

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 269/2016**

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

**IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A READ WITH SECTION 211 OF THE COMPANIES ACT, 1956
AND**

**IN THE MATTER OF M/S IZMO LIMITED
(Formerly known as LOGIX MICROSYSTEMS LIMITED)**

T.P. No. 269/621A/2016

1. Mr. Sanjay Soni, Managing Director,
Flat No.9,
Prestige Casablanca Apartments,
12/1, Airport Road,
Bangalore-560017
2. Ms. Shashi Soni, Whole Time Director,
Flat No.9,
Prestige Casablanca Apartments,
12/1, Airport Road,
Bangalore-560017

- **APPLICANTS**

PARTIES PRESENT:

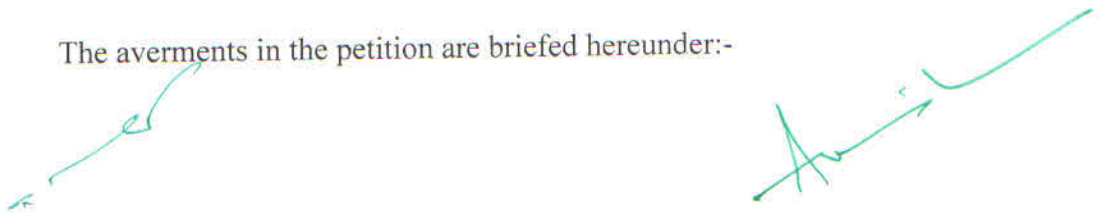
Mr. S. Manjunath, Advocate, # 9, "Manjushree"
3rd Floor, West Link Road, Malleswaram,
Bangalore-560003, Authorised representative for
the Applicants.

Heard on: 16/08/2016, 01/09/2016, 26/09/2016, 26/10/2016, 09/11/2016
and 30/11/2016.

ORDER

The Petition was originally filed before the Company Law Board, Southern Region, Chennai under Section 621A of the Companies Act, 1956 for purpose of compounding for violation of provisions of section 211 of the Companies Act, 1956. 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. 269/16/621A/2016.

The averments in the petition are briefed hereunder:-



The Company was originally incorporated on 08th September 1995 in the name and style of M/s LOGIX MICROSYSTEMS LIMITED and subsequently changed to M/s IZMO LIMITED with effect from 06th August 2014 vide Registration No. L72200KA1995PLC018734. The Registered office of the company is situated at # 177/2C, Billekahalli Industrial Area, Bannerghatta Road, Bangalore-560076.


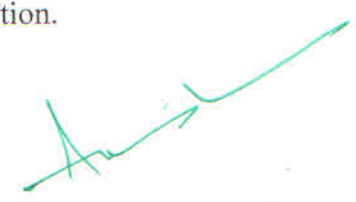
The Applicant Nos. 1 and 2 are the Directors of the Company. The Authorized share capital of the company as per the latest Audited Balance sheet on 31/03/2015 is Rs. 13,20,00,000/- (Rupees Thirteen Crores twenty lakhs only) consisting of 1,32,00,000 (One crore thirty two lakhs) Equity Shares of Rs 10/- each. The Company is a listed company on Bombay Stock Exchange and National Stock Exchange.

The Main objects of the Company is to carry on the business as manufacturers, dealers, importers and exporters of electronic equipments of all kinds and description, to carry on the business as manufacturers and dealers in scientific instruments and research instruments required in the field of electronics and vacuum technology, to establish a research and development unit, to carry on the business of electrical engineers etc., details of the objects of the company are mentioned in the Memorandum of Association.

The averments in the Application that, the Applicants have violated the provisions of section 211 of the Companies Act, 1956. It is averred during financial year ending 31/03/2011, there were 2 instances of violation of provisions of section 211 of the Companies Act, 1956. They are:-

- a) Non-disclosure of statement of investments Contravention.
- b) Basis of valuation of software work-in-progress: Contravention.

It is further averred that there were violation of provisions of section 211 of the Companies Act, 1956 at 4 times. They are:-

- a) Non-compliance with consolidated financial statements- Contravention.
 - b) Non-interest bearing deposits given for various government and non-government authorities;
 - c) Non-remitting of withholding of taxes within the due date and not providing for interest on outstanding dues: contravention.
 - d) Non-payment of term loan instalment: Contravention.
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It is further averred that, the Board of Directors of the Company during the relevant financial years are as hereunder:-

Sl. No.	Name of the Director	Designation	Date(s) of Appointment	Date of Resignation
1	Sanjay Soni	Managing Director	01/04/1999	-
2	Shashi Soni	Chairperson and Whole Time Director	01/06/2001	-
3	Vijay Gupta	Independent Director	23/07/2004	-
4	Roop Singh Chawhan	Director	29/01/2010	30/05/2014
5	Devinder Kumar Bhatia	Director	01/04/2006	13/10/2011

The Counsel for petitioner filed Affidavit of a Director the 1st Applicant herein explaining the details of violation. In the affidavit he has given the details of 6 instances of violation as under:-

