

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

T.P.NO. 242/2016

IN

C.A. NO. 15/621A/CB/2016

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

**IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTIONS 77(A)(10) & 77(A)(11) READ WITH SECTION 621A
OF THE COMPANIES ACT, 1956**

AND

IN THE MATTER OF AOL ONLINE INDIA PRIVATE LIMITED

C.A. NO. 15/621A/CB/2016 IN T.P.NO. 242/2016

1. AOL Online India Private Limited,
No. 401, Prestige Meridian-II,
30, M.G.Road,
Bangalore-560001 -

APPLICANT

PARTIES PRESENTED: Ms. Shilpa Shah, Counsel and Authorised
Representative for the Applicant.

Heard on: 08/09/2016, 18/10/2016 and 25/10/2016

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 77(A)(10) of the Companies Act, 1956. 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 numbered as T.P No. 242/2016.

The averments made in the company application are briefly hereunder:-

The Applicant Company was incorporated under the Companies Act, 1956 on 19th December 2000 as a Private Limited Company in the name and style of AOL Online India Private Limited vide Registration No. U64202KA2000PTC028316. The Registered office of the company is situated at # 401, Prestige Meridian-II, 30 M.G.Road, Bangalore-560001.

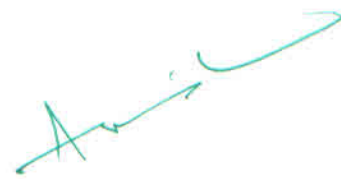




The Authorized share capital of the Applicant company is Rs. 50,00,000/- (Rupees Fifty Lakhs only) consisting of 5,00,000 Equity Shares of Rs 10/- (Rupees Ten only) each, while paid up share capital of the Company is Rs. 23,33,740/- (Rupees Twenty Three Lakhs Thirty Three Thousand Seven Hundred and Forty only) consisting of 2,33,374 equity shares of Rs 10/- each.

The Main objects of the Applicant Company is to carry on, in India or elsewhere, the business of internet Service Provider and to utilize advanced internet technologies and private Global IP Network to provide high quality telecommunications and internet services; to carry on the business of software development, systems integration, planning, development systems, information technology systems etc., Details of the objects of the company are mentioned in the Memorandum of Association of the Applicant Company.

It is averred in the Company Petition that, the Applicant Company has bought back 1,03,722 Equity Shares from its parent company and the said buyback of shares was completed on 21st March 2013. As per provisions of section 77(A)(10) of the Companies Act, 1956 the Applicant Company was required to file a return with the Registrar of Companies, Karnataka at Bengaluru containing particulars relating to the buy-back of shares within 30 days of such completion.

It is further averred that, as per provisions of section 77(A)(10) of the Companies Act, 1956 herein after referred as Act, the Company was to file buy back of shares in e-Form 4C within 30 days of completion of buy back with the concerned Registrar of Companies. However, one of the prerequisites of filing of e-Form 4C is that the Company should have approved SRN of e-Form 62 (e-Form for filing Declaration of Solvency). The Company filed the e-Form 62 with the concerned Registrar of Companies on 28th February 2013 vide SRN B69110161. The buyback of shares was completed on 21st March 2013, and the return of buyback of shares in terms of Section 77(A) (10) of the Act should have been filed by 20th April 2013. However, the Registrar of Companies approved e-Form 62 on 20th September 2013. Thus the company could not file return within the time due to non-availability of approved SRN of e-Form 62.





It is averred that, on receipt of approval of e-Form 62 on 20th September 2013, the Applicant Company filed immediately e-Form 4C with the Registrar of Companies which was rejected by Registrar of Companies. Then a fresh e-Form 4C was subsequently filed on 22nd January 2014 and the same was approved by the Registrar of Companies.

It is averred that, the company could not file the return of buy-back of shares in e-Form with the Registrar of Companies due to above stated circumstances. It is stated that, there was no willful default on the part of the Applicant Company and the period of default was from 21st April 2013 to 22nd January 2014. The present Application is filed suo-moto by the Applicant Company vide Board Resolution dated 21st May 2015. It is therefore, prayed to compound the violation.

We have heard the Advocate for Applicant Company. The Learned Counsel would contend that, there was delay in obtaining SRN of e-form 62 and as a result the Applicant Company could not file return with the Registrar of Companies within 30 days from the date of conclusion of buyback of shares. The learned Advocate would contend that, there was delay in obtaining approved SRN of e-Form 62. It is further contended that the Applicant Company filed return with the Registrar of Companies but there was delay. Thus violation was made good, she prayed the violation can be compounded.

During enquiry the Applicant Company filed copy of Board Resolution dated 28th April 2016. The Applicant Company further filed the Audited financial statements of the Company for the financial year 2012-13, 2013-14 and also e-forms 23ACXBRL and 23ACAXBRL for the year ending 31/03/2013 and 31/03/2014 respectively. The Applicant Company also filed certified copy of the Memorandum and Articles of Association and also filed copy of e-Form 62 along with challan dated 28th February 2013. The Applicant Company also filed approved status of e-form 62. Report from Registrar of Companies-Karnataka at Bengaluru has been received. It is stated in the report that, the Applicant Company committed the default by not filing e-Form 4C i.e., return for buy-back of shares within the stipulated time limit of section 77(A)(10) of the Act and the default period was from 20/04/2013 to 21/01/2014. It is also stated in the report that the Company had filed e-Form 4C on 22.01/2014 vide SRN No. B94290012. The Registrar of Companies stated the offence may be compounded.



Section 77(A)(10) reads as follows:



“A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board of India, a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed.

Violation of section 77(A)(10) is punishable under section 77 (A)(11) which reads as follows:-

“If a company makes default in complying with the provisions of this section or any rules made thereunder, or any regulations made under clause (f) of sub-section (2), the company or any officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years, or with fine which extend to fifty thousand rupees, or with both”.

This Application was filed under section 621A of the Companies Act, 1956. The provisions of section 441 of the Companies Act, 2013 came into effect from 1st June 2016. Before erstwhile Company Law Board, Southern Region, Chennai this application was filed. Therefore, this application is to be decided under the provisions of section 621A of the Companies Act, 1956.

We have heard the submissions of learned counsel for Applicant Company and we have seen the documents filed and also the report of the Registrar of Companies, Karnataka at Bengaluru. According to section 77(A) (11) the Company or the officer are liable for default of provisions of section 77(A) (10). Now this application is filed by the Company and the violation can be compounded by levying the compounding fee as detailed hereunder:-



Sl. No.	Particulars	Violation of Sec.77(A)(10) of the Companies Act, 1956	Grand Total Rs.
1	Applicant Company	Rs. 30,000/-	30,000/-

The compounding fee levied shall be paid by the Petitioner within 15 days from the date of this order and call this matter on 24th November 2016 for compliance.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 8th DAY OF NOVEMBER, 2016