

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH, BENGALURU**  
*(Through Physical Hearing/ VC Mode (Hybrid))*

**C.P.No.68/BB/2023**  
U/s.96 R/w. Section 99  
of the Companies Act, 2013

**IN THE MATTER OF:**

**1. Sandisk India Device Design Centre Private Limited**

*(Represented by its Director, Ms. Shambhavi Gouri Shankar)*

R/o. at No.143/1, Amani Bellandur Village,

Prestige Tech Park, Marathalli-Sarjapur Outer Ring Road,

Kadubeesnahalli,

Bengaluru – 560 103.

- Petitioner No.1

**2. Mr. Sreepad Gopalarao**

*(Represented by the POA to Ms. Shambhavi Gouri Shankar)*

*Whole Time Director at the time of alleged violation,*

401 S Clovercrest LN

San Ramon California, USA - 94582

- Petitioner No. 2

**3. Ms. Shambhavi Gouri Shankar**

*Executive Director at the time of alleged violation*

Flat No.303, Central Park Apartments,

74 MLA Colony, Banjara Hills,

Hyderabad- 500 034

- Petitioner No. 3

**AND**

**The Registrar of Companies, Karnataka**

'E' Wing, 2<sup>nd</sup> Floor,

Kendriya Sadan, Koramangala,

Bengaluru – 560 034.

- Respondent

**Order delivered on: 24<sup>th</sup> April, 2024**

**CORAM:**

1. Hon'ble Shri K. Biswal, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioners : Shri Manish Kumar Singhania

**ORDER**

**Per: K. Biswal, Member (Judicial)**

1. This Petition has been filed on 02.06.2023 by the **Sandisk India Device Design Centre Private Limited & 2 Ors.**, under Section 96 R/w. Section 99 of the Companies Act, 2013, seeking *inter alia*, to condone and compound the offences punishable under Section 96 of the Companies Act, 2013 (hereinafter referred to as the said Act).
2. Before filing of the instant Petition, it is noticed that the Sandisk India Device Design Centre Private Limited has filed the Compounding Application before the Registrar of Companies, Karnataka (RoC), under Section 96 of the said Act for violating the provisions of Section 96 of the said Act. Pursuant thereto, the ROC has submitted its Report dated 17.04.2023 before this Tribunal.
3. Brief facts of the case, as mentioned in the instant Petition, are as under:
  - (1) The Sandisk India Device Design Centre Private Limited (hereinafter referred to as 'Petitioner No.1/Company') was incorporated on 31.03.2005 bearing CIN: U72300KA2005PTC035961 with its registered office situated at No.143/1, Amani Bellandur Village, Prestige Tech Park, Marathalli-Sarjapur Outer Ring Road, Kadubeesnahalli, Bengaluru. Its Authorized Share Capital is Rs.30,00,00,000/- divided into 3,00,00,000 Equity Shares of Rs.10/- each. Subscribed, Issued and Paid-up share Capital of the Company is Rs.1,12,000/- divided into 11,200 Equity Shares of Rs.10/- each. The main objects of the Company, *inter alia*, is to carry on the business of designing, developing, manufacturing flash memory devices, flash storage cards and related products of all kinds and to promote, encourage, plan, develop, design, establish, maintain, organize, manage, operate, test, conduct to run in India or abroad database administration, consultation, software testing, data processing, storage card products and to carry on the work of development storage card and related products and service of all kinds and in all fields including export of man power, technical expertise and services, etc. Copy of Memorandum and Articles of Association of the Company are placed on record and marked as Annexure-A2 to the Petition.

- (2) It is stated in the Petition that in respect of the Financial Year 2017-2018 of the Petitioner No.1 Company conducted its Annual General Meeting (AGM) on 02.11.2018 in compliance with Section 96 of the Companies Act, 2013 and filed necessary forms and returns with the Ministry of Corporate Affairs. The Company has failed to comply with the said provisions for three continuous Financial Years 2018-19, 2019-20 and 2020 - 21.
- (3) For the Financial Year 2018-19, the Company ought to have held its AGM for the Financial Year ended on 31.03.2019 on or before 30.09.2019, i.e., within a period of six months from the date of closing of Financial Year on 31.03.2019. Further, the Company had made an Application to the ROC, Bengaluru for extension of time for holding AGM for the year ended on 31.03.2019, thus ROC, Bengaluru granted extension of time of 45 days (i.e. 1 month and 15 days) for holding AGM that is till 14.11.2019. However, due to delay in finalization of financials and due to some unavoidable reasons Company was not able to hold AGM within time provided by the ROC, Bengaluru. Whereas, the Company held its AGM for the period ended 31.03.2019 was duly called, convened and held on 15.04.2020, resulting in a delay of 151 days from the due date of holding the AGM. The Period of non-compliance for holding AGM for the Financial Year ended 31.03.2019 was from 16.11.2019 to 14.04.2020.

