

# M/S Shekhar Resorts Ltd & Ors vs Roc, Nct Of Delhi And Haryana on 27 September, 2018

1

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 80 of 2018

(Arising out of Order dated 16th February, 2018 passed by the National Company Law Tribunal, New Delhi Bench- III in Company Application Nos. CP-16/176/ND/2017, CP-16/178/ND/2017, CP-16/174/ND/2017, CP-16/177/ND/2017, CP-16/175/ND/2017, CP-16/121/ND/2017, CP-16/130/ND/2017 and Company Petition Nos. CP-16/181/ND/2017, CP-16/182/ND/2017, CP-16/179/ND/2017, CP-16/180/ND/2017, CP-16/124/ND/2017, CP-16/126/ND/2017, CP-16/122/ND/2017, CP-16/125/ND/2017, CP-16/123/ND/2017, CP-16/127/ND/2017, CP-16/142/ND/2017, CP-16/141/ND/2017, CP-16/133/ND/2017, CP-16/132/ND/2017, CP-16/134/ND/2017, CP-16/144/ND/2017 )

IN THE MATTER OF:

Pahuja Takii Seed Ltd. & Ors.

...Appellants

Vs

The Registrar of Companies,  
NCT of Delhi & Haryana

....Respondent

Present:

For Appellants:

Mr. Sudipto Sarkar, Sr. Advocate with Mr. Rajshekhar Rao, Mr. Aashish Gupta, Mr. Saifur R. Faridi and Mr. Anandh Venkatramani, Advocates.

For Respondent:

Mr. P.S. Singh, Ms. Annu Singh and Mr. Rajpal Singh, Advocates for RoC.

With

Company Appeal (AT) No. 81 of 2018

IN THE MATTER OF:

Pahuja Takii Seed Ltd. & Ors.

...Appellants

Vs

The Registrar of Companies,  
NCT of Delhi & Haryana

....Respondent

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

2

Present:

For Appellants:

Mr. Sudipto Sarkar, Sr. Advocate with Mr. Rajshekhar Rao, Mr. Aashish Gupta, Mr. Saifur R. Faridi and Mr. Anandh Venkatramani, Advocates.

For Respondent:

Mr. P.S. Singh, Ms. Annu Singh and Mr. Rajpal Singh, Advocates for RoC.

With

Company Appeal (AT) No. 82 of 2018

IN THE MATTER OF:

Pahuja Takii Seed Ltd. & Ors.

...Appellants

Vs

The Registrar of Companies,  
NCT of Delhi & Haryana

....Respondent

Present:

For Appellants:

Mr. Sudipto Sarkar, Sr. Advocate with Mr. Rajshekhar Rao, Mr. Aashish Gupta, Mr. Saifur R. Faridi and Mr. Anandh Venkatramani, Advocates.

For Respondent:

Mr. P.S. Singh, Ms. Annu Singh and Mr. Rajpal Singh, Advocates for RoC.

With

Company Appeal (AT) No. 83 of 2018

IN THE MATTER OF:

Pahuja Takii Seed Ltd. & Ors.

...Appellants

Vs

The Registrar of Companies,  
NCT of Delhi & Haryana

....Respondent

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

3

Present:

For Appellants:

Mr. Sudipto Sarkar, Sr. Advocate with Mr. Rajshekhar Rao, Mr. Aashish Gupta, Mr. Saifur R. Faridi and Mr. Anandh Venkatramani, Advocates.

For Respondent:

Mr. P.S. Singh, Ms. Annu Singh and Mr. Rajpal Singh, Advocates for RoC.

With

Company Appeal (AT) No. 92 of 2018

IN THE MATTER OF:

Shekhar Resorts Ltd. & Ors.

...Appellant

Vs

The Registrar of Companies,  
NCT of Delhi & Haryana

....Respondents

Present:

For Appellant:

Mr. Pankaj Jain and Mr. Mohit Chaurasia  
Advocates.

For Respondents:

Mr. Sanjib Kumar Mohanty, Senior Panel  
Central Govt. Counsel for Respondent Nos. 1  
&2

With

Company Appeal (AT) No. 101 of 2018

IN THE MATTER OF:

Shekhar Resorts Ltd. & Ors.

...Appellant

Vs

The Registrar of Companies,

....Respondents

NCT of Delhi & Haryana

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

4

Present:

For Appellant: Mr. Pankaj Jain and Mr. Mohit Chaurasia  
Advocates.

