

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
C.P.NO. 14/2016**

DATED: TUESDAY THE 25TH DAY OF APRIL 2017

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

**IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A UNDER SECTION 209(1) AND READ WITH SECTION 209(5)
OF THE COMPANIES ACT, 1956
AND
IN THE MATTER OF KURLON LIMITED**

C.P.NO. 14/2016

1. Mrs. Jaya S. Pai- Director,
5, Ananth Nagar,
Manipal, Udupi-576119
2. Shri K.T. Bhagat - Director,
47, Shashi Kiran apartments,
Flat No.607,
18th Cross, Malleshwaram,
Bangalore-560003.
3. Dr. Nitin G.Khot – Director,
“Khot Villa”, B.C -27, Fort,
Belgaum-590016.
4. Mrs. Rashmi Rastogi – Company Secretary,
H.No.15, RKS Bakery Cross, Akashnagar
PWD Main Road, B.Narayanapura,
Bangalore-560036.

- **APPLICANTS**

PARTIES PRESENTED:

Mr. K. Dushyantha Kumar, Practicing Company Secretary, No. 71, Shop Street, 9th Cross, 2nd Block, Jayanagar, Bangalore-560011 Authorised representatives for the Applicants.

Heard on: 06/12/2016, 21/12/2016, 19/01/2017, 28/02/2017, 30/03/2017
and 05/04/2017

ORDER

This petition is filed by the Applicants for the purpose of compounding for violation of provisions of Section 209 (1) of the Companies Act, 1956 for offence committed during the financial year ending 31st March 2006.

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




The Company Kurlon Limited was incorporated under the Companies Act, 1956 on 9th February 1962 as a Public Limited Company vide Registration No. **001443**. The Registered office of the Company is situated at N-301, III Floor, North Block, Front Wing, Manipal Centre, 47 Dickenson Road, Bangalore-560042.

The Authorised Share Capital of the Company is Rs. 35,00,00,000/- (Rupees Thirty five Crores only) consisting of 3,50,00,000 Equity Shares of Rs 10/- each. The issued, subscribed and paid up share capital is Rs. 14,88,26,050/-.

The Main objects of the Company is to carry on the business of manufactures and dealers of all kinds of coir fibre, Coir Fleeces, Coir Flax, coir, boards, coir briquettes and converters of coir fibre into materials like mats, mattresses, carpets, runners, chords ropes of all kinds and varieties etc., Details of the objects of the Company are mentioned in the Memorandum of Association of the Company.

It is averred in the petition that, during the technical scrutiny of the Balance sheet as at 31/03/2006 by the Registrar of Companies, Karnataka, Bangalore, it has noticed that, the company has not maintained cost records which is required to be maintained pursuant to GSR No.126 (E) dated 24th July 1977 for Polyester Fibre which was used as one of the raw material for manufacturing pillows and issued Show Cause Notice bearing No. ROCB /TS/ BS/SCN/209(1)(d)/1443/2010/SVK dated 20th August 2010 for the said violation

It is further averred that, the company could not reply to the aforesaid Show Cause Notice due to administrative reasons and it was unintentional and there has been a delay of more than five years and the matter is pending before the Special Court of Economic Offences, Bangalore.

The Company alleges that during the said period, it has not manufactured any Polyester fibre Product. Hence it does not fall within the purview of Section 209(1) (d) of the Companies Act, 1956 and Registrar of Companies, Karnataka at Bangalore vide its Report No. ROCB/SVK/1443/621A/2016 dated 31st October 2016 has informed that, "the company has not admitted the default as per para 5(vi) of the petition filed but has offered to compound the offence. The compounding application filed by the Applicants may decide on merits"

The company wishes to go for compounding of offences since it was inadvertently done without professional advice during this period.

The Practicing Company Secretary for the applicants stated that, the Company has filed e-form GNL-1 with the Registrar of Companies, Karnataka, Bangalore on 23rd May 2016 prior to the Notification dated 1st June 2016 issued by the Ministry of Corporate Affairs and as such prayed to dispose off this matter in accordance with the provisions of the Companies Act, 1956.

Section 209 (1) (d) of the Companies Act, 1956 reads as follows:-

- (1) Every company shall keep at its registered office proper books of account with respect to –
 - (d) in the case of a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilization of material or labour or to other items of cost as may be prescribed, if such class of companies is required by the Central Government to include such particulars in the books of accounts.”

