

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 132/2016

IN

C.A. NO. 211/621A/CB/2014

DATED: FRIDAY THE 20TH DAY OF JANUARY 2017

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

IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A READ WITH SECTION 77A (11)
OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF
KASTURBA ROAD BUSINESS CENTRE PRIVATE LIMITED

1. Kasturba Road Business Centre Private Limited,
202, Prestige Meridian,
30, Mahatma Gandhi Road,
Bangalore-560001.
2. Mr. Douglas John Henderson - Director,
Apartment B, 23rd Floor, South Tower 8,
Residence BEL AIR, 38, BEL AIR Avenue,
Island South, N.A., Hong Kong.
3. Mr. Filippo Sarti – Director,
2B, Chemin Du Martinet 5A,
1291, Commugny,
Switzerland.
4. Mr. David Koker – Director,
Flat A 1/F, Block 1, Villa Martini,
8 Stanley Beach Road,
Hong Kong.

APPLICANT

PARTIES PRESENTED: Mr. K.V. Omprakash, Advocate, M/s Conscientia
Law Associates, 76/1, 1st Floor, 7th Cross, Wilson
Garden, Bangalore-560027 Authorised
representative for the Petitioners.

Heard on: 17/10/2016, 26/10/2016, 21/11/2016, 14/12/2016 and 05/01/2017.

ORDER

The Petition 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 77A(11) of the Companies Act, 1956 and it was numbered as C.A 211/621A/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. 132/2016.

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

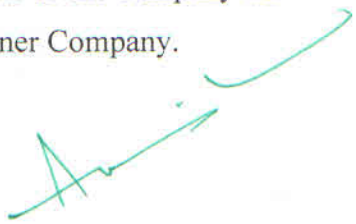

The 1st Petitioner Company was incorporated under the Companies Act, 1956 on 20th February 2006 as a Private Limited Company in the name and style of **Kasturba Road Business Centre Private Limited** vide Registration No. **CIN-U45202KA2006PTC038531**. The Registered office of the company is situated at # 202, Prestige Meridian, 30, Mahatma Gandhi Road, Bangalore-560001.

That 1st Petitioner is a company, petitioners 2 to 4 are the Directors represented by their Attorney Holders by virtue of Special Power of Attorney's referred to as Annexure-III, Annexure-III (A) and Annexure-III(B).

The financial year of the 1st Petitioner Company is 1st April to 31st March.

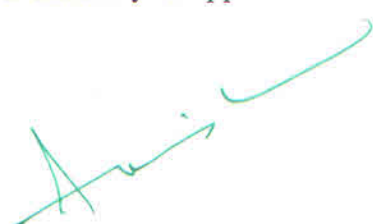

The Paid up share capital of the company is Rs 1,50,000/- consisting of 15,000 Equity Shares of Rs 10/- each.

The Main objects of the 1st Petitioner Company is to establish, operate, manage, control, wind up or otherwise deal in any manner with fully or partly furnished, staffed and equipped or otherwise, serviced offices, commercial and residential accommodation, including one or more individual offices, cyber-cafes and offering ancillary business services like video and audio conferencing facilities, high quality meeting rooms, training rooms, virtual office, information technology services, provision of staff, sale and rent of office equipment, food and beverages, translation and secretarial services etc., Details of the objects of the company are mentioned in the Memorandum of Association of the Petitioner Company.



It is averred in the Company Petition that, the Petitioner Company has issued letter of offer on 30th November 2011 to its shareholders proposing buy back 5,000 Equity Shares at Rs. 1,140/- each from its Holding company i.e., M/s Regus India Holdings Limited and the same was approved by the shareholders at their Extraordinary General Meeting held on 1st December 2011 and the said buyback of shares was completed on 20th December 2011. As per provisions of section 77(A)(10) of the Companies Act, 1956 the 1st Petitioner Company was required to file a return with the Registrar of Companies, Karnataka at Bangalore containing particulars relating to the buy-back of shares on or before 4th January 2012 on such completion. However, the 1st Petitioner Company filed Form 62 vide SRN B30195747 on 21st January 2012 with Registrar of Companies, Karnataka at Bangalore with a delay of 17 days. Subsequently, the 1st Petitioner Company on 5th April 2013 issued letter of offer to its shareholders proposing buy-back of 24.90% of the paid-up equity shares of the company i.e., 2976 Equity Shares of the Company at Rs 2033/- each. The said proposal of buy-back was approved by the shareholders at their Extraordinary General Meeting held on 5th April 2013 and the said buyback of shares was completed on 24th April 2013.

It is further averred that, as per provisions of section 77(A) (10) of the Companies Act, 1956, the Company was to file buy back of shares in e-Form 4C within 30 days of completion of buy back with the concerned Registrar of Companies. However, one of the prerequisites of filing of e-Form4C is that the Company should have approved SRN of e-Form 62 (e-Form for filing Declaration of Solvency) in Form 4A had not been approved by the Registrar of the Companies, due to the reasons that Form 62 relating to the previous buy-back of shares was still Pending for Approval and the 1st Petitioner Company failed to attach the Director's Report in the Form 23AC and Form 23ACA of the company for the Financial year ended 31/03/2012. However, the 1st Petitioner Company filed the e-Form 62 with the Registrar of Companies on 2nd August 2013 vide SRN B80779358. Thus the company could not file return within the time due to non-availability of approved SRN of e-Form 62.