For Respondents: Mr. Sanjib Kumar Mohanty, Senior Panel  
Central Govt. Counsel for Respondent Nos. 1  
&2

With  
Company Appeal (AT) No. 113 of 2018

IN THE MATTER OF:

Magnon Interactive Pvt. Ltd. & Ors. ...Appellant

Vs

The Registrar of Companies, ....Respondents  
NCT of Delhi & Haryana

Present:

For Appellant: Mr. Pankaj Jain and Mr. Mohit Chaurasia  
Advocates.

For Respondents: Mr. Sanjib Kumar Mohanty, Senior Panel  
Central Govt. Counsel for Respondent Nos. 1  
&2

With  
Company Appeal (AT) No. 114 of 2018

IN THE MATTER OF:

Magnon Interactive Pvt. Ltd. & Ors. ...Appellant

Vs

The Registrar of Companies, ....Respondents  
NCT of Delhi & Haryana

Present:

For Appellant: Mr. Pankaj Jain and Mr. Mohit Chaurasia,  
Advocates.

For Respondents: Mr. Sanjib Kumar Mohanty, Senior Panel

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

5

Central Govt. Counsel for Respondent Nos. 1  
&2

With  
Company Appeal (AT) No. 115 of 2018

IN THE MATTER OF:

Magnon Interactive Pvt. Ltd. & Ors. ...Appellant

Vs

The Registrar of Companies, ....Respondents  
NCT of Delhi & Haryana

Present:

For Appellant: Mr. Pankaj Jain and Mr. Mohit Chaurasia,  
Advocates.

For Respondents: Mr. Sanjib Kumar Mohanty, Senior Panel  
Central Govt. Counsel for Respondent Nos. 1  
&2

With  
Company Appeal (AT) No. 116 of 2018

IN THE MATTER OF:

Magnon Solutions Pvt. Ltd. & Ors. ...Appellant

Vs

The Registrar of Companies, ....Respondents  
NCT of Delhi & Haryana

Present:

For Appellant: Mr. Pankaj Jain and Mr. Mohit Chaurasia,  
Advocates.

For Respondents: Mr. Sanjib Kumar Mohanty, Senior Panel  
Central Govt. Counsel for Respondent Nos. 1  
&2

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018  
6

With  
Company Appeal (AT) No. 117 of 2018

IN THE MATTER OF:

Magnon Solutions Pvt. Ltd. & Ors. ...Appellant

Vs

The Registrar of Companies, ....Respondents  
NCT of Delhi & Haryana

Present:

For Appellant: Mr. Pankaj Jain and Mr. Mohit Chaurasia,  
Advocates.

For Respondents: Mr. Sanjib Kumar Mohanty, Senior Panel  
Central Govt. Counsel for Respondent Nos. 1  
&2

And  
Company Appeal (AT) No. 118 of 2018

IN THE MATTER OF:

Magnon Solutions Pvt. Ltd. & Ors. ...Appellant

Vs

The Registrar of Companies, ....Respondents  
NCT of Delhi & Haryana

Present:

For Appellant: Mr. Pankaj Jain and Mr. Mohit Chaurasia,  
Advocates.

For Respondents:

Mr. Sanjib Kumar Mohanty, Senior Panel  
Central Govt. Counsel for Respondent Nos. 1  
&2

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

7

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

In these appeals as common question of law is involved, they were heard together and disposed of by this common judgment.

2. The Appellants, Companies along with its Officers, filed applications under Section 441 of the Companies Act, 2013 for compounding of the offence(s) committed by them, on the ground that corrective measures have already been taken, which have been dismissed/disposed of by the National Company Law Tribunal (hereinafter referred to as "Tribunal"), New Delhi Bench-III, by common order dated 16th February, 2018 with the following observations.

"DECISION:

i) In relation to CP-16/176/ND/2017, CP-

16/181/ND/2017, CP-16/124/ND/2017, CP- 16/126/ND/2017 and CP-16/142/ND/2017 the defaulted provisions being Section 92 of the Companies Act, 2013 and/or the equivalent provision under the earlier Act of 1956 since repealed as the case may be cannot be entertained in view of the following: -

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

(a) Since all the five applications as listed above pertains to default in relation to filing of Annual Returns Which is required to be filed for each year and the default is in relation to more than a year and as the same offence had been committed for the second or subsequent occasions within a period of three years and as the defaulted section being section 92 provides for fine or imprisonment or With both, for the officers in default thereby making it virtually non-compoundable by virtue of operation of Section 451 read with Section 441(6) of the Companies Act, 2013 this Tribunal does not have jurisdiction to compound the offence as dealt with in detail under Issue No.3 supra.

