

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 28 of 2019

IN THE MATTER OF:

Peregrine Guarding Pvt. Ltd. & Ors.

...Appellants

Versus

Registrar of Companies

...Respondent

Present:

For Appellant :

**Mr. Rakesh Kumar, Mrs. Preeti Kashyap and
Mr. Aashish Khattar, Advocates**

ORDER

31.01.2019 The appellant Company and its Directors filed a petition under Section 441 of the Companies Act, 1956 praying for compounding of offence under Section 134(3)(o) read with Section 135(2) of the Companies Act, 2013. As per the statutory requirement, the company was required to disclose its Director's Report, the details of the CSR Policy developed and implemented during the year. A CSR Committee was also required to be constituted for the said purpose. The appellant Company and its Directors defaulted in adhering to this statutory requirement for the Financial Year 2014-15, 2015-16 and 2016-17. Finally, the Board of Directors of the Company in its meeting held on 16th April, 2018 cured the defects and thereby all the defects stood cured with effect from the year ending 31st March, 2018.

2. After filing of the application under Section 441 of the Companies Act, the report was called for from the Registrar of Companies, NCT Delhi and Haryana.

The penal provision for offence under Section 434 (3) is prescribed under Section 134(8), which reads as follows:

“(8) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-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 three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.”

3. For offence under Section 135(5), general penal provision of Section 450 is applicable and reads as follows:

“450. Punishment where no specific penalty or punishment is Provided -

If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or

punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

4. In terms of the said provision, the Registrar of Companies recommended imposition of compounding fees as follows:

1. M/s Peregrine Guarding Private Limited

Section	Financial Year	Days	Amount
134(3)(0)read with 135(2) of the Companies Act, 2013	2014-15		25,00,000/-
	2015-16		25,00,000/-
	2016-17		25,00,000/-
135(5) of the Companies Act, 2013	2014-15	01.04.2015 to 31.03.2018 (1095 days)	11,04,000/-
	2015-16	01.04.2016 to 31.03.2018(730 days)	7,39,000/-
	2016-17	01.04.2017 to 31.03.2018(365 days)	3,74,000/-

2. Mr. Rajan Oberoi

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Section	Financial Year	Days	Amount
134(3)(0)read with 135(2) of the Companies Act, 2013	2014-15		5,00,000/-
	2015-16		5,00,000/-
	2016-17		5,00,000/-
135(5) of the Companies Act, 2013	2014-15	01.04.2015 to 31.03.2018 (1095 days)	11,04,000/-
	2015-16	01.04.2016 to 31.03.2018(730 days)	7,39,000/-
	2016-17	01.04.2017 to 31.03.2018(365 days)	3,74,000/-

3. Mr. Shashi Vir Singh

Section	Financial Year	Days	Amount
134(3)(0) read with 135(2) of the Companies Act, 2013	2015-16		5,00,000/-
	2016-17		5,00,000/-
135(5) of the Companies Act, 2013	2014-15	16.11.2015 to 31.03.2018 (865 days)	8,74,000/-
	2015-16	01.04.2016 to 31.03.2018(730 days)	7,39,000/-
	2016-17	01.04.2017 to 31.03.2018(365 days)	3,74,000/-

4. Mr. Bodh Raj Sharma

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Section	Financial Year	Days	Amount
134(3)(0)read with 135(2) of the Companies Act, 2013	--	---	---
135(5) of the Companies Act, 2013	2014-15	15.03.2018 to 31.03.2018 (16 days) ✓	25,000/-
	2015-16	15.03.2018 to 31.03.2018(16 days) ✓	25,000/-
	2016-17	15.03.2018 to 31.03.2018(16 days) ✓	25,000/-

5. Mr. Kartar Singh

Section	Financial Year	Days	Amount
134(3)(0)read with 135(2) of the Companies Act, 2013	2014-15		5,00,000/-
135(5) of the Companies Act, 2013	2014-15	01.04.2015 to 04.12.2015 (248 days) ✓	2,57,000/-

5. The Tribunal on hearing the parties and taking into consideration the fact that the provision of law being newly introduced under 2013 Act and that the appellants had not much clarity on it and the default had been subsequently made good, deemed it fit, just and equitable to impose the fine for compounding the offence for three years i.e. 2014-15, 2015-16 and 2016-17 as under :

For	Amount U/s 134(3)(o)	Amount u/s 135(5)	Total
M/s Peregrine Guarding Private Limited	6 Lakhs	10 Lakhs	16 Lakhs
Rajan Oberoi	2 Lakhs	5 Lakhs	7 Lakhs
Shashi Vir Singh	2 Lakhs	5 Lakhs	7 Lakhs
Bodh Raj Sharma	2 Lakhs	5 Lakhs	7 Lakhs
Kartar Singh	2 Lakhs	5 Lakhs	7 Lakhs

6. Learned counsel appearing on behalf of the appellant referred to Item No. 4 of the Chart supplied by the Registrar of Companies which had not recommended any amount for the offence under Section 134(3) but in spite of the same, the Tribunal imposed fine of Rs. Two Lakhs. With regard to Mr. Kartar Singh, it was submitted that he had left the post on 5th December, 2015. In Item No. 5, the Registrar of Companies had not calculated the delay and recommended to impose penalty of Rs. Five Lakhs.

7. It is accepted that Mr. Bodh Raj Sharma joined from 15th March, 2018 and the Board of Directors in its meeting held on 18th April, 2018 cleared the defects of 2014-15, 2015-16 and 2016-17. Thus, it is clear that for about 16 days i.e. from 16th March, 2018 to 31st March, 2018, Mr. Bodh Raj Sharma was also a party but had not taken steps to correct and bring to the notice of the Board of Directors. Insofar as Section 134(3) is concerned, it cannot be stated that he had taken steps to correct it because of the corrections simultaneously approved by the Board of Directors on 16th April, 2018. If nothing has been shown by the Registrar of Companies, it is a typographic error and mistake.

Mr. Bodh Raj Sharma had joined on 15th Mach, 2018 and with regard to anything shown for correction has taken place by the year ending 31st March, 2018. Thus we hold that Mr. Bodh Raj Sharma was also liable for penal action under Section 134(8) for 16 days for violating the provisions of Section 134(3) of the Companies Act. Insofar as Mr. Kartar Singh is concerned, as admittedly, he was there in the year 2014-15 and had taken 240 days in removing the defects committed during his tenure. The said period is also applicable for the offence under Section 134(3) for which maximum punishment of Rs. Five Lakhs is prescribed. Thereby, we find no error except typographical error has been made by the Registrar of Companies. If the total amount is calculated, we find that penal amount is less than 33% of the total maximum penal amount payable. The Tribunal having taken lenient view on the ground that new Act has been introduced, we are not inclined to accept the same though we are of the view that the provisions of Act of 2013 are practically similar to the provisions as were there already in Companies Act, 1956. Hence, we find no merit in the appeal. The appeal is dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

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