhra Pradesh
29-7-33, First Floor, Vishnuvardhanarao Street,
Suryaraopet, Vijayawada,
Andhra Pradesh-520002

...Respondent

Date of orders pronounced on: 17.03.2023

***Coram*:**

Justice Telaprolu Rajani, Member Judicial.

Parties/Counsels present:

For the Petitioners : Mr.D.Venkateswarlu, PCS

For the Respondent/RoC : Mr.Sanjay Yadav, RoC

ORDER
Per: Justice Telaprolu Rajani, Member Judicial

1. This is a Company Petition filed by the Petitioners under Section 441 of the Companies Act, 2013 for the purpose of compounding for violation of provisions of Section 96 read with Section 99 of the Companies Act, 2013. The reliefs sought in the Company Petition, reads thus:

> *"The Company was not able to hold the Annual General Meeting within the due dates due to reasons beyond its control including death of the promoter director and force majeure conditions arising due to Covid-19. Subsequently, the Company on the advice of the professionals, conducted the Annual General Meeting on 9th February, 2022 for the Financial Year 2018-19,*

18th February 2022 for the Financial Years 2019-20 and 2020-21. Also, the Company has filed the required documents with the Registrar of Companies with penalty.
The Company had regularly filed its audited financial statement and Annual Returns within the due date till the Financial Year 2017-18. Due to the reasons explained, the company has defaulted in holding the Annual General Meetings for the Financial Years 2018-19, 2019-20 and 2020-21 within the due date and filed the overdue audited financial statement and Annual Returns with penalty.

Consequent to the death of the promoter director viz U.Krishnaiah, there are no business operations in the company and the existing directors have decided to apply for the closure of the company after complying with the provisions of the Companies Act, 2013.

This inadvertent mistake on the part of the Company and its officers in default is ***NEITHER WILFUL NOR WANTON.*** *There is no malafide intention on the part of the Company and its Officer in default for the said non-compliance. The Company and its Officer in default assure that they will promptly comply with all the requirements hereafter.*

In view of the reasons stated above and that the Company, being a Private Limited Company and no member of public is affected

due to non-compliance with the provisions of Section96 read with Section 99 of the Companies Act, 2013, the Applicants humbly present this application under Section 441 of the Companies Act, 2013 and request the National Company Law Tribunal, Amaravathi Bench, Mangalagiri, ***to kindly compound the offence committed by taking a lenient view*** *as the company is a generally compliant company and this is the first instance of the company not being able to hold its Annual General Meetings within the prescribed timelines*."

2. The facts of the case, briefly, are as follows:

   a) Sansidh Agro Industries Private Limited was started in the year 2011 by Mr. Krishnaiah Udutha and Mrs. Saroja Udutha to carry on the business of extraction of Rice Bran Oil in Nellore, Andhra Pradesh. Coastal Andhra Pradesh is a hub for Acqua Culture, hence, with increase in culture, Shrimp/Fish feed factories have enhanced their capacities and some new units were also commissioned and as a result of this, Rice Bran Consumption in these factories had gone up. This resulted in twin disadvantages for the company that are Increase in the raw material price, i.e., Raw/ Boiled/ Par Boiled Rice Bran, Decrease in supply of Raw material and Both the above factors caused continuous worry resulting in sickness. Hence, the Company's business of extraction of Rice Bran Oil UNVIABLE. The Company was unable to function properly and could not make payments to Term Loan Bankers (State Bank of India) in time. As a result of

this, the Bank declared the unit as NPA and put under Stressed Assets and the account was transferred Visakhapatnam Stressed Assets Recovery Branch.

b) The Bank approved for One Time Settlement (OTS) of Debts, however, the company has partially paid its debts as there was no business operations due to COVID-19 pandemic across the Globe. Hence the Company could not make full payments to the Bank and the Bank cancelled OTS and adjusted the amount paid against OTS, towards interest due and the outstanding amounts. The Promoter Director viz., Mr. Krishnaiah Udutha, who was aged about 65 years, went to Stressed Assets Recovery Branch several times and requested to consider the Bank's original proposal. On 13.08.2021, he was suffered a serious heart failure while attending to Stressed Assets Recovery Branch and succumbed to death.

c) On 08.02.2022, Mrs. Sireesha Gumma, (DIN:09496236), D/O. Krishnaiah Udutha, was appointed as the Director of the Company and she took initiative to complete all the pending compliances.

d) The Company was required to conduct the Annual General Meeting (AGM) for the Financial Year ended 31.03.2019 on or before 30.09.2019, AGM for the Financial Year ended 31.03.2020 on or before 31.12.2020 (extended by the Registrar of Companies due to COVID Pandemic) and AGM for the Financial