Mr. Sreepad Gopalrao, the whole time Director was in default for a period of 151 days.

- (4) It is further submitted that as per Section 96(1) of the said Act, the Applicant No.1 Company was required to conduct its AGM for the Financial Year 2019-20 on or before 30.09.2020 being six month from the end of financial. Further the ROC, Bengaluru through general Order dated 08.09.2020 has extended the due date of AGM up to 3 months. Hence, the extended due date for conducting the Annual General Meeting for the Financial Year 2019-2020 was on or before 31.12.2020. But due to outbreak of the coronavirus, the Company could not finalize the financials and failed to convene its AGM on the due date. Further, the Company held its AGM for the period ended

31.03.2020 on 07.01.2022 resulting in delay on 372 days. The period of non-compliance for holding AGM the Financial Year ending 31.03.2020 was from 01.01.2021 to 07.01.2022.

Sl No.	Name of the Officer in Default	Designation	No. of Days of Default
1.	Mr. Sreepad Gopalrao	Whole Time Director	372 Days
2.	Ms. Shambhavi Gouri Shankar	Director	29 Days

- (5) It is stated in the Petition that Petitioner Company No.1 was required to conduct its AGM for the Financial Year 2020-21 on or before 30.09.2020 being six months from the end of financial. Further the ROC, Bengaluru through general Order dated 23.09.2021 has extended the due date of AGM up to 2 months i.e., extended Due date was on or before 30.11.2020. But due to outbreak of the novel coronavirus globally, the Company could not finalize the financials and failed to convene its AGM on the due date. Further, the Company held its AGM for the period ended 31.03.2021 was held on 31.03.2022, resulting in delay on 121 days. The period of non-compliance for holding AGM the Financial Year ending 31.03.2021 was from 01.12.2021 to 31.03.2022.

Sl. No.	Name of the Officer in Default	Designation	No of Days of Default
1.	Mr. Sreepad Gopalrao	Whole Time Director	121 Days
2.	Ms. Shambhavi Gouri Shankar	Director	113 Days

4. The Registrar of Companies, Karnataka has filed its Report dated 31.03.2023, *vide* Diary No.2096 dated 17.04.2023, *inter alia*, contending as follows:

- i. As per Section 96(1) of the Companies Act, 2013, the Annual General Meeting for the Financial Years 2018-19, 2019-20 and 2020-21 were not held within the due date and thereby violated Section 96(1) of the said Act.

The details are as under:

Financial Year ended	Due date of AGM	AGM held on	Period of Default	No. of Days delay
31.03.2019	15.11.2019	15.04.2020	16.11.2019 to 14.04.2020	151 days
31.03.2020	31.12.2020	07.01.2022	01.01.2021 to 06.01.2022	371 days
31.03.2021	30.11.2021	31.03.2022	01.12.2021 to 30.03.2022	120 days

- ii. As per Section 99 of the said Act if any, default is made in holding a meeting of the Company in accordance with section 96 of that Act, 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.
- iii. The maximum fine leviable U/s.99 of the said Act for the default under Section 96 (1) of that Act:

**A. For Company**

Financial Year	Fine leviable	Total Fine (In Rupees)
2018-19	Rs.1,00,000 + (Rs.5000 * 151 days = Rs.7,55,000)	8,55,000
2019-20	Rs.1,00,000 + (Rs.5000 * 371 days = Rs.18,55,000)	19,55,000
2020-21	Rs.1,00,000 + (Rs.5000 * 120 days = Rs.6,00,000)	7,00,000
<b>TOTAL</b>		<b>35,10,000</b>

**B. For each Officer in Default**

**(i) Sreepad Gopalarao (16.11.2019 to 30.03.2022)**

Financial Year	Fine leviable	Total Fine (In Rupees)
2018-19	Rs.1,00,000 + (Rs.5000 * 151 days = Rs.7,55,000)	8,55,000
2019-20	Rs.1,00,000 + (Rs.5000 * 371 days = Rs.18,55,000)	19,55,000
2020-21	Rs.1,00,000 + (Rs.5000 * 120 days = Rs.6,00,000)	7,00,000
<b>TOTAL</b>		<b>35,10,000</b>

