

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

**Company Appeal (AT) No. 49, 50, 51, 52 and 53 of 2016**

**(arising out of Order dated 6<sup>th</sup> October 2016 passed by NCLT, New Delhi in C.P.No. 16/127/16, 16/129/16, 16/128/16, 16/126/16, 16/130/16).**

**M/s Viavi Solutions India Private Limited  
& Others**

**.....Appellants**

**Vs.**

**Registrar of Companies, NCT Delhi and  
Haryana**

**.....Respondents**

**Present: For Appellants: Shri Abhay K.Das and Ms. Shabnam Shalini, Advocates**

**For Respondents: S/Shri Vijay Chandra Joshi, Senior Panel Counsel along with D.Bandopadhyay, Registrar of Companies, NCT of Delhi & Haryana and A.K.Sahoo, Dy. ROC, NCT of Delhi & Haryana**

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

**SUDHANSU JYOTI MUKHOPADHAYA,J.**

As all these appeals preferred by common appellants and similar question of law and grievance raised, they were heard together and disposed of by this common judgement.

2. Since 1<sup>st</sup> November 2011 onwards for about four to five years, the appellants contravened different provisions of Companies Act 1956, which attracted punishment of fine etc. In regard to separate five contraventions of different periods, the appellants preferred five separate applications under Section 621-A of the Companies Act 1956, (equivalent to Section 441 of the Companies Act 2013) for compounding offence(s). By separate order(s) and

judgement(s), the National Company Law Tribunal (hereinafter referred to as the "Tribunal"), New Delhi Bench compounded the offences and imposed fine on each of the defaulting parties. The appellants being not satisfied have challenged the impugned orders in these appeals.

3. The appellants have assailed the impugned orders on following grounds: -

(i) The Tribunal failed to appreciate the objective of Section 621A of the Companies Act 1956 as the same is not punitive and, therefore, no harsh and burdensome punitive order can be passed.

(ii) The Tribunal failed to consider that for the similar contraventions, the then Company Law Board had taken lenient view and less fine have been imposed.

(iii) The Tribunal failed to consider that the delay in compliance was not intentional and was due to ongoing management/organizational changes within the holding company and the composition fee imposed by Tribunal is disproportionate to the alleged technical default which was beyond the control of the management/appellants.

(iv) The defaults were subsequently rectified by appellants and the appellant(s) suo moto preferred compounding applications prior to penal order.

4. The main thrust of the arguments was that the then Company Law Board ('CLB' for short), earlier in similar petitions for composition of offences

under Section 621A used to impose lesser fine for violation of similar provisions.

Learned counsel for the appellants relied on orders passed by the then CLB in Company Application No. 16/239/2015-CLB wherein for contravention of Section 210 of the Companies Act 1956, the then Company Law Board by Order dated 4<sup>th</sup> September 2015, compounded the offence on payment of Rs. 50,000/- each by the Managing Director and the whole time Directors.

In Company Application No. 16/226/2015-CLB, by order dated 4<sup>th</sup> September 2015, the then Company Law Board compounded the offence under Section 220 of the Companies Act, 1956 for a sum of Rs. 25,000/- each to be paid by the Managing Director and other Directors.

In Company Application No. 16/25/2010-CLB, the then Company Law Board compounded of the offence under Section 210(3)(b), 166(1), 220 and 159 of the Act 1956 for Rs. 20,000/- each payable by the defaulters.

5. On the other hand, in the present case for violation of Section 220 or Sections 159, 168 etc., the amount has been compounded in between Rs. 2 lacs and 10 lacs to be paid by each of the Managing director/directors (defaulters).

6. Notices were issued to the Registrar of Companies, NCT, Delhi and Haryana. In their affidavits they have enclosed their report(s) as were filed before the Tribunal. Learned counsel appearing on behalf of the Registrar of Companies submitted that taking into consideration different factors,

Tribunal decided the amount to be paid by each defaulters for alleged offence(s).