The penal for such violation is provided under 209(5) of the Companies Act, 1956 reads as follows:-

“If any of the persons referred to in sub-section (6) fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own willful act been the cause of any default by the company thereunder, 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 Rs 10,000/- or with both.

Provided that in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that those requirements 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.”

This Application was filed under section 621A of the Companies Act, 1956 before the Registrar of Companies, Karnataka, Bangalore. The provisions of section 441 of the Companies Act, 2013 came into effect from 1st June 2016. Therefore, this application is to be decided under the provisions of section 621A of the Companies Act, 1956.



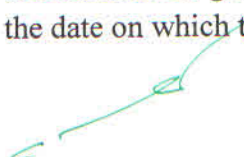

We have seen the Show Cause Notice issued by the Registrar of Companies, Karnataka, Bangalore to the applicants in which, it is clearly stated that, company has failed to maintain proper records as required under section 209(1)(d) of the Companies Act, 1956 in the Balance Sheet as at 31/03/2006.

We have heard the Practicing Company Secretary for Applicants. This Application is filed under section 621A of the Companies Act, 1956 for compounding. It is also an undisputed fact that, prosecution was launched against the Applicants which is pending before the Hon'ble Special Court for Economic Offences at Bangalore bearing C.C No. 406/2015 in respect of the violation. The question whether offence can be compounded even though prosecution was pending against the Applicants. It is contended that, even though prosecution was launched against the Applicants, yet violation can be compounded by the Tribunal and no prior permission from the Special Court for Economic Offence at Bangalore is required and the power given to the Company Law Board (now Tribunal) under section 621A(1) of the Companies Act, 1956 which is independent of exercise of powers by the court under sub-section (7) and all offences other than those which are punishable with imprisonment only or with imprisonment and also fine can be compounded by the Tribunal without any reference to the sub-section (7) even in cases where the prosecution is pending in a criminal court.

It is true that, the Tribunal has power to compound the offence under section 621A (1) of the Companies Act, 1956, even though prosecution is pending and no permission is required from the Special Court for Economic Offences at Bangalore for compounding the violation. It is also true that, offence can be compounded either before launching prosecution or after institution of prosecution against the Applicants.

This Application was filed through the Registrar of Companies, Karnataka at Bangalore. We have received the report from Registrar of Companies, Karnataka at Bangalore vide Letter No. No. ROCB/SVK/1443/621A/2016 dated 31st October 2016 along with enclosures.

After going through the documents the violation can be compounded even after prosecution is launched against the Applicants which is pending before the Special Court for Economic Offences at Bangalore. Sub clause 4(b) of Section 621A of the Companies Act, 1956 provides, if offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the Company to the Registrar within seven (7) days from the date on which the offence is so compounded.




Thus, it is clear if offence is compounded after institution of the prosecution, then Registrar has to bring to the notice of the Court where prosecution is pending in writing and on such notice of composition the Court shall discharge the company or its officers against whom prosecution is pending.

From the above discussion, it is clear that Tribunal can compound the offence, even though prosecution is pending against the Applicants and prior permission is not necessary to compound the offence.

We have perused the documents filed by the Applicants. We have seen the Show Cause Notice and after going through the Company Petition 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 bearing No. ROCB/SVK/1443/621A/2016 dated 31st October 2016, we hereby levy compounding fee for violation of provision of section 209(1) (d) of the Companies Act, 1956 on the Applicants as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.209(1) (d) of Companies Act, 1956-	Grand Total Rs.
1	1 st Applicant-Director	6,000/-	6,000/-
2	2 nd Applicant-Director	6,000/-	6,000/-
3	3 rd Applicant-Director	6,000/-	6,000/-
4	4 th Applicant-Company Secretary	6,000/-	6,000/-

In pursuant to our Order dated 10/04/2017 mentioned herein above, the Applicants have paid the compounding fee by depositing 4 Demand Drafts of Axis Bank Ltd. Bangalore drawn on 13/04/2017 in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai" as detailed below:-




Sl. No.	Particulars of Applicant	Fee Amount Rs.	DD No. & Date
1	1 st Applicant-Director	6,000/-	293345/13.04.2017
2	2 nd Applicant-Director	6,000/-	293343/13.04.2017
3	3 rd Applicant-Director	6,000/-	293344/13.04.2017
4	4 th Applicant-Company Secretary	6,000/-	293346/13.04.2017

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 25th DAY OF APRIL 2017.