

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal (AT) No. 238 of 2019**

**IN THE MATTER OF:**

**1. Quinn Logistics India Private Limited**  
Having its registered office address at:  
Q City, 6<sup>th</sup> Floor, Block-A,  
Sy No: 109, 110 & 111/2,  
Nanakramguda Village,  
Serilingampally Mandal, Hyderabad,  
Rangareddy District, Telangana- 500032

**.....Appellant No. 1**

**2. Mr. Robert Philip Dix, Director**  
Resident of:  
72 Thormanby Road,  
Howth, County Dublin

**..... Appellant No. 2**

**3. Mr. Paul McGowan, Director**  
Resident of:  
Clifton Terrace,  
Monkstown, Dublin.

**..... Appellant No. 3**

**4. Mr. Bryan O'Neill**  
Resident of:  
1 Beechwood Grove,  
Dun Laoghaire, Co. Dublin, Ireland

**....Appellant No. 4**

**Vs**

**1. Registrar of Companies, Hyderabad**  
Having its office at:  
2<sup>nd</sup> Floor, Corporate Bhawan,  
GSI Post, Tattiannaram,  
Bandlaguda, Nagole,  
Hyderabad, Telangana 500068

**.... Respondent**

**Present:**

**For Appellants: Mr. Krishnendu Datta, Mr. Swapnil Gupta, Ms. Shivaamika  
Sinha, Advocates**

**For Respondents: Mr. Sanjib K. Mohanty, Sr. Panel Central Govt. counsel  
with Mr. Amit Acharya, Advocates.**

## **J U D G M E N T**

*[12<sup>th</sup> June, 2020]*

### **Justice Jarat Kumar Jain.**

The Appellant Quinn Logistics India Pvt. Ltd. and its three Directors filed this Appeal against the order dated 19.07.2019 whereby National Company Law Tribunal, Hyderabad allowed the Compounding Application subject to pay the Penalty of Rs. 27,09,000/- by each appellant total Rs. 1,08,36,000/-.

**2.** The Appellant Company was incorporated on 15<sup>th</sup> March, 2007 as a Pvt. Ltd. Company under the provisions of Companies Act, 1956 in the State of Telangana (Formerly State of Andhra Pradesh). The Appellant No. 1 Company is subsidiary of Quinn Logistics Sweden AB. The Sweden Quinn Logistics Company was placed in bankruptcy due to debts owed to Irish government owned Bank Irish Bank Resolution Corporation on 6<sup>th</sup> July, 2011. Pursuant to the appointment of the receiver Mr. Leif Baecklund on 6<sup>th</sup> July, 2011, Quinn Logistics Sweden AB took steps to requisition an Extraordinary General Meeting of the Appellant Company on 18<sup>th</sup> February, 2012 in which the receiver replaced the Board and appointed his nominees on the Board being the Appellant nos. 2 to 4. The Appellant Company could not comply the applicable compliances under the Companies Act for the year 2012, 2013, 2014 and 2015 including holding its Annual General Meetings. After taking bank account statements, the Company prepared the accounts and got the same audited and then conducted the Annual General Meeting on 10.07.2017.

National Company Law Tribunal, Hyderabad Bench vide its order dated 11.08.2017, inter-alia, directed the Company to apply for compounding of the non-compliances/delay in making compliances. In compliance of the directions, the Appellants filed compounding applications under Section 166 read with Section 621 (A) of Companies Act, 1956 (Presently Section 96 read with Section 441 of the Companies Act, 2013.) These applications have been numbered C.A No. 118/441/HDB/2019 (For the year 2012), C.A No. 114/441/HDB/2019 (For the year 2013), C.A No. 120/441/HDB/2019 (For the year 2014) and C.A No. 116/441/HDB/2019 (For the year 2015). The Registrar of Companies (RoC) along with his report dated 03.12.2018 has forwarded these applications to the Registry of the National Company Law Tribunal, Hyderabad Bench.