**(ii) Shambhavi Gouri Shankar (09.12.2021 to 30.03.2022)**

Financial Year	Fine Calculation	Total Fine Leviable (In Rupees)
2019-20 (09.12.2021 to 06.01.2022)	Rs.1,00,000 + (Rs.5000 * 29 days = Rs.1,45,000)	2,45,000
2020-21 (09.12.2021 to 30.03.2022)	Rs.1,00,000 + (Rs.5000 * 112 days = Rs.5,60,000)	6,60,000
<b>TOTAL</b>		<b>9,05,000</b>

**(iii) Guruswamy Manakal Ganesh (02.04.2021 to 07.12.2021)**

Financial Year	Fine Calculation	Total Fine Leviable (In Rupees)
2019-20 (02.04.2021 to 07.12.2021)	Rs.1,00,000 + (Rs.5000 * 250 days = Rs.12,50,000)	13,50,000
2020-21 01.12.2021 to 07.12.2021)	Rs.1,00,000 + (Rs.5000 * 07 days = Rs.35,000)	1,35,000
<b>TOTAL</b>		<b>14,85,000</b>

**(iv) Supria Dhanda (02.04.2021 to 09.12.2021)**

Financial Year	Fine leviable	Total Fine (In Rupees)
2019-20 (02.04.2021 to 09.12.2021)	Rs.1,00,000 + (Rs.5000 * 252 days = Rs.12,60,000)	13,60,000
2020-21 01.12.2021 to 09.12.2021)	Rs.1,00,000 + (Rs.5000 * 09 days = Rs.45,000)	1,45,000
<b>TOTAL</b>		<b>15,05,000</b>

- iv. It further stated that the Company has filed the Annual Return and Balance Sheet for the Financial Year 2021-22. The ROC has at para 12 of the report stated that the actual **Officer in Default is Mr. Sreepad Gopalarao (Former Whole-time Director), Ms. Shambhavi Gouri Shankar, Mr. Guruswamy Manakal Ganesh (Former Director) and Ms. Supria Dhanda (Former Director)**. It is also stated that there is no inquiry/inspection/investigation pending/exists against the Company. It is further resorted that Petitioner has not made any such offences which has been compounded within three years.
5. Heard Shri Manish Kumar Singhania, learned Counsel for the Petitioners. We have carefully perused the pleadings of the Parties and gone the entire material available on record.
6. Shri Manish Kumar Singhania, learned Counsel for the Petitioners, while reiterating various averments made in the Company Petition, as briefly stated supra, has further submitted that the due to delay in Statutory Audits, the Company couldn't convene its AGM in respect of the Financial Years 2018-19, 2019-20 and 2020-21.

7. As stated supra, the ROC has not opposed the instant Petition but has observed that maximum penalty may be imposed on the Petitioner for the said violations. At para 14 it has also stated that the offences were made good for the Financial Years 2018-19, 2019-20 & 2020-21. The RoC has observed that maximum penalty may be imposed on the Petitioners for the said violations. The Petitioners have satisfactorily explained the reasons for delay in complying with violations in question and filed the instant Petition. As per sub-section (1) of Section 441 of the said Act, this Tribunal is empowered to compound violation/offences committed by the Companies, either before or after prosecution on specifying the quantum of payment of fine or compounding fees; however, such sum should not in any case exceed the maximum amount of fine which may be imposed for the offence so compounded. The RoC in its report has furnished computation of maximum fine prescribed under the relevant Section. There is no minimum fine prescribed under the Section 99 of the said Act and it only provides the offence shall be punishable with fine which may extend to one lakh rupees and in case of a continuing default up to Rs.5000/- per day. As stated supra, the Ld. Counsel has satisfactorily explained before the Tribunal the reasons for committing violations/offences in question, so as to consider imposing maximum fine/compounding fees.
8. In the circumstances and for the reasons as stated supra, we are inclined to take a lenient view of the matter. We are of the view that the ends of justice would be served and the Petitioner would be restrained from repeating the offences if the Offences are compounded by levying the following minimum Compounding Fees:

**Fine leviable u/s.99 of the Companies Act, 2013 for the default under Section 96(1) of Companies Act, 2013:**

**(1) Petitioner Company i.e. M/s. Sandisk India Device Design Centre Private Limited is imposed with compounding fees as follows:**

<b>Financial Year</b>	<b>Fine leviable</b>	<b>Total Fine (In Rupees)</b>
2018-19	Rs.50,000+ (Rs.150 * 151 days = Rs.22,650) = Rs.72,650	72,650

2019-20	Rs.50,000+ (Rs.150 * 371 days = Rs.55,650) = Rs.1,05,650	1,05,650
2020-21	Rs.50,000+ (Rs.150 * 120 days = Rs.18,000) = Rs.68,000	68,000
	<b>TOTAL</b>	<b>2,46,300</b>