Year ended 31.03.2021 on or before 30.11.2021. However, the company has conducted the AGM for the Financial Year ended 31.03.2019 on 09.02.2022 with a delay of 864 days, the AGM for the Financial Year ended 31.03.2020 on 18.02.2022 with a delay of 415 days and the AGM for the Financial year ended 31.03.2021 on 18.02.2022 with a delay of 81 days.

e) Subsequent to the conducting of the AGMs for the Financial Year ended 31.03.2019, 31.03.2020 & 31.03.2021 on 09.02.2022, 18.02.2022 & 18.02.2022 respectively, the Company has filed its audited financial statements for the Financial Year 2018-19, 2019-20 and 2020-21 in Form AOC -4 with the Registrar of Companies, Andhra Pradesh, on 15.03.2022 vide SRN T88017207, SRN T88019401 and SRN T87543203 respectively.

f) The Company has further filed the Annual Return for the Financial Year 2018-19, 2019-20 and 2020-21 in Form MGT-7 with the Registrar of Companies, Andhra Pradesh on 17.03.2022 vide SRN T88969822, SRN T88967476 and SRN T88974571 respectively.

g) For Ready Reference Section 96 of Companies Act, 2013 reproduced below:

96. Annual general meeting.—

(1) Every company other than a One Person Company shall in each year hold in addition to any other

meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year:

Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:

Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

(2) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village

in which the registered office of the company is situate: Provided that the Central Government may exempt any company from the provisions of this subsection subject to such conditions as it may impose.

***Explanation**:- For the purposes of this sub-section, "National Holiday" means and includes a day declared as National Holiday by the Central Government.*

h) As per the provisions of Section 96, the Company was required to hold the AGM within a period of 6 months from the date of closing of the Financial Year. However, company has conducted the AGM for the Financial Year ended 31.03.2019 on 09.02.2022 with a delay of 864 days, AGM for the Financial Year ended 31.03.2020 on 18.02.2022 with a delay of 415 days and AGM for the Financial Year ended 31.03.2021 on 18.02.2022 with a delay of 81 days. The inadvertent delay on the part of the company and its Officer in default is NEITHER WILFUL NOR WANTON. There is no malafide intention on the part of the company and its officer in default for the said non-compliance.

3. After considering of the Compounding petition and the amount of fine, this matter falls under the jurisdiction of this Tribunal and hence, the Registrar of Companies, Andhra Pradesh submitted his report vide No.ROCV/Reports/Sec441/2022/554 dated 05.07.2022, the RoC is forwarding this report based on application filed vide GNL-1 SRN

No.F00740746 dated 13.05.2022, it has been espoused that the offence of delay in holding AGM for the FY 2018-2019 on 09.02.2022 with a delay of 864 days, AGM for the FY 2019-2020 on 18.02.2022 with a delay of 415 days & AGM for the FY 2020-2021 on 18.02.2022 with a delay of 81 days. The RoC has also stated that no complaints are pending against the Petitioners. Nevertheless, the RoC has espoused that the company petition has been filed by the Company and directors and not by its officers. The RoC levied fine in detail, as per 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 the 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. Hence, as per calculation of the fine levied by each financial year are:

For the Financial Year 2018-19 ended on 31.03.2019		
Sl.No.	**Particulars**	**Fine in Rs.**
1.	**Sansidh Agro Industries Private Limited (Petitioner No.1)**	
	Fine	1,00,000
	Continuing Offence (864 *5000)	43,20,000
	Total Fine	**44,20,000**
2	**Mrs.Saroja Udatha (2nd Petitioner)**	
	Fine	1,00,000
	Continuing Offence(864*5000)	43,20,000
	Total	**44,20,000**

For the Financial Year 2019-20 ended on 31.03.2020		
Sl.No.	**Particulars**	**Fine in Rs.**
1.	**Sansidh Agro Industries Private Limited (Petitioner No.1)**	
	Fine	1,00,000
	Continuing Offence (415 *5000)	20,75,000
	Total Fine	**21,75,000**
2	**Mrs.Saroja Udatha (2nd Petitioner)**	
	Fine	1,00,000
	Continuing Offence (415 *5000)	20,75,000
	Total Fine	**21,75,000**
3	**Mrs.Sireesha Gumma (3rd Petitioner)**	
	Fine	1,00,000
	Continuing Offence (10 *5000)	50,000
	Total Fine	**1,50,000**