(b) Further a joint application for the default committed under the 1956 Act as well as 2013 Act filed is also not maintainable in view of the position as enunciated and dealt with under Issue No.4 supra.

(c) In any case under the 2013 Act since the maximum amount of fine prescribed for Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 the offence of not filing annual returns is not in excess of five lakh rupees, this Tribunal lacks the pecuniary jurisdiction to entertain the compounding applications as listed above For each of the above reasons stated CP-

16/i76/ND/2017, CP-16/181/ND/2017, CP- 16/124/ND/2017, CP-16/126/ND/2017 and CP-16/142/ND/2017 stands dismissed but without costs.

(ii) In relation to CP-16/174/ND/2017, CP- 16/180/ND/2017, CP-16/127/ND/2017, CP-16/123/ND/2017, CP-16/141/ND/2017, CP- 16/132/ND/2017 and CP-16/144/ND/2017 the defaulted provisions being Section 137 of the Companies Act, 2013 and/or the equivalent provision under the earlier Act of 1956 since repealed as the case may be cannot be entertained in view of the following: -

(a) Since all the seven applications as listed above pertains to default in relation to filing of Financial Statements which is required to be filed for each year and the default is in relation to more than a year and as the same offence had been committed for Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 the second or subsequent occasions within a period of three years and as the defaulted section being section 137 provides for fine or imprisonment or with both, for the officers in default thereby making it virtually non-

compoundable by virtue of operation of Section 451 read with Section 441(6) of the Companies Act, 2013 this Tribunal does not have jurisdiction to compound the offence as dealt with in detail under Issue No.3 supra.

(b) Further a joint application for the default committed under the 1956 Act as well as 2013 Act filed is also not maintainable in view of the position as enunciated and dealt with under Issue No.4 supra.

For each of the reasons as stated above CP-

16/174/ND/2017, CP-16/180/ND/2017, CP- 16/127/ND/2017, CP-16/123/ND/2017, CP-16/141/ND/2017, CP-16/132/ND/2017 and CP-16/144/ND/2017 stands dismissed but without costs.

(iii) In relation to CP-16/178/ND/2017, CP- 16/182/ND/2017, CP-16/130/ND/2017, CP- Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 16/122/ND/2017 and CP-16/125/ND/2017 concerning defaults arising out of sections 96 read with Section 99 of Companies Act, 2013 or the equivalent provisions under the earlier Act of 1956, since repealed and the maximum fine amount provided in Section 99 being Rs.100,000/- in addition to fine which may extend to Rs.5000/- for



each day of default during which the offence continuous and as the maximum amount of fine computed by the Registrar in its report forwarded and extracted as Annexures 1, 5, 9, 12, and 13 respectively discloses that in relation to each of the defaulting company, in the respective petitions exceeds five lakh rupees, the above five petitions as detailed in this paragraph are being taken up for consideration by this Tribunal and is dismissed as not maintainable, in view of the position that the offence relates to non-convening of Annual General Meeting for each of the relevant years as reflected against each of the petition in the above table and as joint petitions for repeated defaults as enunciated and answered in light of Issue No.3 in paragraphs supra cannot be entertained. Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

(iv) In relation to CP-16/133/ND/2017, again falling under Section 96 read with Section 99 of the Companies Act, 2013 and being in relation to non-convening of Annual General Meeting of shareholders for a year, since the maximum amount of fine computed in relation to the defaulting company falls below the threshold limit of five lakh rupees as evident from the computation contained in the Report of Registrar of Companies and extracted as Annexure 18 hereunder, the Registry of this Tribunal is directed to return the files to the Registrar of Companies along with its report to be suitably forwarded to the Regional Director as provided under Section 441(1)(b) of the 2013 Act and the Regional Director shall dispose of the company petition in CP-16/133/ND/2017 in light of this order and in accordance to its merits.

(v) In relation to CP-16/134/ND/2017 again falling under Section 96 read with Section 99 of the Companies Act, 2013 and being in relation to non-convening of Annual General Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 Meeting of shareholders for a year and since Companies has not forwarded any specific report, the Registry of this Tribunal is directed to return the files to the Registrar of Companies for duly forwarding the report and in case it is reported that there has been no default on the part of the applicants the Registrar shall state so and forward the report along with application to the Regional Director for suitably considering and closing the application for compounding as filed by the applicants.

