

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

**C.P.NO. 20/2017**

**IN THE MATTER OF COMPANIES ACT, 1956  
UNDER SECTION 166 READ WITH SECTION 168  
OF THE COMPANIES ACT, 1956**

**AND**

**IN THE MATTER OF  
ARCTERN CONSULTING PRIVATE LIMITED**

Judgement/Order delivered on: **17<sup>th</sup> 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, 2<sup>nd</sup> 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 166 read with section 168 of the Companies Act, 1956.

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



The 1<sup>st</sup> Applicant Company was incorporated under the Companies Act, 1956 on 19<sup>th</sup> 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, 2<sup>nd</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> Applicant Company.

It is further averred in the Company Application that, the 1<sup>st</sup> Applicant Company could not hold its Annual General Meeting for the financial year 2012-13 within the stipulated period as required under Section 166 of the Companies Act, 1956 to place before the Board of Directors for approval of the Financial Statements for the year ending 31<sup>st</sup> March 2013 within the stipulated time due to the reasons that, the 1<sup>st</sup> Applicant Company is part of a group of companies owned by Volt Information Sciences, Inc., a US Corporation and during the period from 17<sup>th</sup> July 2009 to 9<sup>th</sup> April 2013, the parent company of the Applicant 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 1<sup>st</sup> Applicant Company. However, the 1<sup>st</sup> 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 hold its Annual General Meeting for the financial year ending 31<sup>st</sup> March 2013 on 6<sup>th</sup> November 2014 with a delay of 402 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 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 Company and its Directors for compounding of violation committed under section 166 of the Companies Act, 1956. The Practicing Company Secretary further contended that, the new management of the 1<sup>st</sup> 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.

Section 166 of the Companies Act, 1956 reads as follows:-

“Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.”

For the violation of section 166 (1) of the Companies Act, 1956, the punishment is provided under section 168 of the Companies Act, 1956 which reads as follows:-



“if default is made in holding a meeting of the company in accordance with section 166, or in complying with any directions of the Tribunal or the Central Government, as the case may be under sub-section (1) of section 167, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees and in the case of a continuing default, with a further fine which may extend to two thousand five hundred rupees for every day after the first during which such default continues”.

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 General Meeting could not be held within the stipulated time. The Practicing Company Secretary for Applicants further contend that, the Applicant Company had complied with the requirement and held the Annual General Meeting for the financial year ending 31<sup>st</sup> March 2013 on 6<sup>th</sup> November 2014.

The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/MMM/621A/034530/2017 dated 5<sup>th</sup> 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 10<sup>th</sup> March 2016 of the 1<sup>st</sup> Applicant Company wherein the Board of Directors resolved for filing compounding Application, copy of Form No. MGT-7 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 166 of the Companies Act, 1956 on the Applicants as shown in the table given below:-



| Sl. No. | Particulars                                   | Violation of Sec.166 of Companies Act, 1956 |                             | Total      |
|---------|-----------------------------------------------|---------------------------------------------|-----------------------------|------------|
|         |                                               | For violation                               | 402 days delay              |            |
| 1       | 1 <sup>st</sup> Applicant Company             | 5,000/-                                     | 250/- x 402<br>= 1,00,500/- | 1,05,500/- |
| 2       | 2 <sup>nd</sup> Applicant - Managing Director | 5,000/-                                     | 250/- x 402<br>= 1,00,500/- | 1,05,500/- |
| 3       | 3 <sup>rd</sup> Applicant – Company Secretary | 5,000/-                                     | 250/- x 402<br>= 1,00,500/- | 1,05,500/- |

In pursuant to our Order dated 21<sup>st</sup> 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 6<sup>th</sup> 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 <sup>st</sup> Applicant Company             | 1,05,500/-     | 039167 dt. 06/07/2017 |
| 2       | 2 <sup>nd</sup> Applicant - Managing Director | 1,05,500/-     | 039168 dt. 06/07/2017 |
| 3       | 3 <sup>rd</sup> Applicant – Company Secretary | 1,05,500/-     | 039169 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