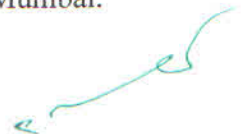
It is averred that, on receipt of approval of e-Form 62 on 12th June 2013 a fresh e-Form 4C was subsequently filed with a detailed reply to the queries raised by the Registrar of Companies on 2nd August 2013.

When the matter came up for hearing, Petitioners filed Memo seeking permission to withdraw the petition on the ground that, the Registered office of the 1st Petitioner Company was originally at Bangalore at the time of filing the petition for compounding. Therefore, Petition was filed before the Company Law Board, Southern Region, Chennai and it was subsequently transferred to this Tribunal.

It is further stated in the withdrawal Memo that 1st Petitioner Company was amalgamated with Regus Business Centre (Delhi) Private Limited under a scheme of amalgamation approved by the Hon'ble High Court of Karnataka, Bangalore vide C.O.P. No. 93/2015. A copy of the order is shown as Annexure-I to the Memo. It is further averred in the Memo Form INC-28 has been filed with the Ministry of Corporate Affairs and shown as Annexure-II to the Memo. It is further averred the Master data of 1st Petitioner Company on the Website of Ministry of Corporate Affairs shows the status of the Company as amalgamated and it is shown as Annexure-III to the Memo.

It is further averred that, by virtue of amalgamation order with Regus Business Centre (Delhi) Private Limited which has its Registered Office at Mumbai. It is further averred that, Hon'ble High Court Bombay also approved the scheme of amalgamation in C.S.P No.403/2015. The copy of the order of the Hon'ble High Court Bombay is shown as Annexure-IV.

It is further averred that, by virtue of scheme of amalgamation approved by Hon'ble High Court of Karnataka, Bangalore and Hon'ble High Court Bombay, the transferee company Regus Business Centre (Delhi) Private Limited which is having its Registered Office at Mumbai, shall continue to represent and be party to the adjudication process of these Petitions. Therefore, the National Company Law Tribunal, Mumbai has jurisdiction as Registered Office of the transferee Company is situated at Mumbai. Therefore, permission is sought to withdraw the petition with a liberty to file fresh application before the National Company Law Tribunal, Mumbai.



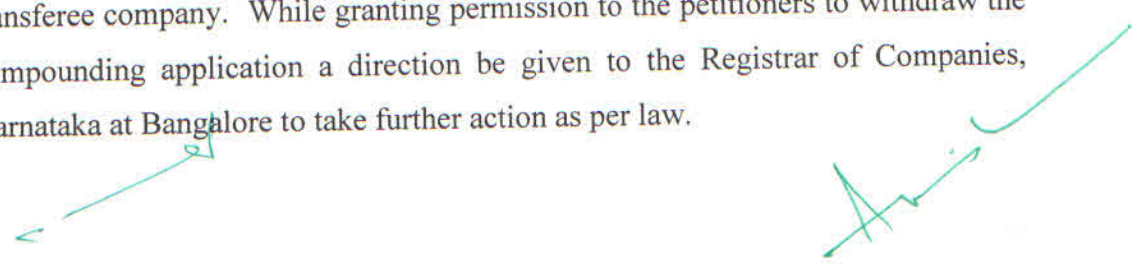
We have heard the Counsel for Petitioners on 17/10/2016, 26/10/2016, 21/11/2016, 14/12/2016 and 05/01/2017. A Memo is filed to grant permission to withdraw the main petition filed for compounding for violation of provisions of section 77A of the Companies Act, 1956. Pending disposal 1st Petitioner Company was amalgamated with Regus Business Centre (Delhi) Private Limited which is a transferee company. Amalgamation took place on the orders of the Hon'ble High Court of Karnataka, Bangalore vide C.O.P. No. 93/2015. Annexure-I is order of the Hon'ble High Court of Karnataka.

Petitioners also filed a copy of the Amalgamation order filed before Ministry of Corporate Affairs shown as Annexure-II and status of the company is shows as amalgamated in the website of Ministry of Corporate Affairs shown as Annexure-III. Even Hon'ble High Court, Bombay also approved the scheme of amalgamation. Annexure-IV is a copy of the order of Hon'ble High Court, Bombay.

Thus it is clear that, 1st Petitioner Company was amalgamated with transferee company Regus Business Centre (Delhi) Private Limited. The 1st Petitioner Company is not presently existing due to amalgamation. The Registered Office of the Transferee Company is located in Mumbai. Petitioners undertake to file application before the National Company Law Tribunal, Mumbai Bench, as it is amalgamated with Transferee Company. After filing petition change took place in the constitution of 1st Petitioner Company and it is no longer in existence due to amalgamation.


The 1st Petitioner Company is the transferor company which is amalgamated with Regus Business Centre (Delhi) Private Limited, in which case the liability of the 1st Petitioner Company be also transferred to and become liability of transferee company by virtue of provisions of section 394 (2) of the Companies Act, 1956.

When once the Assets and liabilities of the transferor company are transferred to the transferee company, the liability shall be attended by the transferee company. While granting permission to the petitioners to withdraw the compounding application a direction be given to the Registrar of Companies, Karnataka at Bangalore to take further action as per law.



In the result Memo is allowed. The Petitioners are permitted to withdraw the present Application, but they are given direction to file fresh application with Registrar of Companies / National Company Law Tribunal.

The Registrar of Companies, Karnataka at Bangalore is also directed to send the details of violation/offence committed by the petitioners before amalgamation along with a copy of the order of this Tribunal to the Registrar of Companies, Mumbai separately for further action against the transferee company.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 20th DAY OF JANUARY 2017