- a) The company has several subsidiaries and has prepared consolidated financial statements for the financial year 2013-14 and Annexed in the Annual Report for the said financial year. However, it has not complied with the consolidated cash flow statement. In page No.174 of the attachment to the application under para 3(v), Auditor has qualified the matter. The Directors have replied to the said qualification in item No.14 in page 140 of the attachment to the application under the Directors Report for the FY 2013-14. This is a one-time offence. Since there is no provision for revised filing of the financials on the MCA, the aforesaid cannot be rectified. However, consolidated cash flow statement was provided in respect of the financial year 2014-2015 as evidenced in page No.80 of the Annual Report for 2014-15.
- b) Statutory Auditors in their report in respect of loans granted to a party covered under Section 301 of the Companies Act, 1956 has stated that he is unable to comment as to whether the rate of interest or other terms and conditions are prejudicial to the interest of the company and further in respect of the deposits given to Government Companies or land lords as Rent Deposits or Telecom Companies for the continuous services in the usual course of business has stated that since the terms of repayment of the principal amount and the payment of the interest have not been stipulated, he is unable to comment as to whether receipt of the principal amount and the interest are regular. However based on the information provided to the Auditors, the qualifications were not made in respect of the financial year 2014-15. As evidenced in page No.58 under para iii) b) of the Annual Report for 2014-15.

- c) The company had withheld taxes to the tune of Rs 31,14,888/- in respect of the payments to Open Text Corporation, Canada a non-resident during the FY 2013-14. The said tax amount was not remitted with the authorities within due date and further had not provided for the interest on the outstanding dues to the tax authorities in its books. However an amount of Rs 35,25,811/- was duly remitted with tax authorities including interest on 23rd July 2014.
- d) The company has not paid term loan installment of Rs 154.59 lakhs for the period September 2012 to March 2014 and Rs 11.39 crores towards credit facilities from September 2011 till 31/03/2014 to the State Bank of Mysore.
- e) The company has not provided audited financials of the subsidiaries with their valuation to arrive at the market value of its shares and therefore the value of the investment in subsidiary, which is given in the Balance Sheet at cost is in question as the lower of cost and market value should be the value.
- f) The company had valued its software work in progress as Rs 1.98 crores for the FY 2009-10 and NIL for the FY 2010-11. Since the Auditors were unable to understand the system maintained by the Company for its software work-in-progress, the Auditors were of a view that there was not comprehensive system of documentation for recording the stage of completion and related cost and therefore they felt that they were unable to comment on the basis of valuation of software work-in-progress.

He has also filed the Annual Report for the financial year 2014-15.

Section 211 (1) of the Companies Act, 1956 reads as follows:-

“Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such other form as may be approved by the Central government either generally or in any particular case; and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance sheet under the heading ‘Notes’ at the end of that Part:”

Section 211(7) of the Companies Act, 1956. The section produced as follows:

“If any such person as is referred to in sub-section (6) of section 209 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, 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 ten thousand rupees, or with both:

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section and the other requirements aforesaid were complied with and was in a position to discharge that duty:

Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed willfully."

It is further averred in the petition that, the violation occurred is technical in nature and is not intentional and that there is no Mens Rea involved. The petition is filed suo-motu by the petitioners vide Board Resolution dated 13th February 2016. It is therefore, prayed to compound the violation.

We have gone through the documents filed by the Petitioners, we have seen copy of the Memorandum and Articles of Association and Board Resolution dated 13th February 2016 where in Board resolved to file compounding application for violation of various provisions of the Companies Act, 1956. We have seen the Annual Report for the financial years 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15.

We have heard the Counsel for Petitioner Sri S. Manjunath. He prayed for compounding for the violation taking a lenient view. Report from the Registrar of Companies, Karnataka, Bangalore was received vide letter No. ROCB/SVK/18734/621A/2014 dated 3rd June 2016 who recommended for compounding and further report that petition may be decided on merits.

This Application was 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, this application is to be decided under the provisions of section 621A of the Companies Act, 1956.

Thus it is clear that, the Directors herein violated the provisions of section 211 of the Companies Act, 1956. After considering the documents filed, report of the Registrar of Companies, Karnataka, Bangalore and submissions made by the Counsel for the Petitioners, we are of the opinion that violation can be compounded by levying the compounding fee as shown below in the table:-

Sl. No.	Particulars	Violation of Sec.211 of Companies Act, 1956- For 6 counts	Grand Total Rs.
1	1 st Applicant- Managing Director	6,000/- x 6	36,000/-
2	2 nd Applicant- Whole Time Director	6,000/- x 6	36,000/-

In pursuant to our Order dated 22/12/2016 mentioned herein above, the Applicants have paid the compounding fee by depositing Demand Draft for Rs. 36,000/- (Rupees Thirty six thousand only) of Axis Bank Ltd., Bangalore drawn on 29/12/2016 in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai" as detailed hereunder:-

Sl. No.	Particulars	D.D No.	Date	Amount Rs.
1	1 st Applicant-Managing Director	033045	29/12/2016	36,000/-
2	2 nd Applicant- Whole Time Director	033052	29/12/2016	36,000/-

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 23rd DAY OF JANUARY 2017