

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

T.P.NO. 267/2016

DATED: THURSDAY THE 16th DAY OF MARCH 2017

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

**IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTIONS 205 (2A) OF THE COMPANIES ACT, 1956
AND
UNDER RULE 4 OF THE COMPANIES (TRANSFER OF PROFITS TO
GENERAL RESERVES) RULES, 1975
AND
IN THE MATTER OF
IMS HEALTH ANALYTICS SERVICES PRIVATE LIMITED
(FORMERLY KNOWN AS
PHARMARC ANALYTIC SOLUTIONS PRIVATE LIMITED)**

T.P.NO. 267/2016

1. IMS Health Analytic Services Private Limited,
Omega, Embassy Techsquare,
Marathahalli-Sarjapur Outer Ring Road,
Kadubeesanahalli, Bangalore-560103.
2. Mr. Amit Sadana -Managing Director,
IMS Health Analytic Services Private Limited,
No. 702, 8th Floor, Prestige Clarke VIL,
Clarke Road, Frazer Town,
Bangalore-560005.

APPLICANTS

PARTIES PRESENT:

Mr. Biswajit Ghosh, No.926, 20th Main, Near BDA
Complex, Banashankari 2nd Stage, Bangalore-
560070 -Practicing Company Secretary &
Authorised Representative for the Applicants.

Heard on: 20/09/2016, 17/10/2016, 11/11/2016, 22/11/2016, 14/12/2016,
16/01/2017, 30/01/2017 and 16/02/2017.

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 205(2A) of the Companies Act, 1956 and under Rule 4 of the Companies (Transfer of Profits to General Reserves) Rules, 1975. 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 numbered as T.P No. 267/2016.

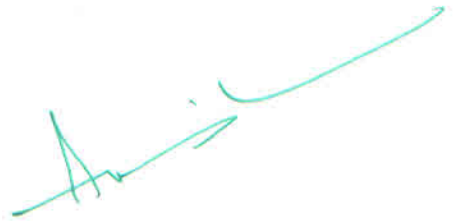
The averments made in the Company Application are briefly described hereunder:-

The 1st Applicant Company was incorporated under the Companies Act, 1956 on 2nd December 2003 as a Private Limited Company in the name and style of "PHARMARC ANALYTIC SOLUTIONS PRIVATE LIMITED" vide CIN No. **U74140KA2003PTC032950**. The Registered office of the company is situated at 3rd & 4th Floor, Tower A, The Millenia, Murphy Road, Ulsoor, Bangalore-560008.

The Authorized share capital of the 1st Applicant Company is Rs. 2,00,00,000/- (Rupees Two Crore only) consisting of 18,00,000 Equity Shares of Rs 10/- each and 2,00,000 Preference shares of Rs.10/- each. The Paid-up capital of the Applicant Company is Rs.1,50,23,070/- consisting of 15,02,307 equity shares of Rs 10/- each.

The Main objects of the 1st Applicant Company is to undertake, conduct, prepare and provide services relating to collection, entry, processing, management and analysis of market and business related data; to initiate, undertake, carry on, joint venture with any person, firm, body corporate formed in India or abroad etc., Details of the objects of the Company are mentioned in the Memorandum of Association of the 1st Applicant Company.

It is averred in the 1st Company Application that, during the financial year 2011-12, the Board of Directors of the 1st Applicant Company at their Board Meeting held on 17th January 2012 passed a resolution and approved payment of an interim dividend aggregating to Rs 59,62,244/- on 15,02,307 shares of Rs 10/- each. The said dividend was paid to the shareholders within the time limit specified under the Companies Act, 1956. Subsequent to the declaration of interim dividend to the shareholders of the Company, the entire shareholding of PharmARC was acquired by IMS AG and Interstastik AG (the shareholding pattern of the company) as a part of the process of acquisition of the business of PharmARC.



It is further averred that, the statement of accounts for the financial year 2011-12 was finalized on 10th January 2013 and noted that, the Company has incurred a loss for the financial year ending 31/03/2012 and was unable to make a transfer of the stipulated percentage of profits to the general reserves, as required under the Companies (Transfer of profits to the Reserve Rules) 1975 and thereby contravened the provisions of Rule 4 of the Companies (Transfer of profits to the Reserve Rules) 1975.