7. We have heard the Learned counsel for the parties and perused the record.

8. Section 621A of the Companies Act 1956 stand replaced since 1<sup>st</sup> April 2014 by corresponding Section 441 of Companies Act 2013 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.*

*(2) Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.*

*Explanation. —For the purposes of this section, —*

*(a) any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence;*

*(b) "Regional Director" means a person appointed by the Central Government as a Regional Director for the purposes of this Act.*

*(3) (a) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be.*

*(b) Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.*

*(c) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.*

*(d) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.*

*(4) The Tribunal or the Regional Director or any officer authorised by the Central Government, as*

*the case may be, while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may direct, by an order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 403, such return, account or other document within such time as may be specified in the order.*

*(5) Any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under subsection (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one lakh rupees, or with both.*

*(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) No offence specified in this section shall be compounded except under and in accordance with the provisions of this section."*

9. There is a wide scope and power vested in the Tribunal (erstwhile CLB) to compound an offence of the nature provided in the section either before or after the institution of any prosecution. Therefore, the Tribunal has jurisdiction to compound the offence of the nature provided for before institution of any prosecution, as also after the institution of any prosecution.

Offences under the Companies Act 2013 (Earlier Companies Act 1956) punishable with imprisonment or fine, or both, may either before or after the institution of any prosecution, can be compounded with the permission of the Special 'Court as per Clause (a) of sub-section 6 of Section 441. However, where an offence is punishable with 'imprisonment only' or 'with imprisonment and fine', the Tribunal has no jurisdiction to compound the offence.

For the aforesaid reason, before compounding any offence, for violation of any provisions of the Act, it is not only the gravity of the offence required to be looked into but also the punishment as prescribed under the Law.

10. From the petition(s) for composition of offence preferred by appellants it is clear that the appellants have taken similar plea in all the petitions such

as (i) violations were not intentional; (ii) the delay in laying of financial statement and other matters were inadvertent; (iii) there were unavoidable circumstances and (iv) the violation(s) were of such a nature which are not prejudicial to the interest of any of the member or the creditors or others dealing with the appellant company. It has also been pleaded that the offence committed by it does not affect the public interest in any way, and no harm was caused to the public. The matter has been taken care of prior to the filing of the petition(s) for compounding.

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 applicants, 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.
- (vii) Financial condition of the company and other defaulters.
- (viii) Offence is continuous or one-time.
- (ix) Similar offence earlier committed or not.
- (x) The act of defaulters is prejudicial to the interest of the member(s) or company or public interest or not.
- (xi) Share value of the company, etc.

**Company Appeal No. 49 of 2016**

13. In this case the appellants contravened the mandate of Section 383-A of the Companies Act 1956, as per which the company should have a whole time Secretary.

14. From the report submitted by Registrar of the Companies, it appears that the 1<sup>st</sup> appellant company has Rs. 1,01,42,820/- paid up capital share as per Balance Sheet for the Financial Year ended on 31<sup>st</sup> March 2015. It has operating revenue of Rs. 549,246,895/- as per Profit and Loss Account of March 31<sup>st</sup>, 2015. The company had not filed any Annual Return for the period from 1<sup>st</sup> November 2011 to 8<sup>th</sup> May 2013 – 1<sup>st</sup> November 2014 to 17<sup>th</sup> December 2015. The maximum penalty for default in complying with Section 383A was calculated at Rs. 10,89,500/- to be paid by each defaulter.

15. We find that the defaults have been made good and compliance certificate were filed in majority cases after about two years. There is no complaint against the company and there is no default earlier. In the present case, the learned Tribunal referring to provision of Section 383-A observed that the Bench deemed it sufficient to impose a fine of Rs. 2 lacs on each of the defaulting parties. That means less than 1/5<sup>th</sup> of the maximum penalty, as could have been imposed has been imposed, which is less than Rs. 100/- per day. As we find that no specific grounds have been shown to reduce the amount, no interference is called for against the impugned order.

**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/- (Rs. Fifty Four Lacs Seventy Two Thousand Five Hundred only) 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 & not prejudicial to the interest of any member or creditors or others dealing with the company & 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.

