

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

T.P.NO. 126/2016

IN

C.A. NO. 185/2014

(DATED: TUESDAY THE 28TH FEBRUARY 2017)

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

**IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 297 READ WITH SECTION 621A AND 629A
OF THE COMPANIES ACT, 1956
AND**

IN THE MATTER OF M/S ATLAS LOGISTICS PRIVATE LIMITED

T.P. NO. 126/2016 IN C.A.NO. 185/2014

1. M/s Atlas Logistics Private Limited,
No.138, 2nd Floor, Maruthi Tower,
HAL Airport Road, Kodihalli,
Bangalore-560008.
2. Mr. H.R Venkatesh Rao - Director,
Mantralaya Apartments, Flat 3,
No.113, 3rd Cross, 3rd Phase,
J.P Nagar,
Bangalore-560078.

APPLICANTS

PARTIES PRESENTED:

Mr. Shrisha V.M, # 34/B1, Siddhi Apartment, PMK Road, Shankarapuram, Bangalore-560004, Practicing Company Secretary & Authorised Representative for the Applicants.

Heard on: 27/10/2016, 25/11/2016, 21/12/2016, 18/01/2017 and 31/01/2017

ORDER

The Application was originally filed before the Company Law Board, Southern Region, Chennai under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of section 297 of the Companies Act, 1956 and it was numbered as C.A 185/621A/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 and re-numbered as T.P No. 126/2016.

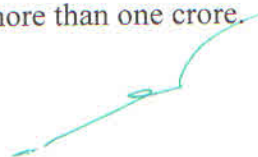
The averments made in the Company Application are briefly described hereunder:-

The 1st Applicant Company was incorporated under the Companies Act, 1956 on 24th June 1999 as a Private Limited Company in the name and style of "ATLAS LOGISTICS PRIVATE LIMITED" vide CIN No. **U63090KA1999PTC025375**. The Registered office of the company is situated at No. 138, 2nd Floor, Maruthi Tower, HAL Airport Road, Kodihalli, Bangalore-560008.

The present Authorized share capital of the Applicant Company is Rs.45,00,00,001/- consisting of 60,75,000 Equity Shares of Rs 10/- each., 39,25,000 Preference shares of Rs 10/- each and 29,91,453 Preference shares of Rs 117/- each. The paid up share capital of the Company is Rs 41,07,50,001/- divided into 60,75,000 equity shares of Rs 10/- each, 29,91,453 Preference shares of Rs 117/- each.

The Main objects of the 1st Applicant Company is to carry on the business of clearing and forwarding agents, cargo handlers, handling and haulage contractors, warehousemen, common carriers by land, rail, water and air container agents, ship brokers, couriers and to handle goods and passengers within the country and outside; to carry on the business of tour and travel operators, charters of road vehicles, aircrafts, ships, tugs, barges, boats and in general, to facilitate movement of cargo and to act as customs agents, wharfingers, landing agents, stevedores and longshoremen; to carry on the business as exporters, importers, general traders, indenting agents and to act as money changers and dealers in foreign exchange etc., Details of the main object of the Company are stated in the Memorandum and Articles of Association.

It is averred in the Company Application that, the 1st Applicant Company has entered into transportation contract with M/s Atlas Movers Private Limited on 4th April 2011. It is also averred that, the 2nd Applicant was also the Director and promoter of the Company M/s Atlas Movers Private Limited, by virtue of which the transportation contract becomes the related party transaction. However, 1st Applicant Company obtained approval from the Board of Directors in respect of transportation contract, but by inadvertence the Central Government approval as required under proviso to section 297 of the Companies Act, 1956 was not obtained before entering into such contract, as the paid up capital of the Applicant Company was more than one crore.




It is further averred that, the default was occurred from 4th April 2011 to 31st March 2014 and covers the financial years from 2011-12, 2012-13 and 2013-14 and the said offence is purely technical and will not affect any person and the omission was neither deliberate nor willful. Thus the suo-moto application filed by the Company and its Director under Section 621A of the Companies Act, 1956 for violation of provision of section 297 for compounding.

In the Memo filed on 30th January 2017 by the Authorized Signatory of the 1st Applicant Company the details of the number of related party transactions held in each year are given as shown in the table below:-

Sl. No.	Financial Year	No. of Related Party Transactions	Total amount of Related Party Transaction (in Rs.)
1	2011-12	170	96,45,784/-
2	2012-13	387	1,20,28,109/-
3	2013-14	159	65,10,817/-
Total		716	2,81,84,710/-

Provisions of section 297 (1) of the Companies Act, 1956 reads as follows:-

“Except with the consent of the Board of Directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company –

(a) for the sale, purchase or supply of any goods, materials or services, or

(b) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the Company.

Provided that in the case of the company having a paid-up share Capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government.”

The violation of provisions of section 297 of the Companies Act, 1956 which is punishable under section 629A reads as follows:-

“If a company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to Rs 5,000/- and where the contravention is a continuing one, with a further fine which may extend to Rs 500/- for every day after the first during which the contravention continues”.

We have heard the Practicing Company Secretary for Applicants on 27/10/2016, 25/11/2016, 21/12/2016, 18/01/2017 and 31/01/2017. In the course of arguments the Practicing Company Secretary filed Memo containing the details of transactions shown in the table above for the financial years from 2011-12 to 2013-14. The 1st Applicant Company has entered into Transportation contract with M/s Atlas Movers Private Limited consisting of interested Directors for which Board approval was obtained to enter into agreement but by inadvertence without prior approval of the Central Government as required under proviso to Section 297 of the Companies Act, 1956. Thus there was violation of provisions of section 297 of the Companies Act, 1956.

It is also stated in the Application that, the default committed under Section 297 of the Companies Act, 1956, is purely unintentional and occurred inadvertently. Therefore, this suo-motto application is filed by the 1st Applicant Company and its Director under section 621A of the Companies Act, 1956 for compounding the violation of section 297 of the Companies Act, 1956 which is punishable under section 629A of the Act.

Report from the Registrar of Companies, Karnataka at Bangalore was received vide letter No. ROCB/MMM/Sec.621A/2014 dated 15/04/2014. In his report he has made an observations that the compounding application may be decided on merits.

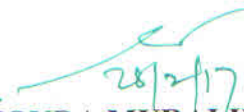
We have seen the documents filed along with application. We have seen the Memorandum and Articles of Association. We have seen the certified copy of the Board Resolution of the Meeting of Board of Directors held on 28th November 2016 for filing Compounding Application. We have seen financials of the Company for the year ending 31/03/2012, 31/03/2013 and 31/03/2014 along with Auditor's Report. Considering the provisions of law and the voluminous transactions that took place over the period of 3 years and after considering the submissions made by the Practicing Company Secretary, we levy compounding fee on the Applicants as detailed hereunder in the table:-

Sl. No.	Particulars	Violation of Sec.297(1) of the Companies Act, 1956 - No. of transactions held in the respective financial year			Total Rs.
		2011-12	2012-13	2013-14	
1	1 st Applicant Company	170 x 100/- = 17,000/-	387 x 100/- = 38,700/-	159 x 100/- = 15,900/-	71,600/-
2	2 nd Applicant-Director	170 x 100/- = 17,000/-	387 x 100/- = 38,700/-	159 x 100/- = 15,900/-	71,600/-

In pursuant to our Order dated 10/02/2017 mentioned herein above, the Applicants have paid the compounding fee by depositing 2 Demand Drafts of Axis Bank Ltd., Bangalore drawn on 21/02/2017 in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai" as detailed below:-

Sl. No.	Particulars of Applicant	Fee Amount/D.D Rs.	DD No. & Date
1	1 st Applicant Company	71,600/-	126052 dt. 21/02/2017
2	2 nd Applicant- Director	71,600/-	126053 dt. 21/02/2017

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 28th DAY OF FEBRUARY 2017.