

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 130/2016

IN

CA NO. 204/621A/CB/2014

(DATED: WEDNESDAY, THE 31ST DAY OF MAY 2017)

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

IN THE MATTER OF THE COMPANIES ACT, 2013
SECTION 621A OF THE COMPANIES ACT, 1956 UNDER SECTION 210
OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF M/s G-CORP LOTUS MALL PRIVATE LIMITED

T.P.NO. 130/2016 IN CA NO. 204/621A/CB/2014

1. Mr. Suresh Thimme Gowda Kumar - Director,
No. 65, Vani Vilas Road,
Basavanagudi,
Bangalore-560004.
2. Mr. Ajantha Jayaram Shetty-Director,
29630, 2nd Cross, Chanmundeshwari Layout,
Vidyaranyapura, Near Ganesh Temple,
Bangalore-560097.
3. Mr. Thomas Patrick Quinn - Director,
128A Merrion Road,
Balls Bridge,
Dublin, 000000, Ireland.
4. Mr. Sharath Gowda - Director,
No. 65, North Road,
Basavanagudi,
Bangalore-560004

- APPLICANTS

PARTIES PRESENT: Mr. Ballambettu Ullas Kiran Pai, Level 6, Basappa Complex,
Lavelle Road, Bangalore-560001, Practicing Company Secretary
and Authorised representative for the Applicants.

Heard on: 27/10/2016, 16/11/2016, 05/12/2016, 23/12/2016, 30/01/2017,
15/02/2017 and 21/03/2017.

COMMON ORDER

Applications are filed on behalf of the Applicants under Sec. 621A of Companies Act 1956 before the Company Law Board, Southern Region, Chennai and numbered as C.A 204/621A/CB/2014. 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. It was renumbered as T.P No. 130/2016 in this Tribunal. The applications are filed by the Applicants with a prayer to record compounding for violation of provisions of section 210 of the Companies Act, 1956.

The Applicants No. 1 to 4 are the Directors of the Company and they have filed two separate Applications before the Registrar of Companies, Karnataka at Bangalore for compounding of default for each year. The Registrar of Companies, Karnataka, Bangalore, has also given report for default period of 2 years i.e., 2009-10 and 2010-11. Accordingly, these two Applications are decided by a common order. Basing on the report of Registrar of Companies, Karnataka, Bangalore, vide letter No. ROC-STA/Section 621-A/Sec.210 / Co.No.46757/ Report/2014 dated 21st April 2014, it disclosed that Applicant No.2 herein was not a Director at the relevant period and therefore, no compounding fee can be levied on him.

The averments in the Company Application are briefly stated hereunder:

The Applicant is a Company which was incorporated under the Companies Act, 1956 on 11th June 2008 under the name and style "G-Corp Lotus Mall Private Limited" vide Corporate Identity No. U45200KA2008PTC046757. The Registered Office of the company is situated at "Doddamane" No.19/3, Vittal Mallya Road, Bangalore-560001.

The Authorised Share Capital of the Applicant company as per latest Audited Balance Sheet is Rs. 9,72,42,000/- divided into:-

- i) 20,000 Equity Shares of Rs 10/- each amounting to Rs 2,00,000/-
- ii) 3,67,400 Convertible Preference Shares of Rs 100/- each amounting to Rs 3,67,40,000/-
- iii) 1000 Class B equity shares of Rs 10/- each amounting to Rs 1000/-
- iv) 1,50,730 Compulsory Convertible Preference shares of Rs 400/- each amounting to Rs 6,02,92,000/-

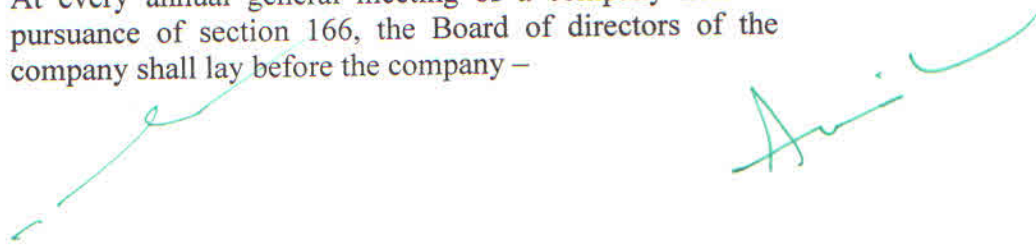
And the paid up share capital of the Company is Rs 9,68,58,800/-

The main object of the Applicant Company is to engage in the business of construction, maintenance and running of business complexes, shopping complexes and malls anywhere in India and to engage in the ancillary business of running restaurants, cinema halls, eating places, shops and other business establishments as part of running of malls etc., Details of the main object of the Company are stated in the Memorandum and Articles of Association.

