

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 171/2016
C.A. 220/621A/CB/2015

*PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL*

IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A UNDER SECTION 303 OF THE COMPANIES ACT, 1956
AND

IN THE MATTER OF M/S DHARAMSHI HOLDINGS AND DEVELOPERS
PRIVATE LIMITED

T.P.NO. 171/2016

1. M/S Dharamshi Holdings And Developers Private Limited,
No. 33, Komal Mansion,
M.T.B. Road, Near Minerva Circle,
Bangalore- 560002.
2. Mr. Rahul Kushalchand Dharamshi,
898, 10th Cross,
22nd Main J.P. Nagar,
II Phase, Bangalore-560078.

- APPLICANTS

PARTIES PRESENTED:

Mr. K. Dushyantha Kumar, Practicing
Company Secretary, No. 71, Shop Street,
9th Cross, 2nd Block, Jayanagar,
Bangalore-560011 Authorised
representatives for the Applicants.

Heard on: 29/07/2016, 10/08/2016, 24/08/2016 and 02/09/2016

ORDER

The Petition was originally filed before the Company Law Board, Southern Region, Chennai under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of section 303 of the Companies Act, 1956. It was numbered as C.A No. 220/621A/CB/2015. Consequent upon the establishment of National Company Law Tribunal Bench at Bengaluru, the said case was transferred to this Tribunal on abolition of Company Law Board, Southern Region, Chennai Bench and renumbered as T.P No.171/2016.

The 1st Applicant is a Private Limited Company Registered under the name and style "Dharamshi Holdings And Developers Private Limited" on 13/06/1995 vide Registration No. U45309KA1995PTC018014. The Registered office of the company is situated at # 33, Komal Mansion, M.T.B. Road, Near Minerva Circle, Bangalore- 560002.

The Authorized share capital of the 1st Applicant Company is Rs 10,00,000/- (Rs. Ten lakhs only) consisting of 1,00,000 (one lakh) Equity Shares of Rs 10/- each and the paid up share capital is Rs 10,00,000/- (Rs. Ten lakhs only) consisting of 1,00,000 (One lakh) equity shares of Rs 10/- each.

As mentioned in the Memorandum of Association, the main object of the 1st Applicant Company is to carry on the business as estate agents and estate managers, and to collect rents, repair, to purchase, acquire, take on lease or in exchange or in any other lawful manner any area, land, buildings, structures and to develop the same and dispose of or maintain the same and to build townships, colonies, farm houses, to provide consultancy services and technical knowhow in connection with building, designs, plans and specifications of models etc.,

The averments in the petition are that, the 1st Applicant Company is presently managed by Board of Directors as stated hereunder:-

- a) Sri Kirti Dhanji Shah
- b) Sri Rahul Kushalchand Dharamshi
- c) Sri Kushalchand Dhanji Shah

It is averred in the petition that, the 1st Applicant Company could not file the Form DIR-12 for the appointment of Director in time with the Registrar of Companies and it is further averred that the Company had appointed Mr. Rahul Khushalchand Dharamshi as Director w.e.f. 30/10/2009 should have been filed before 28/11/2009, due to circumstances beyond the control of the company, the company could not file the Form No.12 for his appointment. However, the Form DIR 12 was filed on 06/05/2014 vide SRN C02565679.

Thus 1st Applicant Company admitted violation of provisions of section 303 of the Companies Act, 1956, in non filing of Form No.12 for the appointment of Director w.e.f. 30/10/2009 within the time prescribed under the Companies Act, 1956.

It is also stated in the Petition that the company has filed the documents belatedly, with additional fees, there is a contravention under sec. 303 of the Companies Act, 1956 and the company has received a notice from the Registrar of Companies directing to file compounding application under sec. 621A of the Companies Act, 1956 before the then Company Law Board, Southern Region, Chennai for compounding the alleged contravention by 1st Applicant Company. The default continued from 28/11/2009 to 06/05/2014 consisting of total 1620 days of delay in filing the return of allotment.

The Applicant Company has sought the following relief:

- a) To compound the offence in view of the fact that the alleged offence is no longer continuing;
- b) So far it relates to non filing of Form DIR-12 for the appointment of Director dated 30/10/2009 within the time prescribed by the Act 1956 as the same was filed on 06/05/2014 vide SRN C02565679.
- c) To pass such order, orders as deem fit in the circumstances of the matter.
- d) To take a lenient view and may levy compounding fees reasonable to the offence alleged to have been committed keeping in view of the circumstances of the matter.

Sub-section (3) of Section 303 of the Companies Act, 1956 reads as follows:-

“If default is made in complying with sub- section (1) or (2), the company, and every officer of the company who is in default, shall be punishable with fine which extend to five hundred rupees for every day during which the default continues”;

The Registrar of Companies, Karnataka, Bengaluru, vide its report dated 18/08/2015 has informed that the Form DIR was filed on 06/05/2014 vide SRN C02565679 with a delay of 1620 days.

The Practicing Company Secretary has stated that the default was unintentional and hence lenient view may be taken in this case. This suo-moto application is filed by the 1st Applicant Company.

We have gone through the documents filed, the affidavit of the 2nd Applicant and also the submissions of the Practicing Company Secretary and the observations of the Registrar of Companies, Karnataka, Bengaluru as stated above and we are of the opinion that the violation can be compounded by levying compounding fee on the 2nd Applicant which is shown in the table.

Sl. No.	Particulars	Violation of Sec.303 of Companies Act, 1956 Delay of 1620 days	Grand Total Rs.
1	2 nd Applicant – Director of the Company	50 x 1620 days	81,000/-
	Total		81,000/-

(Rupees Eighty ^{one} Thousand only)

In pursuant to our Order dated 23/09/2016 mentioned herein above, the Applicants have paid the compounding fee by depositing Demand Draft bearing No. 237576 dated 06/10/2016 for Rs. 81,000/- (Rupees Eighty one thousand only) of HDFC Bank, Bengaluru drawn in favour of “Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai”.

As the compounding fee has been remitted by the Applicants, the offence stated in the petition is compounded. A copy of this Order be sent to Registrar of Companies, Karnataka, Bengaluru for appropriate action.

18/10/16
(RATAKONDA MURALI)
MEMBER, JUDICIAL

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 18th DAY OF OCTOBER 2016