

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

C.P.NO. 21/2017

**IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 166 READ WITH SECTION 220
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 Shri Ratakonda Murali, Member (Judicial) – 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 220 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 filed its Audited Annual Accounts for the financial year ending 31st March 2013 within the stipulated period as required under Section 220 of the Companies Act, 1956 due to the reasons that, the 1st 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 Applicant Company. However, the 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 Accounts for the financial year ending 31st March 2013 with the Registrar of Companies, Karnataka, Bangalore on 20th November 2014 with a delay of 384 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 220 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 Applicant Company under section 220 of the Companies Act, 1956 for compounding which reads as follows:-

“After the balance sheet and the profit and loss account have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar within thirty days from the date on which the balance sheet and the profit and loss account were so laid, or where the annual general meeting of a company for any year has not been held, there shall be filed with the Registrar within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act.”

Section 220 (3) reads as follows:-

“if default is made in complying with the requirement of sub-sections (1) and (2), the company, and every officer of the company who is in default, shall be liable to the like punishment as is provided by Section 162 for a default in complying with the provisions of Section 159, 160 or 161.”

The contravention of Section 220 is punishable under section 162(1) of the Companies Act, 1956 reads as follows:

“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”.

Section 162(2) speaks as follows:-

“(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 of the 1st Applicant Company was undergoing through a transition stage due to 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 Applicant Company and hence the Annual Accounts 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 Form 23AC-XBRL for the financial year 2012-13 on 20th November 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. 23AC-XBRL alongwith 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 220 of the Companies Act, 1956 on the Applicants as shown in the table given below:-



Sl. No.	Particulars	Violation of Sec.220 of Companies Act, 1956 No. of days delay-384	Total Rs.
1	1 st Applicant Company.	384 x 50 = 19,200/-	19,200/-
2	2 nd Applicant - Managing Director	384 x 50 = 19,200/-	19,200/-
3	3 rd Applicant - Company Secretary	384 x 50 = 19,200/-	19,200/-

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	19,200/-	039170 dt. 06/07/2017
2	2 nd Applicant - Managing Director	19,200/-	039171 dt. 06/07/2017
3	3 rd Applicant - Company Secretary	19,200/-	039172 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