

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 228/16

C.A. 289/621A/CB/2015

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

IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A OF THE COMPANIES ACT, 1956 AND SECTION 123 OF
THE COMPANIES ACT, 2013

AND

IN THE MATTER OF M/s BASE EDUCATIONAL SERVICES PRIVATE
LIMITED

C.A. 289/621A/CB/2015

1. M/S BASE Educational Services Private Limited
27, Bull Temple road,
Basavanagudi,
Bangalore-560004.
2. Mr. Vallish Nagaraja Herur,
10/32, 1st Cross, B.M Srikantaiah Road,
Hanumanthnagar,
Bangalore-560019.


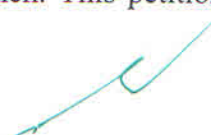
- APPLICANTS

PARTIES PRESENTED:

Mr. P.R.Sitaram, Practicing Company Secretary
and Authorised representative for the Applicant.

ORDER


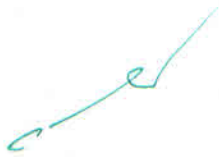
The Petition is filed by the Applicants under Sec.621A of Companies Act 1956 under Section 123 of the Companies Act 2013. Originally the Compounding petition was filed before Company Law Board, Southern Region, Chennai. The Petition was numbered as C.A. 289/621A/CB/2015. Consequent upon the establishment 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. This petition is filed by the Petitioners with a prayer to



record compounding for violation of provision of section 123 of the Companies Act, 2013 punishable under section 450 of the Companies Act, 2013. Contents of the Company Petition are briefly stated hereunder:

The 1st applicant is a company which was incorporated under the Companies Act, 2013 on 24/12/2007 under the name and style of "BASE Educational Services Private Limited vide Corporate Identity No. U80301KA2007PTC044771. The Registered Office of the company is situated at # 27, Bull Temple Road, Basavanagudi, Bangalore-560004. The Authorised Share Capital of the applicant company as per the latest Audited Balance Sheet is Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) consisting of 2,50,000 (Two lakh fifty thousand) Equity Shares of Rs 10/-each. The main object of the company is to carry out the business in India and abroad, centers of excellence for imparting education, online, etc, to provide education and act as education consultants in the field of management, financial, technical and engineering; to impart and promote the imparting of education literary and scientific; to formulate and implement educational schemes and plans etc., Details of the main object of the Company are stated in the Memorandum of Association attached with the Petition.



The Petitioner has stated in the company petition that the interim profits of the Company for the financial period ending 15/7/2015 was Rs 2,26,76,237/- and the company had a balance of undistributed profits lying in the Profit & Loss Account to the extent of Rs 3,46,50,031/-. The company in its Board Meeting held on 16/7/2015 declared an interim dividend of Rs 155/- per share. The Petitioner has also provided certified copy of the Board resolution for declaration of interim dividend. As per provisions of section 123(4) of the Companies Act, 2013 the dividend has to be deposited into the separate Bank Account within 5 days from the date of declaration of such dividend i.e., on or before 21/07/2015. Petitioner has stated in the petition that, due to unavoidable circumstances



the dividend was deposited into the separate Bank Account of the company with National Cooperative Bank, Gandhi Bazar, Basavanagudi Branch, Bangalore on 12/08/2015. There was delay of 21 days in depositing the declared interim dividend. The certified copy of the Bank Account statement is enclosed with the petition. Further it is stated in the petition that, the default committed under section 123(4) has occurred inadvertently and is unintentional. The 1st Applicant Company and its Director suo-moto have filed this application to compound the offence. Therefore this application filed on behalf of the Applicants praying the Tribunal to compound the offence.

We have heard the Practicing Company Secretary for the petitioners. It is the contention of the Practicing Company Secretary that the delay in opening separate Bank Account for depositing declared interim dividend was due to some unavoidable circumstances and it occurred inadvertently and purely unintentional. The Practicing Company Secretary further contended that, there was delay of just 21 days as appears from Xerox copy of the Bank Statement in depositing the declared interim dividend in the special Bank account and prayed for lenient view be taken while compounding.

Thus the 1st Applicant company suo-moto filed for compounding the violation by levying the compounding fee. We have seen the report of Registrar of Companies, Karnataka, Bengaluru. The violation was subsequently made good by depositing the declared interim dividend into the Special Bank Account. Memorandum of Association of the Company is also attached with the Petition. Board Resolution is also enclosed with the Petition, wherein the Board resolved for the payment of interim dividend @ Rs. 155/-per equity share totaling to Rs 3,10,00,000/- excluding Tax to the equity share holders. Certified copy of the Bank account depositing Rs 3,10,00,000/- in the National Co-operative Bank,



Gandhi Bazar, Basavanagudi Branch, Bengaluru is also enclosed with the Petition.

As per section 123 (4) of the Companies Act, 2013 reads as follows:

“The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend”.

It is clear under the provision of section 123(4) interim dividend shall be deposited in a separate account within 5 days from the date of declaration of such dividend. The violation is punishable under section 450 of the Companies Act, 2013. The contention of the Practicing Company Secretary that company made good the violation and there was delay of just 21 days and prayed to take lenient view.

We have received report from the Registrar of Companies, Bengaluru who stated that violation can be compounded by levying compounding fee on the Applicants. Considering the submissions made by the Practicing Company Secretary for petitioners and after going through the contents of the application and documents filed, we direct the Applicant Nos.1 and 2 to pay the compounding fee as detailed hereunder:

Sl. No.	Particulars	Violation of Sec.123 of Companies Act, 2013	Delay of 21 days	Total Rs.
1	1 st Applicant Company	5,000.00	21 x 500/- =10,500/-	15,500.00
2	2 nd Applicant	5,000.00	21 x 500/- = 10,500/-	15,500.00
			Total	31,000.00

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 9th September 2016 for compliance.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 26th DAY OF AUGUST, 2016