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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: July 01, 2025***

+ **CRL.M.C. 63/2018**

VIMAL NANDA & ANRPetitioners

Through: Mr. Rishi Manchanda along with
Mr. Arun Kumar, Mr. Siddharth
Mullick and Mr. Lakhan Gupta,
Advocates.

versus

REGISTRAR OF COMPANIES NCT OF DELHI & HARYANA

.....Respondent

Through: Mr. Arnav Kumar, Advocate, CGSC
for UOI.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CRL.M.A. 18238/2025

1. Application under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as the "Cr.P.C."*) has been filed on behalf of the Petitioners, seeking waiver of cost imposed *vide* Order dated 20.02.2025.

2. It is submitted that the Ld. Arguing Counsel for the Petitioners, who is also a Standing Counsel for the Official Liquidator, was stuck in another Bench dealing with Company matter, on account of which he was unable to appear before this Court leading to imposition of cost of Rs.25,000/- per person. It is submitted that non-appearance was neither intentional nor *mala fide* and the imposition of cost *vide* Order dated 20.02.2025 be set aside.



3. **Submissions heard and record perused.**

4. For the reasons stated in the Application, the cost imposed *vide* Order dated 20.02.2025 is hereby waived off.

5. The Application stands disposed of.

CRL.M.C. 63/2018, CRL.M.A. 258/2018 & CRL.M.A. 31157/2018

6. Petition under Section 482 Cr.P.C. has been filed on behalf of the Petitioners seeking modification of the Order dated 04.08.2017 of the Ld. ASJ.

7. ***The brief facts*** are that the Petitioners who are the Directors of M/s Ruchika Industries Pvt. Ltd., had ceased to participate in the day-to-day affairs of the Company or in the decision making process, after having filed their resignations dated 08.06.2011 with the Board of Directors of the Company and the new Management came on board.

8. On 25.02.2014, the Petitioners received a Notice for Default under Section 159/156/210(3)/220 Companies Act, 1956 (*hereinafter referred to as the "Act"*) for not filing the Balance Sheet, Profit & Loss Account and Annual Returns for the Financial Year 2012-13.

9. ***The criminal proceedings were initiated*** against the Petitioners as well as the Company *vide* Company Case No. 524661/2016 under Section 220(3)/162 of the Act for contravention of Sections 220(1)/159 of the Act despite the Petitioners having already resigned and having no concern or control with the Company during the said period of time.

10. On 14.12.2016, Petitioners filed an Application under Section 621A(6) of the Act ***seeking compounding of the offences*** under Sections 159/162/220(3) of the Act with *bona fide* intent to resolve the litigation



without prolonging it further, on the assurance of the Ld. Predecessor Trial Court that only a nominal compounding fee to the tune of Rs.48,000/-, would be imposed.

11. However, the **Ld. ACMM** *vide* his Order dated **05.10.2017** without going into the merits of the case, *permitted the compounding by imposing a fine of Rs.2 lacs on each of the Petitioners.*

12. **The Impugned Order was challenged before the Ld. Sessions Judge on 02.08.2017** whereby the compounding fine was reduced from Rs.2 lacs to Rs.1.5 lacs.

13. **Aggrieved by the Order passed by the Ld. ASJ**, the Petitioners have filed the present Petition, seeking quashing of the fine imposed while permitting compounding, ***on the grounds*** that the Petitioners were not the Directors at the time of alleged offence as they had already filed the resignations with the Board of Directors on 08.06.2011. However, the Board mischievously, intentionally and in negligence of their duties, did not register the change of Directorship in the Records of ROC because of which they were still being reflected as Directors. The new Management had already come on board, in 2011.

14. Reference is made to the case of Hindustan Steel Ltd. vs. State of Orissa (1969) 2 SCC 627 wherein it was observed that even if minimum penalty is prescribed, the Authority competent to impose penalty, would be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act or where the breach flows from the *bona fide* belief that the offender is not liable for the act in the manner prescribed by the statute.



15. It is submitted that the Petitioners were prevented from filing the Annual Returns and not holding the Annual General Meetings for the financial year 2012-13, since they had already resigned from the post in 2011. The technical default was committed by the new Directors of the Company and the liability to do the needful did not rest on the Petitioners.

16. It is further submitted that though the Petitioners were not liable for the contravention of the provisions of Companies Act but in order to save precious time, they moved the Application for compounding on the assurance that nominal fine for compounding shall be imposed. It is submitted that the Petitioners' conduct was neither wilful nor deliberate since the liability rested on the new Management.

17. Reliance has been placed on Viavi Solutions Pvt. Ltd. vs. ROC, NCT Delhi and Haryana, (2017) 203 Comp Cas 165 wherein it was observed that while permitting compounding, the Court may take into notice the factors such as gravity of offence, whether act was intentional or unintentional, maximum punishment prescribed for such offence, the report of ROC, period of default, whether it has been made good, financial condition of the company and other defaulters, whether the offence is continuous or one time and whether similar offences have been committed or not and whether the act of defaulters was prejudicial to the interest of the members of the Company or in public interest.

18. It is submitted that none of these factors were not considered while imposing the fine of Rs.1.5 lacs. It is therefore, submitted that the judgment dated 04.08.2017 be modified and the fine be waived.