(vi) In relation to CP-16/179/ND/2017, the defaulted provisions being Section 129 of the Companies Act, 2013 or the equivalent provision under the earlier Act of 1956 since repealed as the case may be, and as the maximum amount of fine prescribed in relation to the defaulting company or in relation to the officers-in-default does not individually exceed five lakh rupees as can be seen from the computation of the Registrar of Companies in its report forwarded to this Tribunal and as extracted as Annexure --6 to this order, thereby falling within the Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 compounding jurisdiction of the Regional Director, the Registry of this Tribunal is directed to return the files in CP-16/179/ND/2017 to the Registrar of Companies along with its report, if available on record, to be suitably forwarded to the Regional Director as provided under Section 441(1)(b) of the 2013 Act and the Regional Director shall dispose of the company petition CP-16/179/ND/2017 in light of this order and in accordance with its merit.

(vii) In relation to CP-16/177/ND/2017, the defaulted provisions being Section 149 of the Companies Act, 2013 read with Section 172 of the said Act and as the maximum amount of fine prescribed in relation to the defaulting company or in relation to the officers-in default does not individually

exceed five lakh rupees as can be seen from the computation of the Registrar of Companies in its report forwarded to this Tribunal and as reflected in the earlier part of this order while narrating the facts, thereby falling within the compounding jurisdiction of the Regional Director, this Tribunal is directed to Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 return the files in CP-16/177/ND/2017 to the Registrar of Companies along with its report, if available on record, to be suitably forwarded to the Regional Director as provided under Section 441(1)(b) of the 2013 Act and the Regional Director shall dispose of the company petition CP-16/177/ND/2017 in light of this order and in accordance with its merit.

(viii) In relation to CP-16/175/ND/2017, the defaulted provisions being Section 173 Of the Companies Act, 2013 read with Section 450 of the said Act or the equivalent provision under the earlier Act of 1956 since repealed as the may be, and as the maximum amount of fine prescribed in relation to the defaulting company or in relation to the officers-in default is Rs.10,000/- and if the contravention being a continuing one attracting a further penalty which may extend to Rs.1000/- per day after which the contravention continues and the Registrar of Companies having quantified the maximum fine imposable exceeding five lakh rupees in relation to the defaulting company as extracted as Annexure-3, Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 this Tribunal having compounding jurisdiction takes up the petition for consideration and the said petition is dismissed as not maintainable, in view of the position that the offence relates to non-convening of Board Meeting being a yearly compliance for the relevant years as reflected against the petition in the above table and as joint petitions for repeated defaults as enunciated and answered in light of Issue No.3 in paragraphs supra cannot be entertained and hence dismissed.

(ix) In relation to CP-16/121/ND/2017, the defaulted provisions being Section 217(1)(e) and Section 217(4) of the Companies Act, 1956 since repealed, and as the maximum amount of fine prescribed in relation to the defaulting company or in relation to the officers-in default does not individually exceed five lakh rupees or for that matter Rs.50,000/- under the earlier Act of 1956 as can be seen from the computation of Companies in its report forwarded to this Tribunal and as extracted as Annexure -- 8 to this order, thereby falling within the Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 compounding jurisdiction of the Regional Director, the Registry of this Tribunal is directed to return the files in CP-16/121/ND/2017 to the Registrar of Companies along with its report, if available on record, to be suitably forwarded to the Regional Director as provided under Section 441(I)(b) of the 2013 Act and the Regional Director shall dispose of the company petition CP-16/121/ND/2017 in light of this order and in accordance with its merit.

All the company petitions accordingly stand disposed of."

3. The questions require for determination in these appeals are:

- i. Whether the Companies Act, 2013 bars filing of a joint application for compounding of offence by a defaulting company along with its officers in default?
- ii. Whether the Companies Act, 2013 bars filing of a joint application for compounding of the same offence committed in different years?

- iii. Whether an offence punishable under the relevant provisions of the Companies Act, 2013 with 'imprisonment or fine', if repeated within a period of three years results Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 into a mandatory imprisonment for the defaulters and whether the same can be compounded or not?
- iv. Whether an offence punishable under the relevant provisions of the Companies Act, 2013 with 'only fine', if repeated within a period of three years results into a mandatory imprisonment for the defaulters and whether the same cannot be compounded?
- v. Whether the Tribunal has jurisdiction to compound offences where the fine prescribed for such offence does not exceed Rs. 5,00,000/-

4. According to the learned counsel for the Appellants, there is no bar in preferring a composite application for compounding the same offence committed by defaulting Company along with its Officers in default. There is no bar to prefer such composite appeal if default is committed in successive financial years.

