

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

C.P. No.33/2017

**IN THE MATTER OF
M/S FOUR SEASONS WINES LIMITED**

Judgement/Order delivered on: 5th July 2017

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

For the Petitioner (s) Mr. Sudhir V.Hulyalkar, 16/8, Ground Floor, 2nd
Cross, Gupta Layout, South End Road,
Basavangudi, Banagalore-560004
Practicing Company Secretary and Authorised
representative for the Applicant.

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial) – 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 149 read with section 172 of the Companies Act, 2013.

The averments in the Company Application are briefly described hereunder:-

The 1st Applicant is the Company, 2nd Applicant is a former Manager and Chief Financial Officer and the 3rd Applicant is the Company Secretary. This suo-moto Application is filed by the Applicants for compounding of violation under section 149 of the Companies Act, 2013 herein after referred to as an Act which is punishable under section 172 of the Act.



The 1st Applicant Company was incorporated under the Companies Act, 1956 on 11th July 2006, under the name and style of FOUR SEASONS WINES LIMITED vide Registration No. **CIN-U15549KA2006PLC039931**. The Registered office of the Company is situated at UB Tower, # 24, Vittal Mallya Road, Bangalore-560001.

The Authorised share capital of the company is Rs. 69,00,00,000/- divided into 3,00,00,000 equity shares of Rs. 10/- each and 3,90,00,000/- Preference Shares of Rs 10/- each. The issued, subscribed and paid up capital is Rs. 27,66,89,000/- divided into 2,76,68,900 equity shares of Rs.10/- each and 3,06,12,245 – 12% Non-Cumulative Redeemable Optionally Convertible Preference Shares of Rs 10/- each amounting to Rs 30,61,22,450/- and 80,00,000 – 12% Cumulative Redeemable Preference Shares of Rs 10/- each amounting to Rs 8,00,00,000/-




The Main objects of the 1st Applicant Company is to establish and carry on in India or elsewhere the business as manufacturers, processors, importers, exporters, agents, brokers, suppliers, wholesalers, retailers, distributors, stockists, dealers, godown keepers, C&F agents, del credere agents, developers and to distill, prepare, maintain, mix, blend, clean pack, repack, protect, provide, promoter, sponsor, market, modify, produce, bottle, pressure and crush all sorts of liquors, beverages, alcohols, wines and other similar products such as brandy, whisky, rum, gim, beer or derivatives, etc., Details of the objects of the Company are mentioned in the Memorandum and Articles of Association of the 1st Applicant Company.

It is averred in the Company Application that, as per the provisions under section 149(4) of the Companies Act 2013 read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 that, every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies. the company being a public limited company, should have at least two independent directors on its Board and in terms of section 149(5) of the Companies Act, 2013 is required to appoint such independent Directors on the board within one year from the date of commencement of section 149 of the Act which came into force from 1st April 2014. Therefore, the 1st Applicant Company was required to have two independent Directors by 31st March 2015, as its paid up capital was more than Rs 100 Crores for the financial year 2014-15. It is further averred in the Company Application that, since Section 149 was notified by the Central Government on 1st April 2014, the requirement of appointment of such minimum number of independent Directors should have been completed in a year time which expired on 1st April 2015. Thereby, the 1st Applicant Company contravened the provisions of Section 149(4) read with Section 149(5) of the Companies Act, 2013 and Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, by not having minimum number of independent directors on its Board as on 1st April 2015. However, the 1st Applicant Company has complied with the provisions of Section 149 (4) of the Companies Act, 2013 by appointing Mr. Ramanujam Krishnamurthy and Mr. Perur Phaneendra as Independent Directors on 15th July 2015 and 8th March 2016 respectively.



It is further averred that, the lapse occurred due to delay in finding suitable person accepting the position of director in the Company and thus there was a delay in filling the minimum number of independent directors as required under Section 149 of the Companies Act, 2013.

It is further averred that, the Applicants suo-moto filed this Application for compounding of the offence under Section 441 of the Companies Act, 2013.

We have received the report from Registrar of Companies, Karnataka at Bangalore vide Letter No. ROCB/PS/441/39931/2017 dated 19th May 2017. In his reported it is stated, since the company has admitted the violation suo-moto and made good the offence, the application may be considered on merits.

This Application is filed by the Applicant Company for violation of section 149(4) of the Companies Act, 2013 for compounding which reads as follows:-

“(4) Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

(5) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).”

Violation of this proviso is punishable under section 172 of the Act, which reads as follows:

“If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees”

We have seen the report of Registrar of Companies, Karnataka at Bangalore submitted by them vide their letter reference No. ROCB/PS/441/39931/2017 dated 19th May 2017 and also the extract of Resolution of the Board of Directors dated 9th March 2017 of the 1st Applicant Company for compounding the offence, Certified copies of the Form DIR-12 filed with Registrar of Companies, Karnataka at Bangalore dated 21/08/2015 and 06/04/2016, true copy of letter of appointment of independent Directors dated 15th July 2015 and 8th March 2016 and after hearing

the submissions of the Practicing Company Secretary for the Applicants, the offence can be compounded under section 172 of the Companies Act, 2013 for violation of provisions of Section 149(4) of the Act, by levying the compounding fee on each of the Applicants as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.149(4) of Companies Act, 2013	Total Rs.
1	1 st Applicant Company	Rs. 2,00,000/-	2,00,000/-
2	2 nd Applicant – Chief Financial Officer	Rs. 1,00,000/-	1,00,000/-
3	3 rd Applicant - Company Secretary	Rs. 1,00,000/-	1,00,000/-

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 State Bank of India, Bengaluru drawn in favour of “Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai” as detailed below:-

Sl. No.	Particulars of Applicant	Fee Amount/D.D Rs.	DD No. & Date
1	1 st Applicant Company	2,00,000/-	522414 dt. 26/06/2017
2	2 nd Applicant – Chief Financial Officer	1,00,000/-	250373 dt. 29/06/2017
3	3 rd Applicant - Company Secretary	1,00,000/-	244552 dt. 28/06/2017

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 at Bangalore for appropriate action.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL