IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Through web-based video conferencing platform)

C.P No.106/BB/2022
Section. 441 & 96 of the Companies Act, 2013

In the matter of:

M/s. Civic India M Far Habitat and Infrastructure Pvt Ltd and 5 Ors.
(Represented by Mr. Yenepoya Moideen Rizwan)

R/o: No. 16/1, AVS Compound
off 80 Feet Road, Koramangala,
Bangalore – 560 034 ... Applicants/Petitioners

And

The Registrar of Companies, Karnataka
KendriyaSadan, II Floor,
'E' Wing, Koramangala
Bengaluru – 560 034. ... Respondent

Date of Order: 11th January, 2023

Coram: 1. Hon'ble Shri Kishore Vemulapalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Mr. Uday Shankar, Adv.

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. C.P.No.106/BB/2022 is filed by M/s. Civic India M Far Habitat and Infrastructure Pvt Ltd and 5 Others ('Applicants) under Section 441 and 96 of the Companies Act, 2013 by *inter-alia* seeking to compound the offence committed by the Applicants for delay in holding Annual General Meeting for Financial Years 2015-16 to 2018-19; to take a lenient view in levy of a minimum compounding fees as prayed for upon the Applicants, since this Application is moved on a suo moto basis and the reasons for default were due to disputes between shareholders which were beyond the control of the Applicants etc.

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2. M/s. Civic India M Far Habitat and Infrastructure Pvt Ltd ('herein after referred to as Company') was incorporated under Companies Act, 1956, on 02.07.2007, bearing CIN: U45203KA2007PTC043315 having registered office at No.16/1, AVS Compound off 80 Feet Road, Koramangala, Bangalore - 560024. Its Authorized Share Capital is Rs.42,00,00,000/- divided into 50,00,000 Class A Equity Shares of Rs.10/- each and 3,70,00,000 Class B Equity Shares of Rs.10/- each and its Issued, Subscribed and Paid-up Share Capital of Rs.36,83,61,190/- divided into 50,00,000 Class A Equity Shares of Rs.10/- each and 3,18,36,119 Class B Equity Shares of Rs.10/- each. The copy of certificate of incorporation issued by the ROC, Karnataka and Memorandum of Association and Articles of Association is found attached at Annexure-1 Series of the Application. As per the Memorandum of Association, the main objects of Company *inter-alia* are as follows:

> *"To organize, set up, manage, undertake, develop, promote, build as builders, promoters, developers, Contractors, sub-contractors or to assist, partner or undertake joint development, joint ventures, consortiums, private Public Participation, partnerships, special purpose vehicle etc."*

3. The following are the Directors of Applicant Company No.1, when the offence for not holding the Annual General Meeting for the FYs from 2015-16 to 2018-19 had commenced:

i. Mr. Yenepoya Moideen Rizwan (DIN No: 00203791)
ii. Mr. Aamir Alladin (DIN No. 01020971)
iii. Mr. Kotekunja Ravindra Alva (DIN No. 01385489)
iv. Mr. Mohiuddin Mohamad Ali (DIN No. 02276761)
v. Ms. Amina Mohamadali (DIN No. 03082546)

4. It is stated that the Applicant Company No.1 was set up by Applicant No.4 and Mr. P Mohamed Ali as a Joint Venture in the year 2007. Mr. P Mohamed Ali invested into the Applicant Company No.1 and a shareholders agreement was entered into between Applicant No. 1, 4 and Mr. P Mohamed Ali on 15.11.2007. The Applicants No. 2 to 6 were the Directors of the Applicant Company No.1 and the Applicant No. 4 was responsible for day to day management of the business. During 2016, the Applicant No.4 wanted a revision in various clauses of the Shareholder Agreement dated 15.11.2007 more so on the shareholding patterns and allotments along with voting rights of Class B shares and also raised his

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concerns regarding the developmental activities of the Projects being carried out in the Applicant Company No.1, when he himself as a Director was liable for day to day activities of the Applicant Company No.1 and raised objections regarding the funds not being raised by the Shareholders which affected his responsibilities towards the Applicant Company No.1. Further, the Applicant No.4 wanted Applicant No.2 to buy his 24% shares which he was holding in the Applicant Company No.1.

5. Further, some issues came up on the subject matter of acquisition by National Highway Authority of India which had acquired 9.78 acres of land belonging to the Applicant Company No.1 U/s. 39A (1) of National Highway Act, 1956 for maintenance, management and operation. These disputes continued through January 2016 onwards till June 2020 and therefore as a Board, did not approve and sign the audited accounts and also could not be place before the shareholders at their Annual General Meeting for the various years 2015-16, 2016-17, 2017-18 and 2018-19.

6. It is also stated that in FY 2015-16 there was a systems crash and software issues in the Applicant Company No.1 computer systems. Due to this malfunction, there was a delay in audit of the financials for the year 2015-16, and the Applicant Company No.1 could not conduct the Annual General Meeting before the due date 30.09.2016. The audit of the financials was completed only by 20.08.2018, subsequently the Applicant Company No.1 convened the Annual General Meeting for the said year on 30.09.2018.