5. It was further submitted that the interpretation of Section 451 by the Tribunal relating to 'repeated offences committed within a period of three years' is erroneous.

6. Further, according to learned counsel for the Appellants, the Tribunal has jurisdiction to compound offences even in such cases Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 where the fine prescribed for such offence does not exceed Rs. 5,00,000/-.

7. Almost similar plea has been taken on behalf of the 'Registrar of Companies' which filed report(s) on the basis of joint applications showing the maximum penalty which can be imposed on defaulting Company and its Officers.

#### Analysis of Provision of Law (Section 441)

8. For deciding the aforesaid issue, it is desirable to refer Section 441 of the Companies Act, 2013, which is as follows:

"441. Compounding of certain offence. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only, may, either before or after the institution of any prosecution, be compounded by--

(a) the Tribunal; or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 Director or any officer authorised by the Central Government, on payment or credit, by the company or, as the case may be, the officer, to the Central

Government of such sum as that Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, may specify:

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account: Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 (2) Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation. --For the purposes of this section, --

(a) any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence;

(b) "Regional Director" means a person appointed by the Central Government as a Regional Director for the purposes of this Act.

(3) (a) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be.

(b) Where any offence is compounded under this section, whether before or after the Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.

(c) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

(d) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 (4) The Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may direct, by an order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 403, such return, account or other document within such time as may be specified in the order.

(5) Any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under sub-section (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one lakh rupees, or with both. (6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,--

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

(a) any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;

(b) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

(7) No offence specified in this section shall be compounded except under and in accordance with the provisions of this section."

9. On perusal of sub-section (1) to (4) of Section 441, it is clear that any offence punishable under the Companies Act, whether committed by a company or any officer thereof with fine only, may, either before or after the institution of any prosecution can be compounded by the Tribunal, and where the maximum amount of fine does not exceed five lakh rupees, can be compounded by the 'Tribunal' as also by 'the Regional Director' or 'any officer authorised by the Central Government'. Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

10. Clause (a) and clause (b) of sub-section (1) read with sub-sections (2), (3) & (4) of Section 441 makes it clear that both 'the Tribunal' and 'the Regional Director' or 'any Officer authorised by the Central Government' is empowered to compound the offence which does not exceed five lakh rupees and if the offence is committed by the Company or any Officer thereof with 'fine only'.

11. The aforesaid provision makes it clear that Section 441 only puts a restriction on the power of the 'Regional Director' and 'the authorised officers of the Central Government' permitting them to compound the offences wherein the maximum amount of fine does not exceed five lakh rupees and is punishable with 'fine only'. No such fetter has been put on powers of the Tribunal, which is the main forum for such compounding of offences, the other forum of 'Regional Director' and 'Officer of

the Central Government' being alternative but restricted by extent of quantum of punishment. The Tribunal has the powers to compound all the offences irrespective of any pecuniary limit as evident from a bare perusal of Section 441.

12. The Tribunal erroneously read Section 441 to hold that where the penalty is less than five lakh rupees, it has no jurisdiction because of limitation on its pecuniary jurisdiction, which is non-existent. In absence of any pecuniary jurisdiction limitation under Section 441 (except for the 'Regional Director' and 'the officer authorised by the Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 Central Government'), the Tribunal has no power to lay pecuniary jurisdiction limitation in respect of Tribunal itself.

13. In terms of the scheme envisaged under Section 441 of the Companies Act, 2013, there is no bar on preferring a single application for compounding the same offence committed during different financial years by the Company and its Officers, nor there is any bar on a joint application being preferred by a Company along with its Officers in default. It is trite that procedures are deemed to be permitted unless expressly prohibited. In this connection, we may refer the decision of the Hon'ble Supreme Court in "Rajendra Prasad Gupta v. Prakash Chandra Mishra and Ors. □AIR 2011 SC 1137", wherein the Apex Court held as follows:

"4. We do not agree. Rules of procedure are handmaids of justice. Section 151 of the Code of Civil Procedure gives inherent powers to the court to do justice. That provision has to be interpreted to mean that every procedure is permitted to the court for doing justice unless expressly prohibited, and not that every procedure is prohibited unless expressly permitted. There is no express bar in filing an application for withdrawal of the withdrawal application."

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

14. Section 424 of the Companies Act, 2013 deals with 'procedure before Tribunal and Appellate Tribunal'. As per the said provision, the Tribunal and the Appellate Tribunal, while disposing of any proceeding or appeal will not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act or of the Insolvency and Bankruptcy Code, 2016 and of any rules made thereunder, the Tribunal and the Appellate Tribunal have the power to regulate their own procedure. Therefore, it is clear i.e. for the Tribunal and the Appellate Tribunal to decide the procedure to be followed while dealing with the application under Section 441 of the Companies Act, 2013 or any other petition under the said provision.