As per report of Registrar of Companies, Karnataka, Bangalore dated 11/07/2014, the Applicants have violated not only Rule 4 of the Companies (Transfer of profits to the Reserve Rules) 1975, but also violated provisions of section 205 (2A) of the Companies Act, 1956. Section 205 (2A) of the Companies Act, 1956 reads as follows:-

“Notwithstanding anything contained in sub-section (1), on and from the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), no dividend shall be declared or paid by a company for any financial year out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), except after the transfer to the reserves of the company of such percentage of its profits for that year, not exceeding ten per cent, as may be prescribed:

Provided that nothing in this sub-section shall be deemed to prohibit the voluntary transfer by a company of a higher percentage of its profits to the reserves in accordance with such rules as may be made by the Central Government in this behalf.”

Thus there was violation of section 205 (2A) 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”.



Whereas Rule 4 of the Companies (Transfer of profits to the Reserve Rules)

1975 reads as follows:-

“If a company fails to comply with any of the provisions contained in these rules, the company and every officer of the company in default shall be punishable with fine which may extend to five hundred rupees, and, where the contravention is a continuing one, with a further fine which may extend to fifty rupees for every day, after the first, during which such contravention continues”.

The Applicants filed an Affidavit dated 13th February 2017 of the Director, wherein it is averred that, the Company while declaring the interim dividend for the year 2011-12 had complied the provisions of Section 205 of the Companies Act, 1956. It is further averred in the Affidavit that, the company has paid the interim dividend declared on 17th January 2012 within time and there was no default. It is also stated in the Affidavit that, the Company has clarified the same to the Regional Director. From the reading of Affidavit it is cleared that, the company had made good the default subsequently.

We have heard Practicing Company Secretary for Applicants on 20/09/2016, 17/10/2016, 11/11/2016, 22/11/2016, 14/12/2016, 16/01/2017, 30/01/2017 and 16/02/2017, during the course of hearing, the Practicing Company Secretary filed an Affidavit of the Director. The Practicing Company Secretary contended that, due to insufficiency of profits, the company has not been able to transfer the stipulated percentage of the profits to the general reserve account and the default was neither intentional nor made with any malafide intention. The Practicing Company Secretary for Applicants would further contend that, this is a suo-moto application filed by the Company and its Director for compounding of violation.

We have perused the documents filed by the Applicants. We have seen the certified copy of the Resolution passed in the Board Meeting held on 22nd March 2013 and also the certified copy of Auditor's Report and Annual Accounts for the year ending 31/03/2012 and after going through the Company Application under section 621A of the Companies Act, 1956 and further submissions made by the Practicing Company Secretary for the Applicants and the observations of the



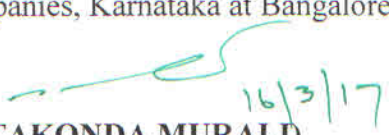
Registrar of Companies, Karnataka, Bangalore in his report dated 25/07/2014, we hereby levy compounding fee for violation of provisions of section 205(2A) of the Companies Act, 1956 and Rule 4 of the Companies (Transfer of profits to the Reserve Rules) 1975 on the Applicants as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.205 (2A) of Companies Act, 1956 –	Violation of Rule 4 of the Companies (Transfer of profits to the Reserve Rules) 1975	Total Rs.
1	1 st Applicant Company	2,000/-	500/-	2,500/-
2	2 nd Applicant – Managing Director	2,000/-	500/-	2,500/-

In pursuant to our Order dated 2nd March 2017 mentioned herein above, the Applicants have paid the compounding fee by depositing 2 Demand Drafts of HDFC Bank, Padmanabanagar Branch, Bangalore-560070 drawn on 09/03/2017 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	2,500/-	001091 dt. 09/03/2017
2.	2 nd Applicant – Managing Director	2,500/-	001092 dt. 09/03/2017

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 16th DAY OF MARCH 2017