

PRINCIPLE OF IMPOSITION OF MINIMUM PENALTY: NON-MANDATORY ON COMPOUNDING CASES

– Order of Delhi National Company Law Tribunal in the application of UW International Training & Education Centre for Health Pvt. Ltd.

[May 11, 2017]



BACKGROUND

Ministry of Corporate Affairs (MCA), on June 1, 2016, notified Section 441 of the Companies Act, 2013 (Act) related to compounding of certain offences under the Act. Further, Ministry constituted National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) on June 1, 2016 to handle the corporate civil matters under the Act and for vesting it with various powers including compounding of offences, class action suits, deregistration of

companies, oppression and mismanagement, re-opening of accounts and revision in financial statements, investigations, etc.

UW International Training & Education Centre for Health Pvt. Ltd., the petitioner company filed an suo moto application to Delhi NCLT with respect to delay in issue of share certificate to the subscribers of the Company, resulting in non-compliance of the time prescribed under Section 56(4)(a) of the Act. NCLT in its order considered the

contention of petitioner company that the said delay was beyond their control and not on account of any malafide intentions. The amount of penalty imposed by NCLT was lesser than that as prescribed under Section 56(6) of the Act, being the penalty provision for violation of Section 56 of the Act.

NCLT, in this Case clarifies that the principle of imposing minimum fine prescribed under the Act is not mandatory on compounding cases.

THE CASE

1. Whether NCLT can levy a higher or lower penalty in compounding cases than the penalties as prescribed under the Act?
2. What are the guiding principles for imposing penalty in compounding cases?

THE RULING

1. Delhi NCLT in its Order against application of UW International Training & Education Centre for Health Pvt. Ltd. ('Case') held that the sentencing or penalty provisions prescribed under the Act cannot be lowered or altered in cases of prosecution holding the defaulter guilty. However, principle of

...

...

imposing minimum fine on compounding matters is not mandatory.

2. NCLT noted that compounding of offence can be accepted by a Court even by admonishing the defaulter or issuing a warning.
3. NCLT further noted that the procedural delay of issuance of share certificates cannot be discounted and accordingly imposed a penalty of Rs. 10,000/- on Company and defaulting officers as opposed to penalty prescribed under Section 56(6) of the Act i.e. Rs. 25,000/- to Rs. 5,00,000/- on Company and Rs. 10,000/- to Rs. 1,00,000/- on defaulting officers.

OUR VIEWS

1. Section 46 of The Competition Act, 2002 gives power to Commission to impose lesser penalty as it may deem fit, than leviable under this Act or rules or the regulation, if it is satisfied that the defaulter has made true and full disclosures in respect of alleged violations.
2. NCLAT in the matter of Viavi Solutions India (P.) Ltd. v. Registrar of Companies, NCT Delhi & Haryana dated February 28, 2016 laid down that NCLT is required to notice the relevant factors while compounding any offence, such as gravity of offence, malafide intention, maximum punishment prescribed, report of Registrar of Companies (ROC), period of default, suo moto compounding or after ROC notice / imposition of the punishment / during the pendency of a proceeding, etc.
3. In suo-moto compounding cases, Tribunal may, based on the aforementioned factors, impose a lower penalty than as prescribed under the penalty provisions of the Act.



Let's Talk

For a deeper discussion on how this issue might affect your business, please contact:
Mr. Mahavir Lunawat
+91 - 22 - 6194 6700
mahavir.lunawat@pantomathgroup.com