**Company Appeal No.51/2016**

19. In this case the appellants contravened section(s) 220 of the Act, 1956 during the period 1<sup>st</sup> November, 2011 to 25<sup>th</sup> February, 2016. Copies of the Balance Sheet etc. for the year ending 31<sup>st</sup> March, 2011 to 31<sup>st</sup> March, 2015 were not filed within time and in majority cases they were filed after two years of each financial year ending. That means the appellants are in the habit of filing the annual return after long delay and all the time filed them after two years of each year ending. The maximum fine payable under section 162 of Act 1956 was calculated by Registrar of the Companies at Rs.10,74,500/- to be paid by each of the defaulters. However, the Tribunal compounded the offence at Rs.5 lakhs payable by each of the appellants i.e. the Company and the two Directors.

20. From the impugned judgement, we find that the Tribunal imposed 50% of the maximum amount, though similar ground has been taken, as were taken in the earlier case by the same appellant in which the Tribunal imposed about 1/5<sup>th</sup> of the maximum amount as fine. No ground has been shown by the Tribunal as to why in the present case for the same ground, the amount has been compounded which approximately 50% of the maximum fine which can be imposed. In this case the gravity of allegation is not grievous and almost similar and not serious. In other cases, the same Bench compounded at Rs.2 lakhs each, which is about 1/5<sup>th</sup> of the maximum fine.

21. In the impugned order dated 6<sup>th</sup> October, 2016, the Tribunal though noticed failure to take steps of Balance Sheet and Profit & Loss Statement has not discussed the grounds taken by appellants, which were similar to the earlier case that is the action was unintentional, delay was inadvertent, there was unavoidable circumstances and it has not affected any member or the Company or any 3<sup>rd</sup> party or the public interest.

We find that in another case earlier, the Company Law Board for the offence under Section 220 of Act 1956 has imposed lesser punishment by order dated 4<sup>th</sup> September 2015 passed in Company Application No. 16/226/2015-CLB wherein, taking into consideration the fact that the default had been made good after about nine months, the Company Law Board compounded the offence at Rs. 25,000/- payable by each defaulter.

22. In the present case as admittedly, the default in filing the Annual Return is more than two years and continued during the subsequent financial years, therefore, we are not inclined to compound the amount to the extent of Rs. 25,000/- each, as ordered by Company Law Board in the other case. It is

also noted that non-filing of Annual Returns for any continuous period of three Financial Years is also a disqualification for appointment as Director under Section 164(2)(a) of Companies Act 2013, thus making it a serious offence. However, to be consistent with the orders passed by Tribunal in analogous case, which is approximately 1/5<sup>th</sup> of the maximum fine, we modify the impugned order of Tribunal dated 6<sup>th</sup> October 2016 passed in Company Petition No. 16/128/16 and to compound the offence on payment of Rs. 2 lacs by each of the appellants i.e. the Company and the two Directors, Mr. Sandeep Kapoor and Mr. Atul Prabhakar Kulkarni. That means total six lacs to be paid by them.

The amount, as compounded be deposited with the Tribunal within three weeks, after adjusting the amount, if any already deposited by appellants. Subject to the remittance of the fine as ordered above, the offence stand compounded. The Registrar of Companies will ensure compliance of the order. This appeal stands disposed of with aforesaid observations.

**Company Appeal No. 52 of 2016**

23. This case relates to contravention of Section 159 of the Act 1956 for not filing the Annual Return during the period from 29<sup>th</sup> November 2013 to 25<sup>th</sup> February 2016. As per Registrar of the Companies the maximum fine provided under Section 162 of the Act 1956 for non-compliance of Section 159 of the Act 1956, the appellants are liable to pay a sum of Rs. 9,58,000/- each. Admittedly, the appellants had filed the Annual Return after more than two years for each year ending. Similar plea has been taken by the appellants as were taken in the earlier case.

24. The Appellate Tribunal, on hearing the parties deemed it fit and proper to impose a fine of Rs. 4 lacs each on the defaulting parties for the entire period of default i.e. total 12 lacs. In this case also the fine amount is about 42% of the maximum amount though in other cases, for similar ground and almost similar offence which are not grievous, the same Bench has imposed approximately 1/5<sup>th</sup> of the maximum fine. Where the fine was Rs. 10 lacs approximately payable by each defaulter, it was compounded at Rs. 2 lacs each. In this case also the appellants have taken similar plea that in other cases, the CLB had imposed lesser amount.

