

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP No.: /3869/NCLT/MB/MAH/2018

Under section 441 of the Companies Act, 2013

In the matter of

SHCIL Services Limited

Having its registered office at :- SHCIL
House, P-51, T.T.C. Industrial Area,
MIDC, Mahape, Navi Mumbai -
400710.

.... Applicant Company

V/s

**REGISTRAR OF COMPANIES,
MUMBAI**

100, Everest Building, Marine Drive,
Mumbai, 400002

Order delivered on :- 08.09.2023

Coram:

**Anil Raj Chellan
Member (Technical)**

**Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Applicant Company :- Mr. M.S. Bhardwaj, Advocate

ORDER

Per :- Kuldip Kumar Kareer, Member Judicial

Applicants/Defaulters Herein:

- 1) SHCIL Services Limited – Company
- 2) Venkatachalam Subramanian – Director
- 3) Arvind Sharma – Director
- 4) Nilakanth Nagarkar - Director

Section Violated:

Section 81 Companies Act, 1956.

Penalty Provided Under:

Section 629A of the Companies Act, 1956.

1. This Compounding Application is filed by the Applicants under Section 441 of the Companies Act, 2013, for compounding of the offence committed under Section 81 of the Companies Act, 1956 (hereinafter as **Act**).
2. The Applicant Company was incorporated on 14.02.1995 with Authorized Share Capital of Rs. 20,00,00,000/- divided in to 1,80,00,000 Equity shares of Rs. 10/- each and 20,00,000 Preference shares of Rs. 10/- each. The issued, subscribed and Paid up Share Capital is Rs. 6,08,97,030/- comprising of 60,89,703 equity shares of Rs. 10/- each.
3. The copy of the Annual Reports for the year ended 31.03.2018 are annexed to the petition. The Company is regular in filing its Annual Accounts with the Registrar of Companies (RoC) till date.
4. The main object of the Applicant Company is to carry on the business as share and stock brokers, intermediaries, dealers, consultants, Advisors, Trustees, underwriters and sub-writers, agents and brokers for taking,

holding, dealing, converting stocks, shares, debenture, bonds, futures and forwards, instruments etc.

5. The Applicant/Defaulters herein have filed Form GNL-1 vide SRN No. H09903212 filed on 11.09.2018 thereby admitting the violation of Section 81 of the Companies Act, 1956.
6. It was observed that an investigation under section 247 of the Companies Act, 1956 was conducted by the inspectors, as appointed by the Central Government and during the said course of investigation, the Company had produced the minutes of the Board of Directors for verification. During the said investigation it was found that the Company convened and held 6th EGM on 15.06.2005 and 7th EGM on 06.01.2006. In the said meetings, a Special Resolution under Section 81(1) and 81(1A) of the Companies Act, 1956 for further issue of share capital was passed and consequently allotment of further share capital was made. During the course of investigation, it was observed that the said EGM's were not held and minutes were falsely recorded.
7. The RoC, Mumbai filed a complaint against the Applicant Company and its officers in default before the Addl Chief Metropolitan Magistrate.
8. The Applicant/defaulters admit their default and submits that the said was inadvertently committed due to oversight and the said default was unintentional. The offence committed is a one time offence.

9. The RoC Mumbai have filed their report/comments. That this Tribunal vide its Order dated 01.02.2019 directed the RoC to submit the report. The Company and its Directors are found to have violated the provisions of Section 81 of the Companies Act, 1956. The said offence is to be compounded by imposing fine under 629A of the Companies Act, 1956 where no specific penalty is provided in the Act.
10. This Bench has gone through the pleadings on record and the submissions made by the Representative for the Applicants / Defaulters herein and is accordingly of the considered view that, the Applicants/Defaulters herein has violated the Provision of Section 81 of the Companies Act, 1956 and for the said violation, the punishment is provided u/s 629A Companies Act, 1956. The Sections which are relevant in this case are as follows:

Section 81(1) :-

Where at any time after the expiry of two years from the formation of a company or at any time after the expiry of one year from the allotment of shares in that company made for the first time after its formation, whichever is earlier, it is proposed to increase the subscribed capital of the company by allotment of further shares.

Section 629A Penalty

“629A If a Company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act 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, 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 [five thousand] rupees, and where the contravention is a continuing one, with a further fine which may extend to [five hundred] rupees for every day after the first during which the contravention continues.”

13. The default on the part of the Company and its officers for which the following penalty is payable :-

Total Fine	Rs. 5000 + Rs. 500*365 days	Rs. 1,87,500/-
No. of Applicants	4	Rs. 1,87,500/- * 4
Total		Rs. 7,50,000/-

14. Further, as to the issue with regards to restriction on the power of the 'Regional Director' and the 'authorized officers of the Central Government' permitting to compound the offences wherein the maximum amount of fine does not exceed Rupees Twenty Five Lakhs, Hon'ble NCLAT in the matter of "*Magnon Solutions Pvt. Ltd & Ors. V/s Registrar of Companies*" has held that no such fetter has been put on powers of the Tribunal, which is the main forum for compounding of offences, the other forum of 'Regional Director' and 'Officer of the Central Government' being alternative but restricted by the extent of quantum of punishment, the Tribunal has all the powers to compound all the offences irrespective of any pecuniary limit. The Tribunal has been conferred with all powers to compound the offence irrespective of the limit of fine. Hence, the present Petition can be compounded.
15. On examination of the circumstances as discussed above a Compounding Fee of **Rs. 7,50,000/- (Rupees Seven Lakhs Fifty**

Thousand Only) shall be sufficient as a deterrent for not repeating the impugned default in future. The imposed remittance shall be paid by way of Demand Draft drawn in favour of “Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai” within 30 days from the receipt of this order.

16. This Compounding Application **3869/441/NCLT/MB/MAH/2018** is, therefore, disposed of on the terms directed above. Needless to mention, the offence shall stand compounded subject to the remittance of the Compounding Fee imposed. A compliance report, therefore, shall be placed on record.
17. Registry shall send a copy of this order to the Registrar of Companies, Mumbai.
18. Ordered accordingly. File be consigned to Records.

Sd/-

ANIL RAJ CHELLAN
MEMBER TECHNICAL

Sd/-

KULDIP KUMAR KAREER
MEMBER JUDICIAL