

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

C.P.NO. 18/2017

**IN THE MATTER OF COMPANIES ACT, 1956 AND
IN THE MATTER OF COMPANIES ACT, 2013 UNDER SECTION 441
FOR COMPOUNDING OF OFFENCE UNDER SECTIONS 96
OF THE COMPANIES ACT, 2013**

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. Suresh Anandham, Company Secretary,
45 I U Willets Road,
Albertson,
New York 11507

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.

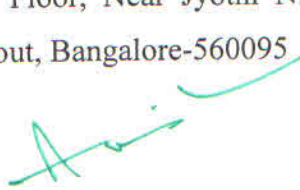
Per: Hon'ble Sri Ashok Kumar Mishra, Member (Technical) – Author

ORDER

This Application was filed by the Applicants under Section 441 of the Companies Act, 2013 for the purpose of compounding for violation of provisions of Section 96 of the Companies Act, 2013 read with section 168 of the Companies Act, 1956.

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

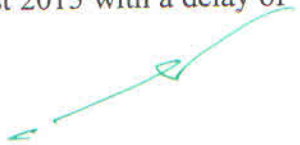
The 1st Applicant Company was incorporated under the Companies Act, 1956 on 19th August 2004, as a Private Limited Company under the name and style of "Arctern Consulting Private Limited" vide CIN No. U74201KA2004PTC034530. The Registered office of the company is situated at No. 49/8, 2nd Floor, Near 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 hold the Annual General Meeting for the financial year 2013-14 within the stipulated period as required under Section 96 of the Companies Act, 2013 to place before the Board of Directors for approval of the Financial Statements for the year ending 31st March 2014 within the stipulated time 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 year 2014-15 the parent company was undergoing through a transition stage due to changes in its management and business activities; the above offences were committed during this transition period which caused delays in the management taking forward the affairs of the Applicant Company. 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. 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 hold its Annual General Meeting on 17th August 2015 with a delay of 321 days.



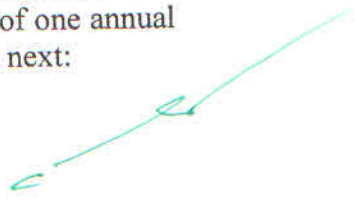
It is also averred in the Company Application that, the above offence committed by the Applicants due to unavoidable circumstances and unintentional and further is not of such nature as to prejudice the interests of the members or creditors or others dealing with the 1st Applicant Company and the Applicants 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.

This Application was originally filed for violation of the provisions of section 96 of the Companies Act, 2013 as Applicants failed to convene the Annual General Meeting within the time prescribed. This application was moved for compounding under section 621A of the Companies Act, 1956. By the date of filing this Application provisions of Section 441 of the Companies Act, 2013 have not been notified. Section 98 of the Companies Act, 2013 was also not notified by the date of Application. Therefore, the provisions of Companies Act, 1956 would apply. Section 166 of the Companies Act, 1956 correspond to 96 of the Companies Act, 2013. Thus the Applicants have committed the violation of provisions of Section 166 of the Companies Act, 1956 punishable under Section 168 of the Companies Act, 1956. We have seen the report of the Registrar of Companies, Karnataka, Bangalore. He is also of the opinion that, the Applicants violated the provisions of Section 166 of the Companies Act, 1956 punishable under Section 168 of the Companies Act, 1956.

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 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.

Provisions of section 96 of the Companies Act, 2013 reads as follows:-

“Every company other than a One Person 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:



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 1st Applicant Company had complied with the requirement and filed e-Form MGT 7 on 14th January 2016 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. 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	321 days delay	
1	1 st Applicant Company	5,000/-	250/- x 321 = 80,250/-	85,250/-
2	2 nd Applicant - Managing Director	5,000/-	250/- x 321 = 80,250/-	85,250/-
3	3 rd Applicant – Company Secretary	5,000/-	250/- x 321 = 80,250/-	85,250/-

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	85,250/-	039164 dt. 06/07/2017
2	2 nd Applicant - Managing Director	85,250/-	039165 dt. 06/07/2017
3	3 rd Applicant – Company Secretary	85,250/-	039166 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