25. Having heard learned counsel for the parties, as we find that the case of the appellants is similar to that of the Company Appeal No. 51 of 2016, where we refused to grant lesser penalty of Rs. 25,000/- but brought down the amount to Rs. 2 lacs each, to be consistent with the order passed in Company Appeal No. 51 of 2016, we are of the view that the appellants deserve certain relief and, therefore, we deemed it sufficient to compound the offence on payment of fine of Rs. 2 lacs by each of the appellants i.e. Rs. 2 lacs payable by the company, Rs. 2 lacs by Mr. Sandeep Kapoor and Rs. 2 lacs by Mr. Atul Prabhakar Kulkarni i.e. total 6 lacs. The amount should be deposited with the Tribunal within three weeks subject to remittance of the amount the offence is compounded. . The appeal stands disposed of accordingly.

**Company Appeal No. 53 of 2016**

26. In this case the appellants contravened Section 210 of the Companies Act 1956. They failed to lay down annual accounts and balance sheet for the year ending 31<sup>st</sup> March 2011, 31<sup>st</sup> March 2012, 31<sup>st</sup> March 2013, 31<sup>st</sup> March

2014 and 31<sup>st</sup> March 2015. The appellants made it good in each of the cases after delay of about two years of each year ending.

27. The penalty for default in complying with Section 210 of the Companies Act, 1956 is applicable up to year ending 31<sup>st</sup> March 2014. Since 1<sup>st</sup> April 2014, Section 129 of the Companies Act will be attracted and penalty for defaulting and complying with Section 129 of the Companies Act 2013 will be attracted, for the year ending 31<sup>st</sup> March 2015.

28. Sub-section (5) of Section 210 of the Act 1956 reads as follows: -

**“Section 210 ANNUAL ACCOUNTS AND BALANCE SHEET.-** (5) *If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to tenthousand rupees, or with both:*

*Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty:*

*Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.”*

For contravention of offence since 1<sup>st</sup> April 2014, the penalty has been prescribed under sub-section (7) of Section 129 of Companies Act 2013 which reads as follows: -

**“129. Financial statement.—** (7) *If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.*

*Explanation. —For the purposes of this section, except where the context otherwise requires, any reference to the financial statement shall include any notes annexed to or forming part of such financial 82 statement, giving information required to be given*

*and allowed to be given in the form of such notes under this Act."*

29. The Registrar of the Companies in its report noticed the penalty prescribed under the Companies Act 1956. In view of 'fine' prescribed under sub-section (5) of Section 210 of Companies Act 1956, the Registrar of Companies calculated the fine for the year ending 31<sup>st</sup> March 2011, 31<sup>st</sup> March 2012, 31<sup>st</sup> March 2013 and 31<sup>st</sup> March 2014 at Rs. 10,000/- for each year ending payable by each defaulters. That is Rs. 40,000/- fine payable by each of the appellants. In regard to the year ending 31<sup>st</sup> March 2015, maximum fine is Rs. 5 lacs payable by each defaulter under sub-section (7) of Section 129.

30. Sub-section (5) of Section 210 of Act 1956 while prescribed fine which may extend to Rs. 10,000/- (maximum), under sub-section (7) of Section 129, the defaulters are liable to pay fine **which shall not be less than 50,000 Rupees** but which may extend to Rs. 5 lacs.

31. In view of the aforesaid provision, the Registrar of the Companies calculated the maximum fine payable by each defaulter at Rs. 5,40,000/- (Rs. Five lacs forty thousand only) i.e.  $Rs. 5,40,000 \times 3 = 1,620,000/-$  (Rs. One Crore Six lacs Twenty Thousand only).

32. The Tribunal by impugned order dated 6<sup>th</sup> October 2016, compounded the offence and imposed a fine of Rs. 50,000/- on each of the defaulting parties.