It is averred in the Company Applications that, the Applicant Company failed to convene the Annual General Meeting within the prescribed time limit for the financial years 2009-10 and 2010-11; therefore, the Directors could not lay the Balance sheet for the financial years ending 31/03/2010 and 31/03/2011 before the Annual General Meetings as required under Section 210 of the Companies Act, 1956. It is further averred that, the main reason for the delay was that, the Applicant No.3 herein is the Director of the 1st Applicant Company is a Foreign National, who represents M/s Lotus One Development, the majority shareholders of the Company and he could not approve the Balance Sheet and Profit and Loss Account before the due date for convening the Annual General Meeting and due to the delay in signing and placing before the Board the financials for the year 2009-10 and 2010-11, the Company could not convene the Annual General Meetings for the years 2009-10 and 2010-11 and therefore the Directors could not lay the balance sheet for the financial years ending 31/03/2010 and 31/03/2011. However, the Company held its Annual General Meeting for the financial year ended 31st March 2010 and 31st March 2011 on 5th June 2012 respectively and laid the Balance Sheet and Profit and Loss Account before the Board. Thereby, there was delay of 614 days and 249 days and thus there was violation of provisions of section 210 of the Companies Act, 1956. The violation of provisions of section 210 of the Companies Act, 1956 was neither willful nor wanton and it was occurred beyond control of the Applicants.

Thus Applicants admitted violation of provisions of section 210 of the Companies Act, 1956, the Directors could not lay the Balance Sheet and Profit and Loss Account before the Board for the financial years ending 31st March 2010 and 31st March 2011 within the prescribed time, which reads as follows:-

At every annual general meeting of a company held in pursuance of section 166, the Board of directors of the company shall lay before the company –



- (a) a balance sheet as at the end of the period specified in sub-section (3); and
- (b) a profit and loss account for that period.

For the violation of section 210(1) of the Companies Act, 1956, the punishment is provided under sub-section (5) of section 210 of the Companies Act, 1956 reads as follows:-

“If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Rs 10,000/- or with both:”

The Applications are filed under section 621A of the Companies Act, 1956. The provisions of section 441 of the Companies Act, 2013 came into effect from 1st June 2016. Before erstwhile Company Law Board, Southern Region, Chennai this application was filed. Therefore, the applications are to be decided under the provisions of section 621A of the Companies Act, 1956.

We have received report from the Registrar of Companies, Karnataka at Bangalore vide letter No. ROC-STA/Section 621-A/Sec.210/Co.No.46757/ Report/ 2014 dated 21st April 2014 who stated that offence can be compounded by levying compounding fee on the Applicants. We have seen Memorandum and Articles of Association. After considering the submissions made by the Practicing Company Secretary for the Applicants and after going through the contents of the applications and documents filed, we hereby levy the compounding fee for violation of section 210 of the Companies Act, 1956 on Applicants No. 1,3 and 4 as set out in the table given hereunder:-

Sl. No.	Particulars	Violation of Sec.210 of the Companies Act, 1956		Grand Total Rs.
		2009-10	2010-11	
1	1 st Applicant- Director	6,000/-	6,000/-	12,000/-
2	3 rd Applicant- Director	6,000/-	6,000/-	12,000/-
3	4 th Applicant- Director	6,000/-	6,000/-	12,000/-

In pursuant to our Order dated 20/04/2017 mentioned herein above, the Applicants have paid the compounding fee by depositing 3 Demand Drafts of Axis Bank Ltd., Cunningham Road Branch, Bangalore drawn on 20/05/2017 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- Director	12,000/-	003853 dt. 20/05/2017
2	3 rd Applicant- Director	12,000/-	003854 dt. 20/05/2017
3	4 th Applicant- Director	12,000/-	003855 dt. 20/05/2017

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.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 31st DAY OF MAY 2017.