

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

**Company Appeal (AT) No.420 of 2018**

[Arising out of Order dated 19<sup>th</sup> November, 2018 passed by National Company Law Tribunal, New Delhi Bench, New Delhi in C.P. No.21/441/2018]

<b><u>IN THE MATTER OF:</u></b>	<b>Before NCLT</b>	<b>Before NCLAT</b>
1. M/s Goyal Proteins Limited N.H. 12, Village Kesar, Tehsil Ladpura, Kota, Rajasthan, India	Original Petitioner No.1	Appellant No.1
2. Mr. Nirmal Goyal Managing Director R/o 90/91B, Talwandi Kota	Original Petitioner No.2	Appellant No.2
3. Mr. Dinesh Goyal Whole Time Director R/o 90-B, UTI, Scheme, Ward No.18, Tehsil-Ladpura, Kota	Original Petitioner No.3	Appellant No.3
4. Smt. Rashmi Goyal Whole Time Director 10, Mali Mahualla, Khanpur, Ditt, Jhalawar	Original Petitioner No.4	Appellant No.4
5. Smt. Kalpana Jain Company Secretary 21-D, New Colony Guman Pura, Kota	Original Petitioner No.5	Appellant No.5

**Versus**

Registrar of Companies,  
Jaipur

Original Respondent

Respondent

**For Appellants: Shri Ankit Totuka, Advocate**

**For Respondent: Dr. Amol Shinde, DROC**

**J U D G E M E N T**  
**(19<sup>th</sup> March, 2019)**

**A.I.S. Cheema, J. :**

1. This Appeal arises out of Impugned Order dated 19<sup>th</sup> November, 2018 passed by National Company Law Tribunal, New Delhi Bench, New Delhi (NCLT – in short) in CP No.21/441/2018.

2. It is stated that Cost Audit Report for 2013 – 2014 could not be prepared and filed in due time at the MCA portal, although the Company had appointed Cost Auditors. There was delay in filing of Cost Audit Report for financial years 2014 – 2015 and 2015 – 2016 also. ROC initiated prosecution under Section 233B(11) of the Companies Act, 1956 (old Act – in short) before the Metropolitan Magistrate Court for Economic Offences, Jaipur for the financial year 2013 – 2014. The Company moved application for compounding and the matter was then filed with NCLT. Permission from prosecuting Court under Section 441(6) of the Companies Act, 2013 (new Act – in short) was also obtained.

3. NCLT considered the Petition which was filed and comments of ROC. It took note of Section 233B of the old Act for the financial year 2013 – 2014 and Section 148(8)(a) read with Section 147(1) of the new Act for violation of Section 148(6) of the new Act. The NCLT considered the number

of days' delay with regard to the default for the years 2013 – 2014 and the delays with regard to 2014 – 2015 and 2015 – 2016 and it was deemed sufficient to impose aggregate fine on the company and defaulting Directors/Officers as under:-

S.No.	Name of the Company	Fine U/s 233 for F.Y 2013-14	Fine U/s 148(8) for F.Y 2014-15 and 2015-16	Total
1.	M/s Goyal Proteins Limited	5,000/-	2,00,000/-	Rs.2,05,000/-
2.	Nirmal Goyal	10,000/-	2,00,000/-	Rs.2,10,000/-
3.	Dinesh Goyal	10,000/-	2,00,000/-	Rs.2,10,000/-
4.	Rashi Goyal	10,000/-	2,00,000/-	Rs.2,10,000/-
5.	Kalpana Jain	10,000/-	2,00,000/-	Rs.2,10,000/-

It is argued that Appellant No.5 – Kalpana Jain was the Company Secretary and the penalty should not have been imposed on her. However, no such case appears to have been put up before the NCLT where the present Appellants 2 to 5 represented themselves to be the Directors and Officers concerned of the Company.

4. We have perused the Appeal and Reply filed by ROC and heard Counsel for both sides.

5. It is argued by the learned Counsel for the Appellants that the NCLT imposed maximum fine of Rs.1 Lakh as prescribed under Section 148(8) read with Section 147(1) on each of the Directors/Officers for each of the two financial years 2014 – 2015 and 2015 – 2016, when in contrast the fine imposed on the Appellant Company is Rs.1 Lakh for 2014 – 2015 and Rs.1 Lakh for 2015 – 2016 as against the maximum fine prescribed of Rs.5 Lakhs for each financial year with regard to applicable provision relating to the Company. Thus, it is submitted that the fine imposed on the Company for each financial year is only 20% of the maximum fine of Rs.5 Lakhs while for the Directors/Officers, it is the maximum amount i.e. - Rs.1 Lakh. The counsel prayed for leniency for the Directors/Officers and parity.

6. The relevant provision relied on by the Counsel for Appellants is Sub-Section (1) of Section 147 of the new Act which is as follows:-

“If any of the provisions of Sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.”

Considering the above provision and the fine as imposed, we find substance in the argument of the learned Counsel for the Appellants that

the Company and the Directors/Officers have not been treated equally.

Thus, we proceed to pass the following Order:-

**ORDER**

The Appeal is allowed. In the Impugned Order, we modify the same with regard to imposing of fine under Section 148(8) for FY 2014 – 2015 and 2015 – 2016 and substitute “40,000” in place of “2,00,000” with regard to the Directors, i.e. present Appellants No.2 to 5. Rest of the Order is maintained.

No orders as to costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

[Justice A.I.S. Cheema]  
Member (Judicial)

/rs/sk