15. Further, in absence of any specific bar of 'joinder of parties' or joinder of separate cause of actions in preferring a compounding application, we hold that joinder of parties for same offence is permitted. Since facts leading to any non-compliance under the Act on the part of a company and its officers in default will be same, any suggestion to the contrary will only lead to multiplication of proceedings and different findings, which is not desirable.

16. The provision for compounding offences vested with the Tribunal, the Regional Director and the Officer authorised by the Central Government was earlier vested under earlier Section 621A of the Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 Companies Act, 1956. Explaining its position, the Central Government from its Ministry of Corporate Affairs by letter dated 28th April, 1993 informed that there is no bar under the Companies Act, 1956 for filing joint compounding applications under Section 621A. After enactment of Section 441 of the Companies Act, 2013, the Central Government from its Ministry of Corporate Affairs reiterated its position by letter dated 31st January, 2018 that there is no bar under the Companies Act, 2013 in filing joint compounding applications.

17. From the aforesaid Circulars also, it is clear that there is no bar on 'joinder of parties' or 'cause of actions for preferring a joint compounding application'.

#### Analysis of Section 451

18. Section 451 of the Companies Act, 2013 relates to 'punishment in case of repeated default', and reads as follows:

"451. Punishment in case of repeated default□If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence."

19. Section 451 is attracted both to 'a company' or 'an officer' of a Company commits an offence punishable either with fine or with imprisonment. From bare perusal of Section 451, it is clear that where the same offence is committed for the second or subsequent occasions within a period of three years, then,

(a) that company and

(b) every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.

20. It is a settled that the Company cannot be imprisoned but if such Company also commits an offence punishable with fine, in such case, if such offence is committed for the second or subsequent occasions within a period of three years, then, the company and every officer thereof who is in default shall be liable to pay twice the amount of fine. The sentence 'in addition to any imprisonment' will not be applicable to the Company even if provided for that offence. Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

21. On the other hand, if an officer of a company commits an offence punishable either with fine or with imprisonment and the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and such officer thereof who is in default shall be punishable with twice the amount of fine for such offence. It is not necessary that additional imprisonment will be automatically attracted, in absence of any such additional punishment of imprisonment is prescribed under the substantive penal provision of the Act.

22. For proper understanding of Section 451, it is desirable to notice punishment in cases of repeated defaults, as prescribed under the Companies Act, 2013.

23. Section 88 deals with 'Register of members' for which every company is required to keep and maintain, as shown therein. Sub-section (5) of Section 88 therein is penal provision for not maintaining a register of members or debenture-holders or other security holders, which is as follows:

"88. Register of members, etc.--(1) Every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely:--

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

(a) register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India;

(b) register of debenture-holders; and

(c) register of any other security holders.

xxx xxx xxx (5) If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-

section (2), the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first during which the failure continues."

24. From sub-section (5) of Section 88, it is clear that if a company does not maintain a register of members or debenture-holders or other Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), in such case,

(a) the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees; and



(b) where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first during which the failure continues.

25. It cannot be stated that Section 451 is not attracted in case of violation of sub-section (1) of Section 88. If Section 451 is made applicable to sub-section (5) of Section 8, it is clear that the Company and every officer of the Company who is in default in case of repeated default for the second or subsequent occasions within a period of three years is punishable with twice the amount of fine for such offence as prescribed under sub-section (5) of Section 88.

In absence of any provision of imprisonment prescribed under sub-section (5) of Section 88, it cannot be held that in terms of Section 451, the company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to imprisonment even if not prescribed under the provision and the Company cannot be imprisoned.

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

26. At this stage, it is also to be determined as to what should be the meaning of "same offence is committed for the second or subsequent occasions within a period of three years" or to say as to how the period of three years to be counted to determine that the same offence is committed for the second or subsequent occasions.

27. From sub-section (5) of Section 88, it is clear that the Company and every officer where the failure is a continuing one, the punishment provided thereunder will be that of 'a further fine which may extend to one thousand rupees for every day, after the first during which the failure continues', addition to punishment of fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees. Where the failure is continuing one, additional fine having imposed in addition to fine prescribed under sub-section (5) of Section 88, as the period may be more than one or more financial years, Section 451 cannot be made applicable on the ground that the same offence is committed for the second or subsequent occasions within a period of three years.

