

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

**C.P. No. 218/2017**

Judgement/Order delivered on: 5<sup>th</sup> March 2018

Coram: Hon'ble Shri RatakondaMurali, Member (Judicial)  
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

**IN THE MATTER OF COMPANIES ACT, 2013  
UNDER SECTION 441 READ WITH SECTION 621A OF  
THE COMPANIES ACT, 1956**

**AND  
IN THE MATTER OF  
ARVIND MOTORS PRIVATE LIMTIED**

1. M/s ARVIND MOTORS PRIVATE LIMITED

A company registered under the Companies Act, 1956  
Having its registered Office at  
14-2-112, Balmatta Road  
Mangaluru – 57 5001

2. Aroor Kishore Rao

Managing Director of the Company  
Alankar Falnir  
Mangaluru – 575 002

**PETITIONERS**

For the Petitioner (s) : Mr. Ballambettu Ullas Kiran Pai, PCS

Per: **Hon'ble Shri Ashok Kumar Mishra, Member (Technical)** – Author

Heard on: 05.12.2017, 11.12.2017, 04.01.2018, 15.01.2018, 25.01.2018,  
15.02.2018

**ORDER**

This Petition is filed by the Petitioners under Section 621A of the Companies Act, 1956 and under Section 441 of the Companies Act, 2013 for the purpose of compounding of violation of provisions of Section 209 of the Companies Act, 1956 in the year 2011 and to take a lenient view of the violation as it has been subsequently remedied.

The averments in the Company Petition filed under section 441 of the Companies Act, 2013 are briefly stated hereunder:-

The 1<sup>st</sup> Petitioner Company was incorporated under the Companies Act, 1956 on 2<sup>nd</sup> February 1999 as a Private Limited Company in the name and style of "M/s Arvind Motors Private Limited". The Registered office of the company is situated at No. 14-2-112, Balmatta Road, Mangaluru – 575 001.

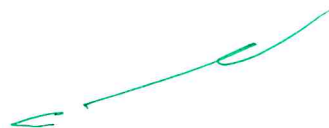
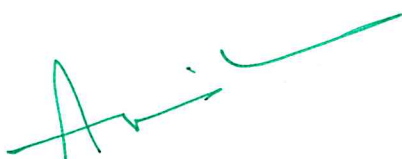
The Authorised share capital of the 1<sup>st</sup> Petitioner Company is Rs. 1,50,00,000/- consisting of 1,50,000 equity shares of Rs.100/- each. The subscribed and paid up capital is Rs.90,00,000/- divided into 90,000 equity shares of Rs.100/- each.

The Main objects of the 1<sup>st</sup> Petitioner Company is (1) To carry on in India or elsewhere the business of manufacturing, buying, selling, reselling, sub-contracting, hiring altering, importing, exporting and deal in all type of motor vehicles, tractors, utilities, jeeps, defense vehicles, ambulances, vans, tempos etc. (2) To carry on in India or elsewhere to own lease, manage, run, establish, install and build workshop, industries both small scale and large scale, garages, tyre retreading units, painting units, battery service stations, fuel stations, body building units etc. (3) To buy, sell and deal in all type of lubricants required for all type of vehicles. (4) To carry on the transport business of transportation of passengers and goods including packaged tours.

The Practicing Company Secretary appearing for the petitioner states that during the Financial Year 2010-2011 the Auditors had qualified the report stating that the Company has not maintained proper records showing the quantitative details and situation of the fixed assets which is later confirmed by the applicant vide letter dated 15.02.2013 and admitted the offence under Section 209 of the Companies Act, 1956.

Section 209 of the Companies Act, 1956 reads thus:

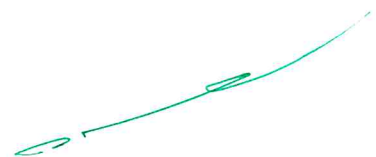
"Every company shall keep at its registered office proper books of account with respect to –



- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;
- (b) all sales and purchase of goods by the company;
- (c) the assets and liabilities of the company; and
- (d) in the case of a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilization of material or labour or to other items of cost as may be prescribed, if such class of companies is required by the Central Government to include such particulars in the books of account.”

