

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 249 of 2018

IN THE MATTER OF:

Registrar of Companies-Cum-Official Liquidator, ...Appellant
Rajasthan, Jaipur.

Vs

Gyan Chand AgarwalRespondent

Present:

For Appellant: Shri Aditya Sahal, Company Prosecutor and Mr. Shiv Prakash Rawat, JTA, ROC Jaipur.

For Respondent: Mr. Suresh Sharma, PCS.

ORDER

12.09.2018: The Respondent – ‘Gyan Chand Agarwal’ filed an application under Section 441 of Companies Act 2013 for compounding of offence punishable under Section 165(6) of the Companies Act, 2013. The National Company Law Tribunal, New Delhi Bench (herein after referred as ‘Tribunal’) by impugned order dated 28th March, 2018 compounded the offence and reduced the fine to Rs.10 lakhs, with following observations:-

“6. Under the circumstances, notwithstanding what would be the minimum quantum of fine imposed by the Prosecuting court after a prolonged trial at the time of sentencing. The Bench deems it just, fit and proper to direct compounding of the default on payment of a fee of Rs.10,00,000/- for perpetuation of the offence for about 849 days.”

2. Learned Company Prosecutor appearing on behalf of the Registrar of Companies, Jaipur referred to sub-section (6) of Section 165 of the Companies Act, 2013, which reads as follows:-

“165(6). If a person accepts an appointment as a director in contravention of sub-section (1), he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees for every day after the first during which the contravention continues.”

3. It is submitted that though the Tribunal had noticed the aforesaid provision and the punishment attributed for the default pursuant to the provision but notwithstanding the minimum quantum of fine imposed, the impugned order has been passed.

4. Mr. Suresh Sharma, Practicing Company Secretary appearing on behalf of Respondent/ Petitioner submitted that the penalty provided under sub-section (6) of Section 165 of Companies Act is not mandatory.

5. However, we do not agree with such submission in view of the provision as quoted above, which prescribe minimum penalty. The legislature having prescribed minimum fine, which shall not be less than five thousand rupees for every day and maximum fine of twenty-five thousand rupees for every day, the Tribunal has no jurisdiction to reduce the fine less than the minimum fine prescribed for the offence.

6. Though the Tribunal has noticed that the fine imposed should not be less than Rs.5000/- which can be extended to Rs.25,000/- for every day after the first during which the contravention continues and default continued for a period of 849 days w.e.f. 01st April, 2015 to 18th July, 2017 but reduced the fine which is much less than the minimum fine prescribed under the aforesaid provision.

7. Learned Company Prosecutor appearing on behalf of ROC submits that if the fine is calculated at the rate of five thousand rupees every day and default having continued for 849 days, the total amount will come to Rs.42,45,000/- (Rupees Forty Two Lakh Forty Five Thousand Only). On the other hand, if the fine is calculated at the rate of twenty-five thousand rupees every day the default having continued for 849 days, the total amount of fine comes to Rs.2,12,25,000/- (Rupees Two Crore Twelve Lakh Twenty Five Thousand Only).

8. Having heard learned counsel for the parties as we find that the impugned order dated 28th March, 2018 has been passed by the Tribunal in contravention of Sub-section (6) of Section 165 of Companies Act, 2013, we set aside the impugned order. However, taking into consideration the facts and circumstances of the case, we impose minimum fine at the rate of five thousand rupees for every day after the first during which the contravention continued. The default having continued for 849 days w.e.f. 01st April, 2015 to 18th July, 2017, we quantify the penalty to Rs.42,45,000/- (Rupees Forty Two Lakh Forty Five Thousand Only) to be paid by the Respondent/ Petitioner within a period of 45 days.

8. The appeal is allowed with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A. I. S. Cheema]
Member (Judicial)

am/gc

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