For the Financial Year 2020-21 ended on 31.03.2021		
Sl.No.	**Particulars**	**Fine in Rs.**
1.	**Sansidh Agro Industries Private Limited (Petitioner No.1)**	
	Fine	1,00,000
	Continuing Offence (81 *5000)	4,05,000
	Total Fine	**5,05,000**
2	**Mrs.Saroja Udatha (2nd Petitioner)**	
	Fine	1,00,000
	Continuing Offence (81 *5000)	4,05,000
	Total Fine	**5,05,000**
3	**Mrs.Sireesha Gumma (3rd Petitioner)**	
	Fine	1,00,000
	Continuing Offence (10 *5000)	50,000
	Total Fine	**1,50,000**

4. Heard the PCS for the Petitioners. I have gone through the Petition of the Petitioners and the report submitted the RoC, Andhra Pradesh and also the submissions made by the Ld. PCS for the Petitioners at the time of hearing noted that the Company Petition made by the

Petitioners for compounding of offence committed under section 96 of the Companies Act, 2013, merited consideration.

5. Having regard to the facts and circumstances of the case, the offence committed under Section 96 of the Companies Act, 2013, as stated and explained above.

6. Basing on the decision cited, since no prosecution is launched against Petitioners and the present Company Petition is filed for compounding of the violation on their own, therefore, the Tribunal can take a lenient view in imposing compounding fee of Rs.2,000/- per day which is just and reasonable in the circumstances of the case. So, the compounding fee is calculated for the offence of delay in holding AGM for the FY 2018-19 on 09.02.2022 with a delay of 864 days, AGM for the FY 2019-20 on 18.02.2022 with a delay of 415 days & AGM for the FY 2020-21 on 18.02.2022 with a delay of 81 days as under:

Table –I:

For the Financial Year 2018-19 ended on 31.03.2019		
Sl.No.	**Particulars**	**Fine in Rs.**
2.	**Sansidh Agro Industries Private Limited (Petitioner No.1)**	
	Fine	1,00,000
	Continuing Offence (864 *2000)	17,28,000
	Total Fine(A)	**18,28,000**
2	**Mrs.Saroja Udatha (2nd Petitioner)**	
	Fine	1,00,000
	Continuing Offence(864*2000)	17,28,000
	Total(B)	**18,28,000**
Total Fine for the FY 2018-19 (A+B)=		**36,56,000**

Table-II

For the Financial Year 2019-2020 ended on 31.03.2020		
Sl.No.	**Particulars**	**Fine in Rs.**
1	**Sansidh Agro Industries Private Limited (Petitioner No.1)**	
	Fine	1,00,000
	Continuing Offence (415 *2000)	8,30,000
	Total Fine(A)	**9,30,000**
2	**Mrs.Saroja Udatha (2nd Petitioner)**	
	Fine	1,00,000
	Continuing Offence (415 *2000)	8,30,000
	Total Fine(B)	**9,30,000**
3	**Mrs.Sireesha Gumma (3rd Petitioner)**	
	Fine	1,00,000
	Continuing Offence (10 *2000)	20,000
	Total Fine(C)	**1,20,000**
Total fine for the FY 2019-2020 (A+B+C)=		**19,80,000**

Table-III:

For the Financial Year 2020-21 ended on 31.03.2021		
Sl.No.	**Particulars**	**Fine in Rs.**
1	**Sansidh Agro Industries Private Limited (Petitioner No.1)**	
	Fine	1,00,000
	Continuing Offence (81 *2000)	1,62,000
	Total Fine(A)	**2,62,000**
2	**Mrs.Saroja Udatha (2nd Petitioner)**	
	Fine	1,00,000
	Continuing Offence (81 *2000)	1,62,000
	Total Fine(B)	**2,62,000**
3	**Mrs.Sireesha Gumma (3rd Petitioner)**	
	Fine	1,00,000
	Continuing Offence (10 *2000)	20,000
	Total Fine(C)	**1,20,000**
Total fine for the FY 2020-2021 (A+B+C)=		**6,44,000**

Total fine imposed on the Petitioners are as Table (I+II+III) is Rs.62,80,000/-.

"As per the calculation, equitable to impose the fine to the Petitioners are, on payment of Rs.30,20,000/- each by the 1st Petitioner and 2nd Petitioner and Rs.2,40,000/- by the 3rd Petitioner totalling to Rs.62,80,000/- (Rupees Sixty Two Lakhs Eighty Thousand Only). The remittance shall be made through online payment in **www.mca.gov.in** under **compounding fee in favour of PAO, MCA, Chennai.** The 2nd & 3rd Petitioners should pay the penalty from their respective personal accounts. The Registrar of Companies, Andhra Pradesh is hereby directed to take further action as provided under Section 441 of the Companies Act, 2013. The RoC shall give effect of this order only after perusal of the Compliance report of cost imposed."

Accordingly, the Company Petition (CP/4/441/AMR/2023) is hereby allowed and disposed of.

Sd/- Dated 17.03.2023

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu