

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

C.P.NO. 22/2017

**IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 159 READ WITH SECTION 162
OF THE COMPANIES ACT, 1956
AND
IN THE MATTER OF
ARCTERN CONSULTING PRIVATE LIMITED**

Judgement/Order delivered on: 17th July 2017

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Sri Ashok Kumar Mishra, Member Technical

1. Arctern Consulting Private Limited,
No. 49/8, 2nd Floor, Near Jyothi Nivas College,
60, Feet Road, Koramangala Industrial Layout,
Bangalore-560095.
2. Mr. Bijal Mehta - Managing Director,
3793 La Donna Avenue,
Palo Alto, California, 94306, USA.
3. Mr. Sudhakar Vishwanath - Company Secretary,
Block-1, FL No.4, Ground Floor,
Opp. B.J. Medical College Ground,
Sadhu Vaswani Path,
Pune-411001

APPLICANTS

For the Applicant (s) : Mr. I.B Harikrishna, No.44/38, Veerabhadran
Street, Valluvarkottam, Nungambakkam,
Chennai-600034 – Practicing Company Secretary
and Authorised representatives for the Applicants.

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

ORDER

This Application was filed by the Applicants under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of Section 159 read with section 162 of the Companies Act, 1956.

The averments made in the Company Application are briefed hereunder:-




The 1st Applicant Company was incorporated under the Companies Act, 1956 on 19th August 2004, as a Private Limited Company under the name and style of "Arctern Consulting Private Limited" vide CIN No. U74201KA2004PTC034530. The Registered office of the company is situated at No. 49/8, 2nd Floor, Near Jyothi Nivas College, 60 Feet Road, Koramangala Industrial Layout, Bangalore-560095

As per the latest Balance Sheet the Authorized share capital of the 1st Applicant Company is Rs. 7,70,00,000/- divided into 50,000 Equity Shares of Rs 10/- each and 76,50,000 of preference shares of Rs 10/- each. The Issued, Subscribed and Paid up Capital of the 1st Applicant Company is Rs. 7,66, 44,650/- divided into 40,000 Equity Shares of Rs 10/- each and 76,24,465 of preference shares of Rs 10/- each.

The Main objects of the 1st Applicant Company is to carry on in India or elsewhere the business of acting as consultants and advisers, relating to technical operational and industrial knowhow, project or design engineering, marketing and other research and feasibility studies, human resources development, industrial and labour relations, information systems and processes and all other matters in any way connected or concerned with or relating thereto including the business of panning, designing, developing, writing, creating, testing and supplying computer software and systems, programming, hardware evaluation software and hardware documentation and data processing and analysis etc., Details of the objects of the company are mentioned in the Memorandum and Articles of Association of the 1st Applicant Company

It is further averred in the Company Application that, the 1st Applicant Company could not file its Annual Return for the financial year ending 31st March 2013 within the stipulated period as required under Section 159 of the Companies Act, 1956 due to the reasons that, the Applicant Company is part of a group of companies owned by Volt Information Sciences, Inc., a US Corporation and during the period from 17th July 2009 to 9th April 2013, the parent company undertook an extensive and comprehensive review of accounting practices which resulted in a restatement of financials, during and after the extensive restatement effort, the parent company also experienced extensive changes in its management and business activities. As a result of the restatement and transition period of the parent company, its executive management was faced with delays in preparation and

coordination to prepare the audited Annual Accounts of the Company, However, the 1st Applicant Company made diligent efforts to prepare and filed the audited Annual Accounts of the Company upon installation of the new management team in an expedient manner and filed its Annual Returns for the financial year ending 31st March 2013 with the Registrar of Companies, Karnataka, Bangalore on 31st December 2014 with a delay of 395 days.