7. Consequently, the Applicant Company No.1 was also unable to file financial statements for these years, before the Registrar of Companies, Karnataka. Due to non-filing of audited financial statements, the Applicant Company No.1 name was struck off from the Registry maintained by the ROC, Karnataka on 11.10.2019. Subsequently, the Applicant Company No.1 being aggrieved by the ROC letter dated 11.10.2019 filed Application before this Hon'ble Tribunal and the same was disposed of vide order dated 14.10.2020 directing the ROC, Karnataka to restore the name of the Applicant Company No.1.

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8. It is further stated that in order to resolve various disputes between the shareholders of the Applicant Company No.1 and also to facilitate restoration of the Applicant Company No.1 in the register of the ROC, a Settlement Agreement dated 23.06.2020 was entered between the shareholders of the Applicant Company No.1 and Applicant No.4 and Mr. P Mohamed Ali, where the parties to this Agreement agreed to perform various obligations towards the Applicant Company No.1 and the Applicant No.4 also agreed to exit from the Applicant Company No.1 and resign from the Board. Further, the Applicant Company No.1 has now filed this Compounding Application before this Hon'ble Tribunal for the non-compliance for holding the AGM for the FYs from 2015 to 2019 which was neither willful nor wanton and it was beyond control of the Applicants.

9. The Registrar of Companies has filed its Report dated 27.01.2022 by inter alia contending as follows:

(1) As per Section 96(1) of the Companies Act, 2013, the Annual General Meeting for the financial years 2015-16 to 2019-20 were not held within the due date and thereby violated sub-section (1) of section 96 of the Companies Act, 2013. The details are as under:

Financial Year ended	Due Date of AGM	AGM held on	Period of default	No. of days delay
2015-16	30.09.2016	03.09.2018	01.10.2016 to 02.09.2018	702
2016-17	30.09.2017	01.09.2020	01.10.2017 to 31.08.2020	1066
2017-18	30.09.2018	01.09.2020	01.10.2019 to 31.08.2020	701
2018-19	30.09.2019	01.09.2020	01.10.2019 to 31.08.2020	336
2019-20	31.12.2020	16.01.2021	01.01.2021 to 15.01.2021	15

(2) As per Section 99 of Companies Act, 2013 for the default made under the provisions of Section 96 (1) of the Companies Act, 2013, if any default is made in holding a meeting of the Company in accordance with Section 96 of the Companies Act, 2013, the Company and every officer of the Company who is in default, shall be punishable with fine which may extend to Rs.1,00,000/- and in

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case of continuing default, with a further fine which may extend to Rs.5000/- for every day during which such default continues.

(3) The maximum fine leviable u/s 99 of the Companies Act, 2013 for the default under Section 96(1) of the Companies Act, 2013:

(a) For Company

Financial Year	Fine Leviable	Total Fine (In Rupees)
2015-16	Rs.1,00,000/- + (Rs.5000 X 702 days) = Rs.35,10,000/-	Rs.36,10,000
2016-17	Rs.1,00,000/- + (Rs.5000 X 1066 days) = Rs.53,30,000/-	Rs.54,30,000
2017-18	Rs.1,00,000/- + (Rs.5000 X 701 days) = Rs.35,05,000/-	Rs.36,05,000
2018-19	Rs.1,00,000/- + (Rs.5000 X 336 days) = Rs.16,80,000/-	Rs.17,80,000
2019-20	Rs.1,00,000/- + (Rs.5000 X 15 days) = Rs.75,000/-	Rs.1,75,000
TOTAL FINE = Rs.1,46,00,000		

(b) For each Director/Officer in default

Financial Year	Fine Leviable	Total Fine (In Rupees)
2015-16	Rs.1,00,000/- + (Rs.5000 X 702 days) = Rs.35,10,000/-	Rs.36,10,000
2016-17	Rs.1,00,000/- + (Rs.5000 X 1066 days) = Rs.53,30,000/-	Rs.54,30,000
2017-18	Rs.1,00,000/- + (Rs.5000 X 701 days) = Rs.35,05,000/-	Rs.36,05,000
2018-19	Rs.1,00,000/- + (Rs.5000 X 336 days) = Rs.16,80,000/-	Rs.17,80,000
2019-20	Rs.1,00,000/- + (Rs.5000 X 15 days) = Rs.75,000/-	Rs.1,75,000
TOTAL FINE = Rs.1,46,00,000		

10. The learned Counsel for the Petitioners has filed memo for producing citations vide Diary No. 4400 dated 14.10.2022 and rejoinder to the report filed by ROC, Karnataka vide Diary No. 4399 dated 14.10.2022 and the same are taken on record.

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11. We have heard the learned Counsel for the Petitioners and have also perused the records carefully.