**(2) For the Officer in default (Mr. Sreepad Gopalarao, Former Whole-time Director) is imposed with compounding fees as follows:**

Financial Year ended	Fine leviable	Total Fine (In Rupees)
2018-19	Rs.25,000 + (Rs.100 * 151 days = Rs.15,100) = 40,100	40,100
2019-20	Rs.25,000+ (Rs.100 * 371 days) = Rs.37,100 = Rs.62,100	62,100
2020-21	Rs.25,000+ (Rs.100 * 120 days) = Rs.12,000 = Rs.37,000	37,000
<b>TOTAL</b>	<b>TOTAL</b>	<b>1,39,200</b>

**(3) For the Officer in default (Ms. Shambhavi Gouri Shankar, Former Director) is imposed with compounding fees as follows:**

Financial Year ended	Fine leviable	Total Fine (In Rupees)
2019-20 (09.12.2021 to 06.01.2022)	Rs.25,000+ (Rs.100 * 29 days = Rs.2,900) = 27,900	27,900
2020-21 (09.12.2021 to 30.03.2022)	Rs.25,000+ (Rs.100 * 112 days = Rs.11,200) = Rs.36,200	36,200
<b>TOTAL</b>	<b>TOTAL</b>	<b>64,100</b>

**(4) For the Officer in default (Ms. Supria Dhanda, Former Director) is imposed with compounding fees as follows:**

Financial Year ended	Fine leviable	Total Fine (In Rupees)
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2019-20 (02.04.2021 to 09.12.2021)	Rs.25,000+ (Rs.100 * 252 days = Rs.25,200 ) = 50,200	50,200
2020-21 (01.12.2021 to 09.12.2021)	Rs.25,000+ (Rs.100 * 09 days = Rs.900) = Rs.25,900	25,900
<b>TOTAL</b>	<b>TOTAL</b>	<b>76,100</b>

**(5) For the Officer in default (Mr. Guruswamy Manakal Ganesh, Former Director) is imposed with compounding fees as follows:**

<b>Financial Year ended</b>	<b>Fine leviable</b>	<b>Total Fine (In Rupees)</b>
2019-20 (02.04.2021 to 07.12.2021)	Rs.25,000+ (Rs.100 * 250 days = Rs.25,000) = 50,000	50,000
2020-21 (01.12.2021 to 07.12.2021)	Rs.25,000+ (Rs.100 * 07 days = Rs.700) = Rs.25,700	25,700
<b>TOTAL</b>	<b>TOTAL</b>	<b>75,700</b>

9. Hence, in view of the foregoing circumstances and in exercise of the powers conferred on this Tribunal U/s.441 of the Companies Act, 2013, a Compounding Fees of -

- a) **Rs.2,46,300/-** (Rupees Two lakhs Forty Six Thousand Three Hundred only) for the Company, namely, M/s. Sandisk India Device Design Centre Private Limited;
- b) **Rs.1,39,200/-** (Rupees One lakh Thirty Nine Thousand Two Hundred Only) for Officer in Default, namely, Mr. Sreepad Dopalarao, Former Whole-time Director of the Company;
- c) **Rs.64,100/-** (Rupees Sixty Four Thousand One Hundred Only), for Officer in Default, namely, Ms. Shambhavi Gouri Shankar, Former Director of the Company;
- d) **Rs.75,700/-** (Rupees Seventy Five Thousand Seven Hundred Only), for Officer in Default, namely, Mr. Guruswamy Manakal Ganesh, the Former Director of the Company; and
- e) **Rs.76,100/-** (Rupees Seventy Six Thousand One Hundred Only), for Officer in Default, namely, Ms. Supria Dhanda, the Former Director of the Company,

as total amount is hereby levied and the same shall be paid by the Petitioners online in favour of the *'Pay and Accounts Officer, ROC Karnataka, Ministry of Corporate Affairs, Chennai'* through MCA website within a period of six weeks from the date of receipt of copy of this Order.

10. Accordingly, **C.P.No.68/BB/2023 is disposed of** on the above terms with a direction to the Petitioners to place on record the compliance of the same before the Respondent, and thereafter the Respondent-ROC, Karnataka is directed to ensure compliance of the above and to take consequential action. Upon payment of the said compounding fees and submission of compliance report by the Petitioners to the ROC, Karnataka the aforesaid offences shall stand compounded. Copy of this order be provided to the ROC, Karnataka.

**-Sd-**  
**MANOJ KUMAR DUBEY**  
**MEMBER (TECHNICAL)**

**-Sd-**  
**K. BISWAL**  
**MEMBER (JUDICIAL)**