

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 35 of 2018

IN THE MATTER OF:

S. D. Bio-Tech Ltd. & Ors.

...Appellants

Vs

Registrar of Companies

....Respondent

Present:

**For Appellants: Ms. Ritu Goyal and Mr. Awanish Kumar,
Advocates. Mr. Mohd. Nazim Khan, PCS.**

For Respondent: None.

ORDER

30.01.2018. This appeal has been preferred by the Appellant Company and three Directors against order dated 12th December, 2017 passed by National Company Law Tribunal (hereinafter referred to as Tribunal), New Delhi in CP No. 16/203/ND/2017, whereby and whereunder the Tribunal in their application under Section 441 of Companies Act, 2013 for compounding of the offences under section 92 and 137 of Companies Act, 2013 reduced the penalty amount from Rs.10,64,000/- (for Company) and Rs.10 Lakh (for rest of the Directors) respectively to Rs.3 lakhs each for the Company and each of the three Directors.

The fact of the case is that the Appellants defaulted in filing the Annual Return in time and attracted punishment under section 92(5) of the Companies Act, 2013. For violation of Section 137 and as the Financial Statement adopted in the AGM was not filed with Registrar of Companies, punishment under Section 137(3) was attracted. The Company was liable to pay fine which may be extent to Rs.10 lakh and the Directors were liable for imprisonment upto 6 months or fine upto Rs.5 lakhs each.

For the aforesaid offences punishable under Section 92(5) and 137(3) of the Companies Act, the ROC recommended the fine as under:

U/s 92 of the Companies Act, 2013

S. No.	Name of Applicant	Fine U/s 92()	Default Period	Amount
1.	S. D. Bio-Tech Limited	92(5)	30.11.2015 to 15.07.2017	5,00,000/-
2.	Mr. Dharam Pal Malhotra	92(5)	30.11.2015 to 15.07.2017	5,00,000/-
3.	Ms. Ashima Malhotra	92(5)	30.11.2015 to 15.07.2017	5,00,000/-
4.	Mr. Sulabh Malhotra	92(5)	30.11.2015 to 15.07.2017	5,00,000/-

U/s 137 of the Companies Act, 2013

S. No.	Name of Applicant	Fine U/s 137	Default Period	Amount
1.	S. D. Bio-Tech Limited	137	30.10.2015 to 15.05.2017	5,64,000/-
2.	Mr. Dharam Pal Malhotra	137	30.10.2015 to 15.05.2017	5,00,000/-
3.	Ms. Ashima Malhotra	137	30.10.2015 to 15.05.2017	5,00,000/-
4.	Mr. Sulabh Malhotra	137	30.10.2015 to 15.05.2017	5,00,000/-

The Tribunal taking into consideration the facts that the default has been made good after two years, reduced the fine as under:

S. No.	Name of Applicant	Fine U/s 92(5)	Fine U/s 137	Total
1.	S. D. Bio-Tech Limited	1.5 Lakhs	1.5 Lakhs	3 Lakhs
2.	Mr. Dharam Pal Malhotra	1.5 Lakhs	1.5 Lakhs	3 Lakhs
3.	Ms. Ashima Malhotra	1.5 Lakhs	1.5 Lakhs	3 Lakhs
4.	Mr. Sulabh Malhotra	1.5 Lakhs	1.5 Lakhs	3 Lakhs

Learned Counsel appearing on behalf of the Appellants submits that the Company and the Directors are not in position to pay Rs.3 Lakhs as their financial condition is not correct. In view of such oral submission, this Appellate Tribunal asked the Learned Company Secretary to file the statement of accounts of the Directors in support of such plea. However, the appellants do not want to disclose their respective amount as lying in their account. In such circumstances, it cannot be believed that the Appellants are not in a position to pay the amount or that they are bankrupt. This apart, as we find that the Tribunal has already reduced the penalty which is less than 1/3rd of the amount of the penalty proposed by the R.O.C, which is just and fair, we are not inclined to interfere with the impugned order. In absence of any merit, the appeal is dismissed.

(Justice S. J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member (Judicial)

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