**3.** Ld. Tribunal held that the Appellant Company and its directors are liable to be penalized under Section 168 of Companies Act, 1956 for the violation of Section 166 of the Companies Act, 1956 the violation continued up to 31.03.2014 thereafter, they are liable to be penalized under Section 99 of Companies Act 2013 for violation of the Sub-Section (1) Section 96 of the Companies Act, 2013 with effect from 01.04.2014. Ld. Tribunal after hearing the parties allowed the Compounding Applications subject to pay the penalty as indicated above. Being aggrieved with this order, Appellants filed this Appeal.

**4.** Learned Counsel for the Appellants submitted that Appellant Nos. 2 to 4 appointed as Directors at the instance of bankruptcy receiver. Therefore, the

erstwhile directors who were all removed by the receiver did not cooperate with the new directors i.e. Appellant Nos. 2 to 4 and they took active steps to prevent Appellants from getting control of the Appellant Company. The Appointment of Appellant Nos. 2 to 4 has been challenged in a Civil Suit and Civil Court has granted injunction against the appointment of Appellants as directors. However, subsequently the injunction vacated in Appeal by the High Court of Delhi. Appellants wrote to the RoC on 08<sup>th</sup> November, 2012 explaining that due to requirement of signature of an ex-director, the Appellants could not register their appointment with the RoC. Hence, they are unable to take further steps necessary to comply the compliances of the Appellant Company.

**5.** It is further submitted by the Learned Counsel for the Appellants that in December, 2012 RN Marwaha & Company filed Company Petition against the Appellant No. 1 for winding up. However, subsequently Hon'ble High Court of Andhra Pradesh was pleased to recall the order of winding up on 13<sup>th</sup> August, 2013. The Receiver and the new management wrote letters dated 29.11.2012, 25.07.2016, 07.11.2016 and 01.12.2016 to the RoC, Hyderabad on the basis of representation and persistent follow ups on 27<sup>th</sup> January, 2017. RoC, Hyderabad (Respondent No. 1) finally permitted the registration of the name of one director with MCA portal. Then, the Appellant Company filed Form DIR-12 on 08.02.2017.

**6.** The name of new directors were not on the MCA Website, therefore, directors were not able to get the Bank Statement to prepare the accounts as they were not signatory of the bank accounts. In these circumstances, the

Appellants could not comply the compliances under the Companies Act including holding its Annual General Meeting.

**7.** Learned Counsel for the Appellant submits that, it is evident that the delay in compliances was neither intentional nor due to any ignorance of the management of the Company but due to factors beyond its control.

**8.** It is further submitted that the Appellant nos. 2 to 4 are professional, have no personal interest in the appellant company, they are appointed as nominees of the Swedish receiver. Learned Counsel for the Appellant further submits that while imposing the exorbitant fine on the directors, the National Company Law Tribunal failed to consider the mitigating factors due to which it was impossible for the directors to comply with the mandate of law in relevant period. Ld. National Company Law Tribunal has imposed the Penalty on appellants total Rs. 1,08,36,000/- which is unreasonable and disproportionate to the default. Particularly, when the default has already been made good. Hence, considering the extreme circumstances that existed in the present case, penalty amount may be reduced.

**9.** On the other hand, Learned Senior Panel Counsel, Central Government submits that as per the calculation, every appellant is liable to pay Penalty total Rs. 2,35,90,000/- whereas the Tribunal has taken a very lenient view and imposed only Penalty of Rs. 27,09,000/- on each Appellant. In such circumstances, it cannot be said that Tribunal has not considered the mitigating circumstances and imposed an exorbitant fine.