19. ***The Respondent No. 1 in its Counter Affidavit*** has submitted that as



per the records, Form DIR-12 available with the Respondent No. 1, the Petitioners had resigned from the Board of Directors on 08.06.2015. This Form was filed along with the Resignation Letters, both of which were dated June 08, 2015. It is acknowledged by the Petitioners also in their Petition that they submitted their resignations of June, 2011 though were never submitted with the ROC as the proceedings had been initiated by Respondent No. 1 pertaining to non-compliance by the Company for the financial year 2009 to 2013 during which period, the Petitioners were the Directors and fell under the definition of '*Officer in default*' under the *Act*.

20. The Petitioners had voluntarily compounded the offences in the proceedings before Ld. ACMM and now to contend that there was some mistake or *bona fide* impression that nominal fine would be imposed, is totally incorrect. The Petitioners cannot be permitted to seek complete waiver of compounding fee levied on them by the Impugned Judgment.

21. The amount of compounding fee levied upon the Petitioners is proportionate to the nature of offence. Discretion has been duly exercised by the Ld. Sessions Judge in reducing the compounding amount which does not merit any further reduction. The Compounding was permitted on humanitarian grounds in the light of assertions of the Petitioners. There is no ground to further decrease or waive the Fine amount.

22. All the contentions made in the Petition are denied. It is submitted that the present Petition is liable to be dismissed.

23. **Submissions heard and record perused.**

24. The Petitioners had themselves filed an Application dated 14.12.2016 before the Ld. ACMM seeking compounding of the offence wherein it is



specifically stated that they were the Directors of the Company. It was further stated by them that they had given their resignation on 08.06.2011 and submitted it to the Board of Directors, though it was never filed with the ROC. It is their own case that their resignation was forwarded to ROC in June, 2015 along with the Resignation Letters of the same day thereby belying the contention that they had ceased to be the Officers of the Company in 2011.

25. They may have given their resignations, but there is no document. Minutes of the Meeting or averment that the same got accepted by the Board of Directors. The Ld. ASJ has considered this aspect while observing that the Petitioners being the Directors in the default period, were liable for the offences under Sections 220(3)/162 of the Act for non-filing of Balance Sheet, Profit & Loss Account and Annual Returns for the financial year 2012-13.

26. *The core question in the present Petition is whether there exist circumstances where the discretion may be exercised to further reduce the compounding fine of Rs.1.5 lacs imposed on each of the Petitioners.*

27. In the case of M/s Instrumentation Laboratory India Pvt. Ltd. vs. Union of India & Anr., 2017 SCC OnLine Del 8430, Coordinate Bench of this Court while considering the similar facts, had observed that while exercising the discretion, not only it must be reasonable and fair in the given circumstances but also must satisfy the *doctrine of proportionality* which involves *balancing test* and *necessity test*. The *balancing test* permits scrutiny of excessive onerous penalties or infringement of rights or interest and manifest balance of relevant considerations. *The necessity test* requires



infringement of human rights to the least restrictive alternative.

28. In *Halsbury's Laws of England* (4th Edn.), Reissue, Vol. 1(1), it was stated that the Court would quash exercise of discretionary power, in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct.

29. As per the prosecution, there was default in filing the Balance Sheet and Profit & Loss Account for the financial year 2010-11 and 2012-13. The fine that could be imposed for non-compliance of Section 220 of the Act, is upto Rs.500 per day. ROC had imposed fine @ Rs.500 per day for 3835 days which came to Rs.19,17,500/-.

30. Likewise, default in filing Annual Returns under Section 159 of the Act was for the period 2008-09 till 2012-13, which was calculated for 8086 days @ Rs.500 per day which came to Rs.40,34,000/-.

31. The total fine amount that was imposed on the Petitioners and the Company was of Rs.59,51,500/-, while the compounding amount imposed by the Court is Rs.1,50,000/- which comes to Rs.12.6 per day.

32. It is pertinent to observed that the offence committed is of *not submitting the Balance Sheet, Profit & Loss Account and Annual Returns*, which is essentially a crime committed by the Company on which the fine of Rs.1,50,000/- has already been imposed. The two Directors had been made liable being the Officers-in-charge and responsible for the affairs of the Company.

33. It has been submitted that both the Petitioners are senior citizens



living in rented house, going through financial crunch and having hardship and severe financial difficulty, which is making it difficult for them to pay the hefty amount as penalty for the offence for which they were not responsible in the first instance.

34. The litigation got commenced in the year 2014 and since then the Petitioners have been pursuing the matter. Their *bona fide* is established from their Compounding Application that was filed by them in the year 2016.

35. Considering that the compounding fine which may be imposed by the Court while permitting compounding, is in sole discretion of the Court, which has already been exercised by Ld. ASJ in his Order dated 04.08.2014 by reducing the compounding fine to Rs.1,50,000/-. However, considering the long litigation at the advance stage of the two Petitioners, the compounding fine is reduced to Rs.1,00,000/- each.

36. It is stated that Rs.50,000/- had already been deposited by each of the Petitioners before the Ld. Trial Court. The balance amount of Rs.50,000/- be deposited within 15 days.

37. The present Petition is accordingly disposed of along with pending Applications.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 1, 2025

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