IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.302
CP/50(AHM)2024

Proceedings under Section 441,447 & 448 of Co.Act,2013

IN THE MATTER OF:

Shail Devang Shah ....**Petitioner**
V/s
Registrar of Companies,Ahmedabad ....**Respondent**

Order delivered on: 17/08/2026

Coram:
Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

This case is fixed for pronouncement of order

The order is pronounced in open court vide separate sheet

Sd/- Sd/-

DR. V. G. VENKATA CHALAPATHY **CHITRA HANKARE**
MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**

AD/SJ/ AP

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT NO. II

CP 50 (AHM)/2024

[*Petition under Section 441 read with Sections 447 and 448 of the Companies Act, 2013 read with Rule 88 of the National Company Law Tribunal Rules, 2016*]

In the Matter of:
Shail Devang Shah
Rajdeep 16, Varundavan Colony
Nava Vikasgruh Road
Dharnidhar Temple Paldi,
Ahmedabad - 380 007 ....Petitioner

Vs.

Registrar of Companies, Ahmedabad
ROC Bhavan,
Rupal Park, Nr Ankur Bus Stand
Ahmedabad – 380 013.

....Respondent

Order Pronounced on: 17/08/2026

CORAM:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

DR. V.G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Appearance:

For the Petitioner : Mr. Saumitra Chaturvedi, Adv.

ROC : Ms. Ishani Pandya, Adv.

RD : Mr. Shivpal Singh

Sd/-

-SD-

JUDGMENT

1. This petition is filed under section 241 r.w 447 & 448 of the Companies Act 2013 (herein after referred to as CO. Act). The said offence has been alleged against the petitioner in the capacity of Jash Energy Pvt Ltd. M/s R-tech Investment, Hong Kong based company sought foreign direct investment (FDI) approval from Department for Promotion of Industry and Internal Trade for an investment into the Company. Accordingly agreement was executed disclosing the residential status of one Mr. Hao CAI as main land China. The FDI approval was received from Ministry of New and Renewable Energy. Security clearance form has to be attached with the FDI application.

2. It is mandatory to mention the residential status of the directors. Thus Mr. Hao CAI had no intention to deceive the company. The Petitioner further stated that by notification dated 01.06.2022, the Ministry of Corporate Affairs amended companies (appointment and qualification of directors) Rules. The newly inserted Proviso casts obligation upon

Sd/- Sd/-

person seeking appointment to hold the office of the director in a company to seek necessary security clearance from the Ministry of Home Affairs. On 29.06.2023, the Board of Directors of the company appointed Mr. Hao CAI as an additional director of the company. Form DIR-12 is filed before ROC for his appointment wherein Mr. Hao CAI has declared that he is not required to obtain the security clearance from the Ministry of Home Affairs, Government of India under sub-rule(1) of rule 10 before applying for director identification number.

3. The petitioner further stated that on 05.02.2024 along with company and other members of Board, he has received Show Cause Notice alleging default u/s 152 of the Act. It is stated that e-form DIR-12 filed by the Company for appointment of Mr. Hao CAI contains false declaration. On 19.03.2024, the petitioner received another show cause notice alleging offence under the provisions of section 448 r.w 447 for the same cause of action. The petitioner filed reply to the said show cause notice stating that it is an inadvertent error in the form. Mr. Hao CAI has already resigned from the company. Thereafter

-SD- Sd/-

the respondent instead of giving opportunity to the petitioner filed complaint in pursuant to show cause notice against the petitioner bearing Criminal Complaint No. 6 of 2024, which is pending before the Special Court, Ahmedabad. The initiation of proceedings u/s 448 against the petitioner is bad in law. It is further stated that the alleged case does not involve public interest and no amount of money is involved. It is compoundable. The present case falls within the criteria for compounding of offences u/s 441 of the Companies Act. Hence the petitioner prayed for compounding criminal complaint No. 6 of 224 pending before the Special Court for Companies Act, Ahmedabad.

4. The ROC in its reply given the status of other details of the Company of Petitioner and further submitted that while filing e-form DIR-12 for appointing individuals as a Director Chinese Citizen i.e. Mr. HAO CAI, was appointed in Jash Energy Private Limited., without attaching Security Clearance from Ministry of Home Affairs and false declaration was given. He was not required to obtain security

Sd/- Sd/-

clearance. The false declaration attracted a violation of Section 448 and 447 of the Companies Act. The Petitioner also had given a false declaration in the e-form. The Security Clearance was mandated under Section 152 of the Companies Act, 2013 r/w 2nd Proviso of Rule of the Companies Rules, 2014. The Ministry vide letter No. CL/II-03/692/2023-0/o.DGCoA-MCA directed to file prosecution against the certifying Personnel, KMPs and Signatories of the e-form. Accordingly, prosecution was filed against the Petitioner. The complaint before the Disciplinary Directorate, Institute of Company Secretary (ICSI), New Delhi for false certification was filed. The matter was referred to DIN cell, Regional Director for cancellation of the DIN of Appointee Director Mr. HAO CAI.