28. In order to interpret Section 451 and the words used in it "where the same offence is committed for the second or subsequent occasions within a period of three years" aid can be taken from Explanation of sub-section (2) of Section 441 where with regard to that Section, it is provided that "any second or subsequent offence committed after the Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 expiry of a period of three years from the date on which the offence was previously "compounded", shall be deemed to be a first offence". (Emphasis supplied) It is apparent that unless previously the offence has been "compounded", the rigour of higher punishment as contemplated under Section 451 would not get attracted.

29. Section 451 can be tested also in the light of other nature of punishment prescribed under the Companies Act, 2013, such as Section 86, which is as follows:

"86. Punishment for contravention.--If any company contravenes any provision of this Chapter, the company shall be punishable with fine which shall not be less than

one lakh rupees but which may extend to ten lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both."

30. From the aforesaid provision, it is clear that if a company contravenes any of the provision of Chapter VI, the company shall be Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 punishable with fine which shall not be less than one lakh rupees and may extend to ten lakh rupees. With respect to every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

31. We have held that the Company cannot be imprisoned. The officer of the company who is in default shall be punishable with imprisonment or fine or with both as prescribed under Section 86. Whether such officer is to be imposed punishment of fine or imprisonment or both will dependent on the basis of gravity of offence which can be decided only by the Court of Competent Jurisdiction (Special Court). Such power having been delegated to the Court of Competent Jurisdiction, it cannot be held that in view of Section 451 for committing the same offence for the second or subsequent occasions within a period of three years, the officer is liable to be imprisoned. If such interpretation is given, then it will amount to taking away the power of the Competent Court (Special Court) to decide whether in the fact and circumstances of the case and on the basis of gravity of offence, the officer will be liable for punished of imprisonment or fine or both.

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

32. Therefore, we hold that the Tribunal is wrong in holding that if Section 451 is read along with Section 441(6) for offence punishable with 'fine or imprisonment' or 'only with fine' or 'fine and imprisonment' on repeated defaults committed within three years, the Tribunal does not have jurisdiction to compound the offence.

33. A bare perusal of the provision makes it evident that Section 451 only provides that 'fine' in case of any repeated defaults shall be 'twice the amount of fine', in addition or in alternative to any imprisonment for such default if prescribed under the relevant provisions of Act, 2013. It does not make the imprisonment mandatory.

34. Secondly, use of word 'any' in Section 451 in the phrase 'in addition to any imprisonment for that offence' leaves discretion with the prosecuting authority/court to punish the defaulter with imprisonment. Had the intention of the legislature been to make the imprisonment mandatory, it would not have used the word 'any'.

35. If the interpretation adopted by the Tribunal is accepted then it will amount to substituting words in a penal provision, which is impermissible in the law.

36. On the contrary, the settled law is that the penal provisions have to be construed literally, as held by the Hon'ble Supreme Court in Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 "Abhiram Singh & Ors. v. CD Commachen & Ors. (2017) 2 SCC 629", wherein the Apex Court held:

"39. We see no reason to take a different view. Ordinarily, if a statute is well drafted and debated in Parliament there is little or no need to adopt any interpretation other than a literal interpretation of the statute. However, in a welfare State like ours, what is intended for the benefit of the people is not fully reflected in the text of a statute. In such legislations, a pragmatic view is required to be taken and the law interpreted purposefully and realistically so that the benefit reaches the masses.

Of course, in statutes that have a penal consequence and affect the liberty of an individual or a statute that could impose a financial burden on a person, the rule of literal interpretation would still hold good."

37. For the reasons aforesaid, we hold that the Tribunal failed to appreciate Section 451 of the Companies Act, 2013. We further hold that Section 451 only provides with 'fine' in case of any repeated defaults shall be 'twice the amount of fine', in addition to any Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 imprisonment for such default under the relevant provisions of the Act, if prescribed and it does not make the 'imprisonment mandatory'.

38. In view of the aforesaid findings, we set aside the impugned order dated 16th February, 2018 and remit the respective Company Petitions to the Tribunal for decision on its merit taking into consideration the offence committed by the Company and its Officers and the Report of the Registrar of Companies.

39. We make it clear that we have not decided individual claim of one or other Applicants/Petitioner which is to be determined by the Tribunal. The appeals are allowed with aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S. J. Mukhopadhyaya) Chairperson (Justice A.I.S. Cheema) (Member (Judicial) NEW DELHI 27th September, 2018 AR Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 BALVINDER SINGH, MEMBER (TECHNICAL) Before I examine the implications of Section 451 of the Companies Act, 2013 which are dealing with the punishment in case of repeated default, it will be worth to look into the various sections of the Companies Act, 2013 in which the punishment for offence are provided. For example A. Punishment provided in the same Section.