33. The Tribunal failed to notice that Rs. 50,000/- was the minimum fine prescribed under sub-section (7) of Section 129 of Companies Act 2013 which was applicable for the financial year ending 31<sup>st</sup> march 2015. This apart fine upto Rs.10,000/- has been prescribed for each of the year ending upto 31<sup>st</sup> March, 2014, apart from imprisonment.

34. The Registrar of Companies though brought to the notice of the Tribunal that maximum Rs. 5,40,000/- was payable by each of the defaulters i.e. M/s Viavi Solutions India Private Limited and two directors i.e. 'fine' of Rs. 10,000/- each for the year ending 31<sup>st</sup> March 2011, 31<sup>st</sup> March 2012, 31<sup>st</sup> March 2013 and 31<sup>st</sup> March 2014 i.e. Total Rs. 40,000/- and maximum fine of Rs. 5 lacs for the year ending 31<sup>st</sup> March 2015 i.e. total Rs. 5,40,000/-, the Tribunal without noticing the provision of Section 129 compounded the offence at Rs. 50,000/-, ignoring the fine payable for the four years ending 31<sup>st</sup> March 2014.

35. From the impugned order it is manifest and clear that the Tribunal failed to notice the minimum fine prescribed under sub-section (7) of Section 129 of Companies Act 2013 which is applicable for the year ending 31<sup>st</sup> March 2015, also failed to notice that a fine up to Rs.10,000/- is payable by appellants under Sub Section (5) of Section 210 of Companies Act 1956 for each of the year ending 31<sup>st</sup> March 2011, 31<sup>st</sup> March 2012, 31<sup>st</sup> March 2013 and 31<sup>st</sup> March 2014.

36. In view of the error apparent in the impugned order dated 6<sup>th</sup> October 2016 passed by Tribunal in C.P.No.16/130/16, the said order cannot be upheld. It is accordingly set aside.

37. Now the question arises as to what amount the defaulter company and two directors are liable to pay for contravention of Section 210 of Companies Act for the year ending, as noticed above, payable under sub-section (5) of Section 210 and Section 129 for the year ending 31<sup>st</sup> March 2015 payable under sub-section (7) of Section 129.

38. The allegation can be stated to be grievous in view of the punishment prescribed, under sub-section (5) of Section 210 of Act, 1956 which is punishable with imprisonment for a term which may extend to six months or fine of 10,000/- rupees or both. Similarly, the allegation can be stated to be grievous in view of punishment prescribed sub-section (7) of Section 129 of Companies Act, 2013 i.e. imprisonment which may be extended to one year for the directors or with fine which shall not be less than 50,000/- rupees but may be extended upto 5 lacs rupees or both.

39. This court is not inclined to decide the aforesaid issue, as there will be enhancement of fine, if the fine for the year ending 31<sup>st</sup> March 2011, 31<sup>st</sup> March 2012, 31<sup>st</sup> March 2013 and 31<sup>st</sup> March 2014 are taken together with minimum fine of Rs.50,000/- to be imposed for year ending 31<sup>st</sup> March, 2015. In this background, we deemed it proper to remit the case back to the National Company Law Tribunal, New Delhi Bench to decide the question of compounding of offence afresh, after taking into consideration the Report submitted by the Registrar of the Companies, the grounds shown by the petitioner and the ratio laid down and discussed above. Tribunal will also take into consideration the punishment prescribed under sub-section (5) of

Section 210 Of the Companies Act 1956 and sub-section (7) of Section 129 Of Companies Act 2013 which are applicable for different year ending,

40. In the result, the Company Appeal Nos. 49 and 50 Of 2016 are dismissed. The Company Appeal Nos. 51 and 52 of 2016 stand disposed of in terms of order as mentioned above, the Company Appeal No. 53 Of 2016 is disposed of by remitting the Company Petition NO. 16/ 130/ 16 to National Company Law Tribunal, New Delhi Bench for fresh decision after notice and hearing the parties.

41. However, in the facts and circumstances of the case there shall be no order as to cost.

Mr. Balvinder Singh)  
Member (Technical)

(Justice S.J Mukhopadhaya)  
Chairperson

NEW DELHI  
28<sup>th</sup> February, 2017