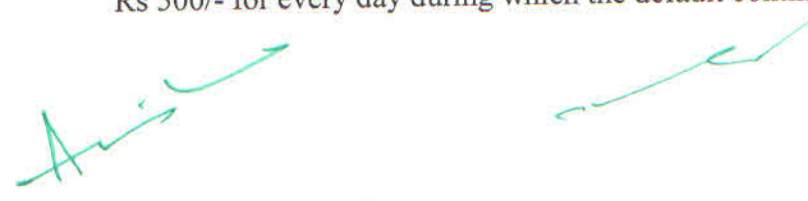
It is also averred in the Company Application that, the above offence committed by the Applicants due to unavoidable circumstances and unintentional and further is not of such nature as to prejudice the interests of the members or creditors or others dealing with the 1st Applicant Company and the Applicants unequivocally declares that the offence committed by them does not affect the public interest in any way and no harm has caused to the public interest.

The Practicing Company Secretary for Applicants contended that, this is a suo-moto application filed by the Applicants for compounding of violation committed under section 159 of the Companies Act, 1956. The Practicing Company Secretary further contended that, the new management of the 1st Applicant Company has taken actions and implemented policies designed to prevent any future defaults and further contend that, a lenient view may be taken while compounding the offence.

This suo-moto application is filed by the 1st Applicant Company under section 159 read with the provisions of section 162 of the Companies Act, 1956 for compounding which reads as follows:-

“every company having a share capital shall, within sixty days from the day on which each of the annual general meetings referred to in section 166 is held, prepare and file with the Registrar a Return containing the particulars specified in Part I of Schedule V, as they stood on that day, regarding- its registered office, the register of its members, the register of its debenture holders, its shares and debentures, its indebtedness, its members and debenture holders, past and present, and its directors, managing directors, managers and secretaries, past and present.

Section 162(1):- “If a company fails to comply with any of the provisions contained in section 159, 160 or 161, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to Rs 500/- for every day during which the default continues”.



“(2) For the purposes of this section and section 159, 160 and 161, the expressions “officer” and “director” shall include any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act.”

We have heard the Practicing Company Secretary for Applicants on 05/06/2017. The Practicing Company Secretary contended that, the parent company was undergoing through a transition stage due to changes in its management and business activities; as a result of the transition period of the parent company the management was faced with delays in preparation and coordination to prepare the audited Annual Accounts of the Company and hence the Annual Returns could not filed within the stipulated time. The Practicing Company Secretary for Applicants further contend that, the Applicant Company had complied with the requirement and filed e-Form 20B on 31st December 2014 with the Registrar of Companies, Karnataka, Bangalore.

The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/MMM/621A/034530/2017 dated 5th April 2017 has stated in his report that, the Company has admitted the default and has offered to compound the offence and the Compounding Application may be decided on merits.

We have seen the Certified Copy of the extract of Board Resolution dated 10th March 2016 of the 1st Applicant Company wherein the Board of Directors resolved for filing compounding Application, copy of Form No. 20B along with ROC Challan filed with Registrar of Companies-Karnataka at Bangalore. After considering the materials on record and after taking into account the submissions made by the Practicing Company Secretary that lenient view may be taken, we hereby levy compounding fee for delay in complying section 159 of the Companies Act, 1956 on the Applicants as shown in the table given below:-

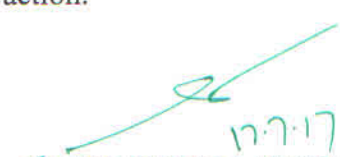
Sl. No.	Particulars	Violation of Sec.159 of Companies Act, 1956 No. of days delay-395	Total Rs.
1	1 st Applicant Company.	395 x 50 = 19,750/-	19,750/-
2	2 nd Applicant Managing Director	395 x 50 = 19,750/-	19,750/-
3	3 rd Applicant Company Secretary	395 x 50 = 19,750/-	19,750/-

In pursuant to our Order dated 21st June 2017 mentioned herein above, the Applicants have paid the compounding fee by depositing 3 Demand Drafts of HDFC Bank Ltd, Koramangala Branch, Bangalore drawn on 6th July 2017 in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai" as detailed below:-

Sl. No.	Particulars of Applicant	Fee Amount Rs.	DD No. & Date
1	1 st Applicant Company	19,750/-	039173 dt. 06/07/2017
2	2 nd Applicant - Managing Director	19,750/-	039174 dt. 06/07/2017
3	3 rd Applicant – Company Secretary	19,750/-	039175 dt. 06/07/2017

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, Bangalore for appropriate action.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL