

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
COMPANY APPELLATE JURISDICTION**

Company Appeal (AT) No.33 of 2016

(arising out of Order dated 30th September, 2016 passed by NCLT, Ahmedabad Bench in CA No.90/621A/CLB/MB/2013(Old) in C.P. No.90/621A/CLB/MB/2013(Old).

M/s. Gopala Polyplast Ltd. & Ors.

.....

Appellants

Vs.

**Registrar of Companies, Ahmedabad,
Gujarat**

.....

Respondents

Present: For Appellants:- Ms.Tannya Baranwal, Advocate

**For Respondents:- Shri Sanjib K Mohanty, Senior Panel
Government Counsel along with Shri Vijay Khubchandani,
Registrar of Companies, Gujarat, Ahmedabad.**

J U D G E M E N T

The Appellant being not satisfied with the compounding of fine has challenged the order dated 30th September, 2016 passed by National Company Law Tribunal, (hereinafter referred to as the "Tribunal"), Ahmedabad Bench, in TP No.154/621A/NCLT/AHM/2016 (New), CA No.90/621A/CLB/MB/2013 (Old).

2. The appellant contravened the provisions of Section 383-A of the Companies Act 1956. On inspection of Books of Accounts and other records the Ministry of Corporate Affairs, Govt. of India vide letter dated 22nd September, 2008 informed about the contravention. The Company had not appointed a full time Company Secretary since 2004 and only after receipt of

notice from Govt. of India a full time Company Secretary was appointed on 8th November, 2008.

3. On 19th June, 2012, the Registrar of the Company, Gujarat issued a notice as to why legal action be taken against the appellants for violation of Section 383-A(1A) of the Companies Act, 1956 (for short 'Act, 1956').

4. On receipt of such notice, the appellants moved before the Company Law Board ('CLB' for short) for compounding of offence under section 621-A of the Companies Act (now equivalent section 441 of the Companies Act, 2013).

5. The Registrars of the Companies forwarded a common report dated 28th May, 2013 and informed that the Company, its Managing Director and its Full Time Director, committed violation of Section 383A of the Act 1956 during the period from 1st April, 2004 to 31st October, 2008 and the total days of default during that period comes to 1674 days. The Registrars of the Companies calculated the maximum fine payable under the provisions of the Act, 1956 as Rs.500 x 3 applicants x 1674 days = Rs.25,11,000/-.

6. Since the constitution of the Tribunal, the case was transferred from CLB. The Tribunal having heard the parties noted that the paid up Capital Share of the Company as on 31st March, 2007 was 14.77 crores as per report of Registrar of the Companies. The report also suggested that no similar

offence under section 383-A were compounded during the last three years. The Company is not a vanishing Company.

7. The Tribunal also noted the grounds & pleas taken by appellants in non-compliance of Section 383-A of the Act, 1956 was due to oversight and was not wilful violation. The appellant pleaded to take lenient view.

8. The Tribunal on hearing the parties compounded the offence on payment of fine at Rs.400/- per day for each applicant. Three defaulter appellants have been directed to pay Rs.6,69,600/- each by way of Demand Draft.

9. Learned Counsel appearing on behalf of appellants submitted that for a similar offence, the National Company Law Tribunal, Bangaluru Bench, in T.P. No.273/16/621A/2016 compounded the offence on payment of fine of Rs.50/- per day for delay of 1706 days in violation of Section 383-A of Act, 1956.

10. Learned Counsel appearing on behalf of the 1st Respondent submitted that the Tribunal having noticed the relevant factors compounded the offence.

11. In T.P. No. 273/2016, M/s. Izmo Limited & Ors., the National Company Law Tribunal, Bangluru Bench, noticed that the authorised share capital of

the company as per latest Audited Balance sheet, the nature of business of the said Company and other factors while compounding the offence.

12. In the said case, it was noticed that the accounts of the Company was audited and earning per share were found very low which was Rs.0.22 per share of face value of Rs.10/- each. Taking into consideration that fact that the Company appointed a full time Company Secretary after delay of 1706 days, the compounded offence on payment of fine at Rs.50/- per day.

13. In the present case, the appellants have pleaded that the violation of Section 383A of 1956 was not wilful and was due to oversight. The Registrar of the Companies has reported that no similar offence under section 383A of the Act was compounded during last three years and the Company is not a vanishing Company. However, it is not the case of the appellants that their share value have gone down, as was noticed in M/s. Izmo Limited that T.P. No.273 of 2016. It was also noticed that the appellants were not in a position to pay higher amount.

14. It is true that the Tribunal is required to notice different factors and grounds apart from nature of offence, and order if any passed in similar case for the same offence. The decisions of different Bench of the Tribunal should be consistent in passing orders taking into consideration the essential factors and the precedence if brought on record of the Tribunal.

15. Sub-section (1A) of Section 383-A of the Act 1956 stipulate that if a Company fail to comply with the provisions of Sub-section (1), 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.

16. In the present case, it is not the case of the appellants that their share value has gone down and the company and other defaulters are not in a position to pay higher amount. However, it is accepted by the Registrar of the Companies that the appellants have not violated section 383-A during previous three years. It is not disputed that there was oversight and the default was not wilful. It is also accepted by the respondent that the moment the matter was brought to the notice of appellants by the Ministry of Corporate Affairs, Govt. of India, the Company appointed a whole time secretary on 8th November, 2008.

17. In the aforesaid background and to be consistent with the earlier orders passed by the then Company Law Board and in some other cases by the Tribunal, we are of the view that for violation of section 383-A offence is compounded on payment of Rs.100/- (one hundred only) per day by each appellants. The amount payable by each of the appellants will be Rs.100/- x 1674 days = Rs.1,67,400/- (Total Rupees One Lakh sixty-seven thousand Four hundred only).

18. Hence, each of the appellants are directed to pay Rs.1,67,400/- (Rupees One Lakh sixty-seven thousand Four hundred only) separately by way of separate Demand Drafts in favour of PAO, MCA, Mumbai within three weeks from the date of this order and file original DD before the Registry of the National Company Law Tribunal, Ahmedabad within 4 weeks. The total amount thereby calculates at Rs.1,67,400/- x 3 = Rs.5,02,200/- (Rupees Five lakhs two thousand two hundred only).

19. The order dated 30th September, 2016 passed by the Tribunal, Ahmedabad Bench in T.P. No.154/621A/NCLT/AHM/2016 (New), CA No.90/621A/CLB/MB/2013 (Old) stands modified to the extent of above. The appeal is disposed of with the aforesaid observation and direction. However, there shall be no order as to cost.

20. Let a copy of the order be forwarded to each of the appellants and the respondent, Registrar of Companies, Ahmedabad, Gujrat for needful.

(Mr. Balvinder Singh)
Member (Technical)

(Justice S.J.Mukhopadhaya)
Chairperson

New Delhi
28th February 2017

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