**10.** After hearing learned Counsel for the parties, we have gone through the record.

**11.** Admittedly, the Appellant Nos. 2 to 4 did not hold Annual General Meeting of the Company for the years 2012, 2013, 2014 and 2015 and thus violated the Provisions under Section 166 of Companies Act which is punishable under Section 168 of the Companies Act, 1956 till 31.03.2014. Thereafter, violated the Provisions under sub-section (1) of Section 96 of Companies Act, 2013 which is punishable under Section 99 of Companies Act, 2013. The Act came into force on 01.04.2014. Hence, the period of violation is 01.04.2014 to 09.07.2017. RoC in his Report has mentioned the total amount of Penalty to be imposed on each Appellant which is 2,35,90,000/- however, the Ld. Tribunal has imposed Penalty on each Appellant 27,09,000/-

**12.** This Tribunal in the case of Company Appeal (AT) No. 49, 50, 51, 52 and 53 of 2016 decided on 28<sup>th</sup> February, 2017 held as under:

*“11. We agree with the submissions made on behalf of the appellant(s) that while compounding any offence the Tribunal is required to notice different factors, such as grounds taken by the applications, nature of offence, etc. There should be consistence in compounding similar offence, if the defaulters are similarly situated and the grounds taken are similar. Lesser amount cannot be imposed in one case and higher amount in another, for same offence, if similar ground is taken. Different Bench of Tribunal are required to be consistent in passing order*

*compounding any offence and are required to notice the precedence, i.e. earlier order if any passed in one or other case for similar offence.*

*12. Depending on nature of offence and its gravity and if it is pleaded by the applicant or reported by Registrar of Companies, the Tribunal is required to notice the relevant factors while compounding any offence, such as:-*

- (i) The gravity of offence;*
- (ii) The act is intentional or unintentional;*
- (iii) The maximum punishment prescribed for such offence, such as fine or imprisonment or both fine and imprisonment.*
- (iv) The report of the Registrar of Companies.*
- (v) The period of default.*
- (vi) Whether petition for compounding is suo moto before or after notice from Registrar of Companies or after imposition of the punishment or during the pendency of a proceeding.*
- (vii) The defaulter has made good of the default.*
- (viii) Financial condition of the company and other defaulters.*
- (ix) Offence is continuous or one time.*

- (x) *Similar offence earlier committed or not.*
- (xi) *The act of defaulters is prejudicial to the interest of the member(s) or company of public interest or not.*
- (xii) *Share value of the company, etc.*

**Company Appeal No. 49 of 2016**

- 13. *x x x x x x x x*
- 15. *x x x x x x x x*
- 15. *x x x x x x x x*

**Company Appeal No. 50 of 2016**

16. *In this appeal the allegation relates to contravention of Section 166 of Act 1956. The annual General Meetings of the company were not held regularly. The maximum fine for the period from 1<sup>st</sup> January, 2011 to 30<sup>th</sup> November, 2015 was calculated as per Section 168 of Act 1956 which stipulates Rs. 2500/- per day fine rate and fixed fine of Rs. 50,000/-. The total comes to Rs. 54,72,500/- to be paid by each three defaulters.*

17. *In this case the Tribunal has deemed it sufficient to impose a fine of Rs. 10 lakhs on each of the defaulting parties which is less than 1/5<sup>th</sup> of maximum amount.*

18. *In this appeal, as we find that the appellants have only taken plea that the violation occurred due to inadvertence*



*and without intention and not prejudicial to the interest of any member or creditors or others dealing with the company and nor did affect public interest, we are of the view that the Tribunal rightly brought down the penalty which is less than 1/5<sup>th</sup> of the maximum amount. In this background no interference is called for against the impugned order.”*

**13.** In this appeal, the same grounds are taken for reducing the amount which were taken in the Company Appeal No. 50 of 2016.

**14.** Ld. Tribunal to maintain the consistency has to impose Penalty which is as per calculation maximum fine Rs. 2,35,90,000/-. 1/5<sup>th</sup> of the maximum amount is Rs. 47, 18,000/-. However, Ld. Tribunal has imposed Penalty Rs. 27, 09,000/- which is less than 1/5<sup>th</sup> of the Maximum amount. Therefore, we are of the view that Ld. Tribunal has undertaken a lenient view in imposing Penalty.

We found no ground to interfere in the impugned order. Hence, the Appeal is hereby dismissed. No cost.

(Justice Jarat Kumar Jain)  
Member (Judicial)

(Mr. Balvinder Singh)  
Member (Technical)

(Dr. Ashok Kumar Mishra)  
Member (Technical)

**New Delhi**  
Basant B.