5. The ROC further stated that as per provision of Section 441(1) of the Companies Act, 2013 compounding can be made of any offence punishable under the act not being an offence punishable with imprisonment only or punishable with imprisonment

Sd/- Sd/-

and also fine. The ROC sought legal opinion from Counsel of Central Government, who's opined that the offence compoundable as it false under 2nd proviso of Section 447 of the Companies Act. Hence, prayed that offence may be compounded by deciding matter on merit.

6. Heard Ld. Counsels for both the sides and perused written submissions filed by the Petitioner. Petitioner has relied upon the judgments of *Hon'ble NCLAT in the case of Company Appeal(AT) No. 49,50,51,52 and 53 of 2016 M/s. Viavi solutions India Private Limited & Ors vs. ROC, NCT Delhi & Haryana.* The said appeal was dismissed except Appeal no. 51 & 52 , which were remanded back to the NCLT for fresh decision. He also relied upon judgment of co-ordinate bench in the case of *CP/49/2024 Jayant Parimal vs. ROC, Ahmedabad.*

7. On perusing the declaration given by Mr. HAO CAI it is clear that he has mentioned that " *I am not required to obtain the security clearance from the Ministry of Home Affairs, Government of India under*

Sd/-

Sd/-

sub-rule(1) of rule10 before applying for Director identification number..” his declaration certified by the Petitioner. Thus, it is proved that the false declaration is made and also certified. The Petitioner further submitted that a declaration was made inadvertently and before making it already clearance from Ministry was obtained. He has further submitted that there was no intention to make false declaration by the Mr. HAO CAI. Moreover, he has further submitted that he has already resigned from the Directorship. The suitable form DIR-12 is also filed with the office of the Respondent to give effect to the resignation. According to the Petitioner before filing of prosecution opportunity of personal hearing was not given to him.

8. Section 441 (1) of the Companies Act, 2013 reads as under:

> *(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) (not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine) may, either before or after the*

Sd/- Sd/-

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 twenty-five lakh rupees by the Regional 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.

9. Thus, Section 441 of the Companies Act, gives powers to the Tribunal to compound the offence punishable with fine only, or punishable with imprisonment or with fine, may either before or after

Sd/- -SD-the institution of any prosecution. The punishment prayer for making false statement as per Section 448 is provided under Section 447.

10. Section 447 reads as follows:

> *"Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one percent. of the turnover of the company, whichever is lower , shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:*
>
> *Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.*
>
> *Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both........."*

11. The Petitioner is Director in the Company it appears that it is procedural lapse as submitted by the

-SD- -SD-

Petitioner without any intention on his part. The violation being technical and procedural in nature there is no unlawfull gain to the petitioner as well as no loss to the Respondent. It also does not affect any public interest or rights of Stakeholders. Moreover, the error is rectified and fresh DIR-12 is filed with the Respondent. As per 2nd proviso of Section 447 the punishment provided for offences where no public interest is involved is either imprisonment or fine therefore, this offence can be compounded by the Tribunal under Section 441 of the Companies Act.

12. The default was committed on 06.09.2023 and was remedied only on 10.01.2025, which is Approx. more the one year the fine prescribed under Section 448 is upto Rs. 50.00 lakhs. Considering the fact prosecution is already filed and that the defect is cured by the petitioner a lenient view is taken for awarding fine. The fine of Rs. 1.00 lakhs to compound the offence will meet the ends of justice, hence we pass the following order:

-SD- -SD-

ORDER

i. CP No. 50 of 2024 is allowed.

ii. The offences committed by the Petitioner is allowed to be compounded subject to payment of fine of Rs. 1.00 lac, to be deposited into Pay and Accounts office Ministry of Corporate Affairs, New Delhi within two weeks from the date of passing of this order.

iii. The petitioner is directed to serve copy of this order alongwith proof of compliance upon the Respondent.

iv. In view of the above direction CP 50 of 2024 stands disposed of .

-SD-

DR. V.G. VENKATA CHALAPATHY
MEMBER(TECHNICAL)

Sd/-
Sd/-

CHITRA HANKARE
MEMBER(JUDICIAL)