

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 239/2016**

IN

C.A. NO. 12/621A/CB/2016

DATED: MONDAY THE 6TH DAY OF FEBRUARY 2017

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

**IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 159 READ WITH SECTION 162
OF THE COMPANIES ACT, 1956**

AND

IN THE MATTER OF MBNA INDIAN SERVICES PRIVATE LIMITED

T.P.NO. 239/2016 IN C.A. NO. 12/621A/CB/2016

**MBNA Indian Services Private Limited,
The Residency, 7th Floor,
133/1 Residency Road,
Bangalore-560025.**

APPLICANT

PARTIES PRESENT:

Mr. S.Eshwar # 4, Aishwarya, 128/177, 6th Street,
Kumaran Colony, Vadapalani, Chennai-600026,
Practicing Company Secretary and Authorised
Representative for the Applicants.

Heard on: 28/10/2016, 25/11/2016 and 22/12/2016

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 159 of the Companies Act, 1956 and it was numbered as C.A 12/2016. 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. 239/2016.

The averments made in the Company Application are briefed hereunder:-

The Applicant Company was incorporated under the Companies Act, 1956 on 1st October 2003 as a Private Limited Company in the name and style of MBNA INDIAN SERVICES PRIVATE LIMITED vide Registration No. **U74140KA2003PTC032663**. The Registered office of the company is situated at The Residency 7th Floor, 133/1 Residency Road, Bangalore-560025.

The Authorized share capital of the Applicant company is Rs. 1,84,00,000/- divided into 18,40,000 equity shares of Rs 10/- each. The Issued, Subscribed and Paid up Share Capital of the Company is Rs 8,50,000/- divided into 85,000 equity shares of Rs 10/-each.

The company was engaged in supervising and supporting information technology enabled services and products on behalf of MBNA group companies worldwide.

It is averred in the Company Application that, the Company was required to file Annual Return containing the particulars regarding- its registered office, the register of its members, the register of its debenture holders, its shares and debentures, its indebtedness, its members and debenture holders, past and present, and its directors etc., with the Registrar of Companies, Karnataka, Bangalore within 60 days of due date of the Annual General Meeting as per section 166 of the Companies Act, 1956.

It is further averred that, there was delay in conducting Annual General Meeting for the financial years 2008-09, 2009-10, 2010-11 and 2011-12. Thus Company did not conduct the Annual General Meeting within the stipulated period as required under 166 of the Companies Act, 1956. Consequently, the company could not file its Annual Returns within 60 days of Annual General Meeting as prescribed under section 166 of the Companies Act, 1956. Therefore, the Company was at default. As this Application is confined for compounding for the default of 4 financial years and the details are shown in the table for the said 4 financial years as hereunder:-

Financial period	Due date for AGM under Section 166	Due date of filing Annual returns under section 159 of the Companies Act, 1956	Actual date of filing
2008-09	31/12/2009	01/03/2010	15/11/2010
2009-10	31/12/2010	01/03/2011	25/10/2011
2010-11	31/12/2011	29/02/2012	10/10/2012
2011-12	31/12/2012	07/03/2013	08/04/2013

It is further stated the company had obtained immunity certificate from the Registrar of Companies, Karnataka, Bangalore for the delayed returns for the financial years 31/12/2004, 31/12/2005, 31/03/2007 and 31/03/2008. Therefore, the present application is filed for the rest of the years praying for compounding the violation for these years.

It is averred in the Application the reason for delay in submitting the Annual Returns that, the financial books and records of the Company were monitored from the United Kingdom. There was delay in auditing the accounts, holding Annual General Meetings and filing Balance sheet and Profit and loss Account, lack of employees in India made it difficult for the company to communicate with the auditors and resulted in long delays. Despite these odds, the Applicant Company with available manpower was able to get prepared the financial statements, completion of Audits, holding of annual general meeting, preparation and filing of Annual Returns. The details for the delay are given in the Application.

Further, the company has ceased all operations since 2007 and no transaction was carried out since then. The violation of provisions of section 159 of the Companies Act, 1956 was not done willfully and was without any mala fide intention on the part of the Applicant Company.

It is also further averred that, the shareholders of the company proposed to windup the company in accordance with the law. Therefore, this application is filed.

This suo-moto application is filed by the Applicant Company under section 159 read with the provisions of section 162 of the Companies Act, 1956 for compounding which reads as follows:-

“every company having a share capital shall, within sixty days from the day on which each of the annual general meetings referred to in section 166 is held, prepare and file with the Registrar a Return containing the particulars specified in Part I of Schedule V, as they stood on that day, regarding- its registered office, the register of its members, the register of its debenture holders, its shares and debentures, its indebtedness, its members and debenture holders, past and present, and its directors, managing directors, managers and secretaries, past and present.

Section 162(1):- “If a company fails to comply with any of the provisions contained in section 159, 160 or 161, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to Rs 500/- for every day during which the default continues”.



We have heard the Practicing Company Secretary on 28/10/2016, 25/11/2016 and 22/12/2016. He represented that there was delay in holding Annual General Meetings for the above financial years due to reasons stated in the Application and further contended that the Applicant Company since complied the requirements by filing the Annual Returns for the 4 financial years 2008-09, 2009-10, 2010-11 and 2011-12 by paying additional fee. The Practicing Company Secretary would contend that, the Applicant Company in fact discontinued operations from 2007 and hence requesting the Tribunal to take lenient view.

We have seen the report of the Registrar of Companies, Karnataka, Bangalore vide letter No. ROCB/MMM/621A/0323663/2015 dated 18th November 2015. In his report, it is stated that the Applicant Company since complied the provisions of section 159 of the Companies Act, 1956 by filing Annual Returns for the above default years by paying additional fees. Thus there was compliance by the Applicant Company. The Registrar of Companies, Karnataka, Bangalore further stated that, the Company Application may be decided on merits.

We have seen the contents of the Application and also the documents filed along with it. Copy of Form 20B and Schedule V for the financial years 2008-09, 2009-10, 2010-11 and 2011-12 which is marked as Annexure- A3. Thus material is placed by the Applicant Company to the effect that the Applicant Company has complied the provisions of section 159 of the Companies Act, 1956. Since it is stated the Applicant Company has stopped doing transactions w.e.f. 2007. We proposed to levy compounding fee for the violation on the Applicant Company for the 4 financial years 2008-09, 2009-10, 2010-11 and 2011-12 as follows:-

Sl. No.	Name of the Applicant	Financial year	No. of days delay	Violation of Sec.22C of the Companies Act, 1956	Amount Rs.
1	MBNA Indian Services Private Limited- The Applicant Co.	2008-09	259	259 x 100/-	25,900/-
		2009-10	238	238 x 100/-	23,800/-
		2010-11	223	223 x 100/-	22,300/-
		2011-12	38	38 x 100/-	3,800/-
Total					75,800/-

(Rupees Seventy five thousand eight hundred only)

In pursuant to our Order dated 06/01/2017 mentioned herein above, the Applicant have paid the compounding fee by depositing Demand Draft bearing No. 016268 dated 03/02/2017 for Rs. 75,800/- (Rupees Seventy five thousand eight hundred only) of HDFC Bank, Richmond Road, Bangalore drawn in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai".

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 6th DAY OF FEBRUARY 2017