

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) Nos. 240-241 of 2018**

**IN THE MATTER OF:**

**Karthikeya Paper and Boards Ltd. & 2 Ors.**

**...Appellants**

**Vs.**

**Registrar of Companies, Tamil Nadu**

**...Respondent**

**Present: For Appellant: - Mr. Aravindh.S., Advocate**

**ORDER**

**26.07.2018**— The appellants committed offence under Section 92 of the Companies Act 2013 during the financial year 2014-2015, therefore, they filed application under Section 441 of the Companies Act 2013 for compounding offence. The Registrar of Companies brought on record the maximum and minimum fine payable under the Companies Act, which is as follows: -

<b>Name of the Defaulter</b>	<b>FY 2014-15 (Minimum)</b>	<b>FY 2014-15 (Maximum)</b>
M/s Karthikeya Paper and Boards Limited	Rs.50,000/-	Rs.5,00,000/-
Smt. Priya Vasanthkumaf (Managing Director)	Rs.50,000/-	Rs.5,00,000/-

Shri Raghupathy Vasanthakumar (Whole time Director)	Rs.50,000/-	Rs.5,00,000/-
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2. The National Company Law Tribunal (for short the 'Tribunal'), Chennai Bench, Chennai, taking into consideration the report of the Registrar, and the fact the prosecution has already been initiated against the company and its directors before the Hon'ble Judicial Magistrate Court No. III in STC No. 4277/17 on 31<sup>st</sup> January 2017 and reduced the fine as follows: -

<b>Name of the Defaulter</b>	<b>Fine to be paid</b>
M/s Karthikeya Paper and Boards Limited	Rs. 3,00,000/-
Smt. Priya Vasanthkumar (Managing Director)	Rs. 1,00,000/-
Shri Raghupathy Vasanthakumar (Whole Time Director)	Rs. 1,00,000/-
	<b>Rs. 5,00,000/-</b>

3. Learned counsel for the appellants submitted that it was the first offence committed by the appellant, therefore, the amount of penalty should have been reduced to minimum of the fine prescribed.

4. Sub-section (5) of Section 92 relates to penal action to be taken if Annual Return in terms of Section 92 of the Companies Act 2013 is not filed within time. Relevant provision reads as follows: -

**“92. Annual return.** — (1) *Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—*

- (a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;*
- (b) its shares, debentures and other securities and shareholding pattern;*
- (c) its indebtedness;*
- (d) its members and debenture-holders along with changes therein since the close of the previous financial year;*
- (e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;*
- (f) meetings of members or a class thereof, Board and its various committees along with attendance details;*
- (g) remuneration of directors and key managerial personnel;*

*(h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;*

*(i) matters relating to certification of compliances, disclosures as may be prescribed;*

*(j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and*

*(k) such other matters as may be prescribed, and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice: Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.*

*“(5) If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.”*

5. From the aforesaid provision, it is evident that apart from imposition of penalty which shall not be less than fifty thousand rupees, and may extend to five lakhs rupees, every officer of the company who is in default are liable for punishment with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but may extend to five lakhs rupees.

6. Section 441(6) of the Companies Act, 2013 put some restrictions on the Tribunal for compounding certain offences, which reads as follows: -

**“441. Compounding of certain offences.—** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only, may, either before or after the institution of any prosecution, be compounded by—

(a) the Tribunal; or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any officer authorised by the Central Government, on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, may specify:

*Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed*

*for the offence so compounded: Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account:*

*Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.*

*xxx*

*xxx*

*xxx*

*(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -*

*(a) Any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;*

*(b) Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.”*

7. From Clause (a) of Section 441(6), it is clear that the Tribunal cannot compound the offence which is punishable under the Act with imprisonment or fine without prior permission of the Special Court.

8. In this background, while we raised doubt about the jurisdiction of the Tribunal to compound the offence like the present where punishment has been prescribed for the individual Directors, learned counsel for the appellants sought permission to withdraw both the appeals. In view of the prayer made we allow the appellant to withdraw both the appeals but without any liberty to move before this Appellate Tribunal against same very orders.

9. Both the appeals are dismissed as withdrawn. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

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