It is further submitted that the Petitioner has maintained all the above records except proper records showing the quantitative details and situation of the fixed assets as required under the section, for the year ended March 31, 2011. The Petitioners further concede that it was mentioned as a qualification in the Auditors Report for that year. However, since the company has electronically maintained the records showing the details of the value and depreciation thereof as required for the accounting purpose and full disclosures were made in the financial statements of the company. It is further stated that the company has filed the said financial statements showing full details of the assets with the Registrar of Companies as applicable from time to time. So there is no concealments of details of assets. The Petitioner Company submits that the offence was committed inadvertently and without any intention. The details of the fixed assets were a part of the accounting software and the accounting staff had incorrectly assumed that this was sufficient compliance. This violation of Section 209 of the Companies Act, 1956 was neither willful nor wanton and was completely done inadvertently and the Petitioners herein file this petition for compounding the offence committed.

The Practicing Company Secretary appearing for the Petitioner submits that the violation relates to the period during the erstwhile Companies Act, 1956 under Section 209.



The Registrar of Companies has vide his letter No. ROCB/MMM/441/024798/2017 dated 10.11.2017 submitted a report and has mentioned with respect to the composition of offences as follows:

“Not maintaining fixed assets register as required under Section 209(1) of the Companies Act, 1956 for the year ended March 31, 2011.”

The Registrar of Companies has also stated in his report that a show cause notice under Section 209(5) dated 05.10.2017 was issued to the Company for violation of Section 209(1) of the Companies Act, 1956 as per the technical scrutiny of balance sheet as at March 31, 2011 carried out by Registrar of Companies under Section 234 of the Companies Act, 1956.

The Registrar of Companies has also confirmed that no proceedings before the court are pending in the present case. The Registrar of Companies has confirmed that the violation has been made good and the Company has now maintained the Fixed Assets Register. The PCS for the Petitioner Company explained that the violation of Section 209(1) was unintentional and they are properly maintaining their books of accounts now.

In view of the above statements made and the provisions of law as they stand, the Tribunal is of the view that the violation of Section 209(1) has been committed inadvertently and it is due to the problem with the accounting software of fixed assets of the company and their accounting staff and hence they could not comply with the provisions of Section 209(1) of the Companies Act, 1956,

Accordingly, in line with the provisions of Section 621A of the Companies Act, 1956, read with Section 209(7) and Section 206(6) the following compounding fee is levied on the Managing Director of the Company. 2<sup>nd</sup> Applicant Company is not liable for compounding. 1<sup>st</sup> Applicant Company is not

liable for compounding. Hence compounding fee is levied on 2<sup>nd</sup> Applicant who is the Managing Director of the 1<sup>st</sup> Applicant Company.

Sl. No.	Particulars	Violation of Sec.209 of the Companies Act, 1956	Total Rs.
1	2 <sup>nd</sup> Petitioner Managing Director	Rs.10,000	10,000

In pursuant to the order dated 15<sup>th</sup> February 2018 mentioned herein above, the Petitioners have paid the compounding fee by depositing a demand draft No.461554 dated 16.02.2018 drawn on Kotak Mahindra Bank Ltd., in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai" as detailed below:-

Sl. No.	Particulars of Applicant	Fee Amount/D.D. Rs.	DD No. & Date
1	2 <sup>nd</sup> Petitioner Managing Director	10,000/-	461554 dt. 16.02.2018

As the compounding fee has been remitted by the 2<sup>nd</sup> Petitioner, the offence stated in the petition is compounded. A copy of this order be sent to the Registrar of Companies, Karnataka for appropriate action.

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL