

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.NO. 20/2016

DATED: TUESDAY THE 17th DAY OF JANUARY 2017

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

IN THE MATTER OF COMPANIES ACT, 1956 AND
IN THE MATTER OF COMPANIES ACT, 2013
UNDER SECTION 441 FOR COMPOUNDING OF OFFENCE
UNDER SECTION 96 READ WITH SECTION 99
OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF M/s ID FRESH FOOD (INDIA) PRIVATE LIMITED

C.P.NO. 20/2016

1. ID Fresh Food (India) Private Limited,
No.37, Doddenkundi Industrial Area,
Whitefield Road,
Mahadevapura,
Bangalore-560048.
2. Mr. Musthafa Pathayickode Cheriammed - Director
Villa 27, Whitefield Boulard,
Whitefield Hoskote Road,
Opp.Sai Garden Whitefiled B An,
Bangalore-560066.
3. Mr. Talya Kandi Jafar- Director,
Thazhekandy,
Chennalode P.O
Kavumannam,
Wayanad,
Kerala-673121
4. Mr. Tayakandi Kandi Shamsudeen - Director
Thazhekandy,
Chennalode P.O
Kavumannam,
Wayanad,
Kerala-673121
5. Mr. Abdul Nazer - Director
No.26, 5th Cross, Abbaiah Reddy Layout,
C.V.Raman Nagar,
Bangalore-560093.

Petitioners

PARTIES PRESENT:

Ms. S.C. Sharada, No.405, 7th Cross, 4th Block,
Koramangala, Bangalore-560034. Practicing
Company Secretary and Authorised Representative
for the Petitioners.

Heard on: 08/12/2016.

ORDER

This Petition is filed under Section 96 read with section 99 of the Companies Act, 2013 with a prayer for compounding of certain violation committed under provisions of 441 of the Companies Act, 2013.



The averments made in the company petition are briefed hereunder:-

The Petitioner Company was incorporated under the Companies Act, 1956 on 17th December 2012 as a Private Limited Company in the name and style of "Magnificent Food Products Private Limited" vide Registration No. CIN U15549KA2012PTC067294. Subsequently the Company has changed its name to ID Fresh Food (India) Private Limited vide incorporation certificate dated 19th August 2013. The Registered office of the company is situated at No.37, Doddenkundi, Industrial Area, Whitefield Road, Mahadevapura, Bangalore-560048.

As per the latest Balance Sheet the Authorized share capital of the Petitioner company is Rs. 4,37,050/- divided into 17,100 of Equity Shares of Rs 10/ each and the paid up share capital of the Company is Rs 3,50,210/- consisting of 10,000 Equity Shares of Rs 10/- each.

The Main objects of the Petitioner Company is to carry on in India or elsewhere the business to manufacture, produce, process, prepare, disinfect, fermentate, compound mix, clean, wash, and deal in all types of consumer food items, their byproducts, including foods and vegetables, packed foods and instant foods etc., Details of the objects of the Petitioner Company are mentioned in the Memorandum and Articles of Association of the Petitioner Company.

It is averred in the Company petition that, the 1st Petitioner Company could not conduct its 3rd Annual General Meeting for the year ending 31st March 2015 within the prescribed time limit for the financial year 2014-15. The Annual General Meeting was held after its due date. The reason is that 1st Applicant Company delayed in closing the Books of Accounts, owing to technical errors in the implementation of the accounting software. Due to this the documents and information required for convening the 3rd Annual General Meeting could not be complied within the time. However, the Board of Directors of the Petitioner Company vide their Board Meeting held on 14th September 2015 resolved to seek



extension of time up to 31st December 2015 to hold the Annual General Meeting from the Registrar of Companies, Karnataka, Bangalore. In turn the Registrar of Companies, Karnataka, Bangalore granted extension of time for holding 3rd Annual General Meeting upto 31st December 2015. The Petitioner Company could not even hold the Annual General Meeting within the extended period for the reason that the Statutory Auditors were not willing to submit their audit report to the Company.



However, the Petitioner Company hold its 3rd Annual General Meeting on 22nd July 2016 and the default period was from 1st January 2016 to 22nd July 2016 and thereby there was a delay of 204 days. It is further averred that, the violation occurred under Section 96 of the Companies Act, 2013 was neither willful nor wanton and it was due to reasons which were beyond the control of the petitioners. The 1st Petitioner Company and its Directors suo-moto filed this application admitting violation and prayed for compounding. Thus there was violation of provisions of section 96 which 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 notice 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 violation of provisions of section 96 is punishable under section 99 of the Companies Act, 2013 which reads as follows:-

“If any default is made in holding a meeting of the Company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.”

We have heard the Practicing Company Secretary for Petitioners on 08/12/2016. The Practicing Company Secretary contended that, the default occurred due to unavoidable circumstances and totally inadvertent for not holding Annual General Meeting within the stipulated time and there was neither willful nor wanton on the part of Company or its Directors. The Practicing Company Secretary for Petitioners further contend that, this is a suo-moto application filed by the Company and its Directors for compounding of violation.



The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/AHN/STA/67294/2016 dated 7th November 2016 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 Memorandum and Articles of Association of the Petitioner Company, Certified copy of the Board Resolution dated 21st July 2016 of the Petitioner Company wherein the Board of Directors resolved for filing compounding Application which is marked as Annexure L, Certified copy of Form GNL-1 along with ROC Challan filed with Registrar of Companies-Karnataka at Bengaluru. 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 under section 99 of the Companies Act, 2013 for the delay in holding Annual General Meeting on the Petitioner Company and its Directors as shown in the table given below, considering lenient view resulting from change of Auditors etc.,

Sl. No.	Particulars	Violation of Sec.96 of Companies Act, 2013	Delay of 204 days	Total Rs.
1	1 st Petitioner Company	Rs. 10,000/-	204 x 500/- = 1,02,000/-	1,12,000/-
2	2 nd Petitioner Director	Rs. 10,000/-	204 x 500/- = 1,02,000/-	1,12,000/-
3	3 rd Petitioner Director	Rs. 10,000/-	204 x 500/- = 1,02,000/-	1,12,000/-
4	4 th Petitioner Director	Rs. 10,000/-	204 x 500/- = 1,02,000/-	1,12,000/-
5	5 th Petitioner-Director	Rs. 10,000/-	204 x 500/- = 1,02,000/-	1,12,000/-

In pursuant to our Order dated 03/01/2017 mentioned herein above, the Applicants have paid the compounding fee by depositing 5 Demand Drafts of Kotak Mahindra Bank, Indiranagar, Bangalore drawn on 07/01/2017 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 Petitioner Company	1,12,000/-	735905 dt. 07/01/2017
2	2 nd Petitioner Director	1,12,000/-	735906 dt. 07/01/2017
3	3 rd Petitioner Director	1,12,000/-	735907 dt. 07/01/2017
4	4 th Petitioner Director	1,12,000/-	735908 dt. 07/01/2017
5	5 th Petitioner- Director	1,12,000/-	735909 dt. 07/01/2017

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

DATED THIS THE 15th DAY OF JANUARY 2017