"Section 92(5)-Annual return "If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under Section 403 with additional fee, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both."

B. Punishment provided for a group of Sections.

Section 99-Punishment for default in complying with provisions of Section 96 to 98:

"If any default is made in holding a meeting of the company in accordance with Section 96 or Section 97 or Section 98 or in complying with any directions of the Tribunal, the company and Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.' C. Punishment in case of repeated default "Section 451. Punishment in case of repeated default-

If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasion within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence."

This section deals with repeated default. Interestingly Section 451 has been placed after Section 450 which deals with 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 etc 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. That means that after Section 450, Section 451 is dealing with repeated offence and it will be applicable to offences listed anywhere in the Companies Act, 2013 whichever will fall in its remit.

2. I am in agreement with the observations made by Hon'ble Chairperson and Member (Judicial) on the various issues except on Section 451 of Companies Act, 2013. Section 451 of the Companies Act, 2013 relates to 'punishment in case of repeated default', and reads as follows:

"451. Punishment in case of repeated default-

If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasion within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence."

It is to be noted that this is a new provision under the Companies Act, 2013, there was no similar provision in the old Act. Since this Section deals with repetition of offence and enhance the

punishment of Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 repetition of offence its impact will be felt on a number of provisions contained in the Act dealing with default, if they are repeated. Therefore, punishment as provided under various sections in the Companies Act, 2013 will as such apply to offence committed for the first time only. Similarly, the existing provisions of Section 441 dealing with compounding of offence will also be materially impacted as to the extent of its reading in the light of Section 451 of the Act.

3. Learned Tribunal below has also looked into the background material on the basis of which Section 451 has been introduced in the Act. It has also noted that in spite of two Amendments made in the Act of 2013, Section 451 as originally passed has been retained by the Legislature in its wisdom which clearly discloses the intention of Legislature to be unforgiving in relation to repeated defaults. Further seeing the repeated defaults committed by the company or its officers and there being no such provision of punishment in old Act of 1956, therefore, the Legislature thought it fit to insert Section 451 in Act and retained it till today.

I can understand this provision that to "Err is Human" but repetition of the "Error is not Human". A person learns from his mistake and he does not continue to make mistake after mistake. This provision will stare at a person who has not learnt a lesson even after committing offence at least not to repeat at least within a short span of three years.

Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018

4. In Section 451 of the Act, in first part it is stated that "if a company or an officer of a company commits an offence punishable either with fine or with imprisonment" and in the second part it is stated that "and where the same offence is committed for the second or subsequent occasions within a period of three years" and in the third part charging section it is stated "then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence."

The first part clearly shows that the offence to which this Section 451 will cover are those only which are punishable either with fine or with imprisonment. Therefore, this section will not be applicable on the offence which are not punishable

i) With fine

ii) With imprisonment

iii) Imprisonment with fine The second part shows that if it is committed for the second and subsequent occasions within a period of three years, thus if the offence is repeated after more than 3 years it will not be covered under this section.

In third part the word used "in addition to" does not mean "or" because if that could have been the intention then the legislature could have used the word 'or' and not 'in addition to' as the word 'or' has been used by the legislature in first part and deliberately not used in the third Company Appeals

(AT) Nos. 80-83, 92, 101, 113-118 of 2018 part. Since the legislature has chosen the word 'in addition to' the only meaning I can ascribe to 'in addition to' and not to be read as 'or'. The word 'any imprisonment provided for that offence' would reflect as provided in the respective section for the first offence for the purpose of imprisonment.

5. In the light of discussion above it indeed is a case that an offence which is punishable either with fine or imprisonment as a first offence, would become an offence punishable with fine and imprisonment in all cases of its repetition within a period of three years.

6. Further Section 441 of Companies Act, 2013 regulates the compounding of certain offences. Section 441(6) states as follows:

"Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974),-

(a) Any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;

(b) Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

I have already held in para 5 that in the light of it any offence which is punishable either by fine or imprisonment as a first offence will Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018 be compoundable in terms of Section 441(6)(a) but on the repetition of it within three years it will not be compoundable because it will be covered by Section 441(6)(b).

(BALVINDER SINGH) MEMBER (TECHNICAL) NEW DELHI 27th September, 2018 BM Company Appeals (AT) Nos. 80-83, 92, 101, 113-118 of 2018