12. The learned Counsel for the Petitioners, while reiterating various averments made in the Company Petition, as briefly stated supra, has further submitted that due to the disputes between the shareholders which culminated in a settlement agreement, system crash and software issues in the FY 2015-16 and Striking off of the Applicant Company No.1 under Section 248 of the Companies Act, 2013, the board of directors were not able to approve and sign the audited accounts and hold the Annual General Meeting and that the said default was neither willful nor wanton and it was beyond the control of the Applicants and thus prays the Tribunal to take a lenient view in imposing cost for compounding violations which are neither intentional nor deliberate.

13. As stated supra, the ROC has not opposed the instant Petition but stated material facts regarding violations and maximum prescribed and number of days in complying with violations. The Petitioners have satisfactorily explained the reasons for delay in complying with violations in questions and filed the instant Petition suo *moto, that too after making good violations in question. The Petitioners have not committed similar violations earlier and these are the first violations committed by them.* The Report of ROC mentioned maximum fines prescribed under the extant sections. Therefore, depending on the facts and circumstances of the case, the Tribunal is empowered either to impose suitable fine or even waive it. Under sub section 1 of Section 441 of Companies, Act, 2013, the Tribunal is empowered to compound violations/offences committed by Companies, either before or after prosecution, on specifying quantum of payment, 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 his report has furnished computation of maximum fine prescribed under the relevant section. There is no minimum fine prescribed under the section and it only says upto one lakhs and upto Rs. 5000 per day. Therefore, the Tribunal has to take into consideration of the extenuating circumstances as available in given case. As stated supra, the Learned Counsel, has satisfactorily explained to Tribunal, the reasons for

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committing violations/offences in question, so as consider to impose minimum compounding fees.. Therefore, we are inclined to take a lenient view of matter and thus want to impose minimum Compounding fees as mentioned below.

14. In the result, C.P.No.106/BB/2022 is hereby disposed of by compounding the offence/violations committed by the Company and its Officers, with the amount of compounding fees as mentioned below:

(1) **The Applicant No.1 (Company) M/s. Civic India M Far Habitat and Infrastructure Pvt Ltd is imposed with compounding fees as follows:**

FY ended	Compounding Fees	Compounding Fees (In Rupees)
2015-16	Rs.50,000/- + [Rs.100*702 days = Rs.70,200/-]	Rs.1,20,200/-
2016-17	Rs.50,000/- + [Rs.100*1066 days = Rs1,06,600/-]	Rs.1,56,600/-
2017-18	Rs.50,000/- + [Rs.100*701 days = Rs.70,100/-]	Rs.1,20,100/-
2018-19	Rs.50,000/- + [Rs.100*336 days = Rs.33,600/-]	Rs.83,600/-
2019-20	Rs.50,000/- + [Rs.100*15 days = Rs.1,500/-]	Rs.51,500/-
Total		**Rs.5,32,000/-**

(2) **The Applicant No.2 Mr. Yenepoya Moideen Rizwan, (Director) is imposed with compounding fees as follows:**

FY ended	Compounding Fees	Compounding Fees (In Rupees)
2015-16	Rs.10,000/- + [Rs.50*702 days = Rs.35,100/-]	Rs.45,100/-
2016-17	Rs.10,000/- + [Rs.50*1066 days = Rs.53,300/-]	Rs.63,300/-
2017-18	Rs.10,000/- + [Rs.50*701 days = Rs.35,050/-]	Rs.45,050/-
2018-19	Rs.10,000/- + [Rs.50*336 days = Rs.16,800/-]	Rs.26,800/-

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2019-20	Rs.10,000/- + [Rs.50*15 days = Rs.750/-]	Rs.10,750/-
Total		**Rs.1,91,000/-**

(3) **For the Applicant No.3 Mr. Aamir Alladin, (Director)** is imposed with total compounding fees of **Rs.1,91,000/-**. (Method of calculation same as Applicant No.2).

(4) **The Applicant No.4 Mr. Kotekunja Ravindra Alva, (Director)** is imposed with total compounding fees of **Rs.1,91,000/-**. (Method of calculation same as Applicant No.2).

(5) **The Applicant No.5 Mr. Mohiuddin Mohamad Ali, (Director)** is imposed with total compounding fees of **Rs.1,91,000/-**. (Method of calculation same as Applicant No.2).

(6) **The Applicant No.6 Ms. Amina Mohamadali, (Director)** is imposed with total compounding fees of **Rs.1,91,000**/-. (Method of calculation same as Applicant No.2).

(7) The above compounding fees shall be paid by the Applicants/Petitioners online in favour of the 'Pay and Accounts Officer, Ministry of Corporate Affairs' through MCA website within a period of six (6) weeks from the date of receipt of the copy of this order.

(8) The Applicants/Petitioners are directed to place on record the compliance of the same, and thereafter the 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 Applicants to the ROC, the aforesaid offence shall stand compounded. Copy of this order be provided to the ROC, Karnataka.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(KISHORE VEMULAPALLI)
MEMBER (JUDICIAL)

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