

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) Nos. 145 of 2017

Aseem Gupta

.... Appellant

Vs.

ROC Delhi and Haryana

.... Respondents

**Present: Mr. Saurabh Kalia with Rakesh Wadhwa, Mr. Siddharth
Sharma, Advocates for Appellant**

ORDER

08.05.20 17 The appellant preferred an application under section 621 A of the Companies Act 1956 for compounding offence under section 63 and 68 of the Companies Act before the National Company Law Appellate Tribunal (hereinafter referred to as the 'AT'). The appellant took plea that the appellant was never an active director during his tenure with the Company. He never attended any board meeting or any AGM, nor was he introduced to the other Directors. He neither signed the prospectus nor the balance-sheets and had no hand in the alleged misappropriation of the funds of the company. It is his case that he himself has been made scape goat and has been embroiled in this case, details of which he is completely unaware of.

Before the Tribunal the 2nd respondent Securities and Exchange Board of India (SEBI) opposed the prayer on the ground that the case shall affect the prosecution in the case(s) filed on behalf of several unsuspecting investors

who have been duped and pleaded that the appellant was a signatory to the prospectus, although through an attorney. He is therefore, liable for the misstatement in the prospectus which was published during his tenure as a Director. It was further brought to the notice of the Tribunal that though the investigation has revealed that there were two other individuals, namely Shri Ravish Kumar Gupta and Shri Ashok Kumar Jam, it was doubtful whether these two individuals actually existed.

The Tribunal in the impugned order dated 17th March 2017 taking into consideration aforesaid plea taken by the parties, observed that it is not sufficient to project that the appellant had no role to play in the fraudulent acts and was made a scape goat at the instance of other mischievous people.

Similar plea has been taken by the appellant before this Appellate Tribunal. However, we are not inclined to interfere with the impugned order for the following reasons.

It has not been made clear as to whether the appellant while functioning as Director had drawn emoluments from the company. This apart, as per section 434(1)(a) of the Companies Act 2013, if any case was pending before the erstwhile Company Law Board, now stands transferred to the National Company Law Tribunal, the Tribunal is required to decide the case in terms of the provisions of the Companies Act 2013.

The present provision for compounding offence is stipulated in section 441 of the Companies Act 2013, sub-section 6 of which is reads as follows:-

441. (1) *Notwithstanding anything contained in the Code of Criminal Procedure, 19 Sub-section (1) (a) and (b) 73,*

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:

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(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

(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.*

In view of the aforesaid provisions we are of the view that the Tribunal was not competent to compound the offence without prior permission of the Special Court, as the punishment of the alleged violation is fine or imprisonment.

At this stage learned counsel appearing on behalf of the appellant sought permission to withdraw the appeal to enable the appellant to move before the Special Court to obtain permission to prefer an application under section 441 of the Companies Act 2013 for compounding the offence. In view of the prayer made by the counsel for the appellant, we allow the appellant to withdraw the appeal with liberty as sought for, if permissible under the law.

The appeal stands disposed of with the aforesaid observations.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member(Technical)

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