

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

T.P.NO. 263/2016

(DATED: FRIDAY THE 20TH JANUARY 2017)

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

**IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A UNDER SECTION 220 OF THE COMPANIES ACT, 1956
AND**

IN THE MATTER OF MAITRI SUVARNASIDHI PRIVATE LIMITED

1. Maitri Suvarnasidhi Private Limited,
7th Floor, Manipal Centre,
No.47, Dickenson Road,
81 Municipal Division,
Bangalore-560042.
2. Mr. Lakshmikant Shrikrishna Narvekar - Director
7th Floor, Manipal Centre,
No.47, Dickenson Road,
81 Municipal Division,
Bangalore-560042.
3. Mr. Vijay Shankar Tavare - Director
7th Floor, Manipal Centre,
No.47, Dickenson Road,
81 Municipal Division,
Bangalore-560042.

APPLICANTS

PARTIES PRESENTED: Mr.R. Kannan, Sri Sankara Gurukrupa Illam, No.6A,
10th Street, New Colony, Adambakkam,
Chennai-600088 – Practicing Company Secretary
and Authorised representatives for the Applicants.

Heard on: 28/10/2016, 16/11/2016, 06/12/2016. 13/12/2016 and 21/12/2016

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 220 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. 263/16 in the file of Tribunal.

The averments in the Application are briefed hereunder:-




The 1st Applicant Company was incorporated under the Companies Act, 1956 on 3rd October 2013 as a Private Limited Company in the name and style of Maitri Suvarnasidhi Private Limited vide Registration No. CIN-U36911KA2013PTC071272. The Registered office of the company is situated at 7th Floor, Manipal Centre, No.47, Dickenson Road, 81, Municipal Division, Bangalore-560042.

The present Authorized share capital of the 1st Applicant company is Rs. 1,00,000/- (Rupees One lakh only) consisting of 10,000 (Ten thousand) Equity Shares of Rs 10/- each. The issued, subscribed and paid up capital is Rs. 1,00,000/- (Rupees one lakh only) consisting of 10,000 equity shares of Rs 10/-each.

The Main objects of the 1st Applicant Company is to carry on the business of trading, manufacturing, making, buying, selling assembling, importing, exporting and dealing in ornaments, imitation jewelleryes and jewelleryes of all kinds whether of gold, silver, platinum, rolled gold and other metals and alloys, precious stones like diamonds, rubies, emeralds, pearls and any other substances and to establish and maintain franchises, factories and workshops for manufacturing and making such ornaments, jewelleryes and other articles etc., Details of the objects of the company are mentioned in the Memorandum and Articles of Association of the 1st Applicant Company.

It is averred in the Company Application that, the Registrar of Companies, Karnataka, Bangalore has filed the complaint in the Special Court for Economic Offences, Bangalore bearing C.C.No.407/2015 C.C.No.411/2015 against the 1st Applicant Company based on the provisional balance sheet submitted by the Company for the period ended 31st March 2015 and issued Show Cause Notice bearing No. ROCB/PS/D/N/CO.NO.71272/2015 dated 28th July 2015 to that effect. The Applicants further averred the Annual General Meeting of the Company for the period ended 31/03/2014 was held on 27/11/2014 and the company could not file the financial reports for the period ended 31/03/2014 with the Registrar of Companies, as required under section 220 of the Companies Act, 1956 due to administrative issues. However the company has subsequently filed the financial reports for the period ended 31/03/2014 vide SRN Q77556439 dated 29/02/2016.



The Applicants admitted default of provisions of sub-section (1) of section 220 of the Companies Act, 1956 for not filing of the financial statements with the Registrar of Companies, Karnataka at Bangalore within the stipulated time. The 1st Applicant Company and its Directors suo-moto have filed this application to compound the offence, praying the Tribunal to compound the offence and sought relief on the ground that:-

- 1) There was an unavoidable difficulty which resulted in a delay of getting the digital signatures from the Director of the Company.
- 2) The procedures in the MCA website have changed their user interface which has become harder for the officials to understand and use and hence contributing to the delay in filing.
- 3) The company could not file the Annual Report for period ending 31st March 2014 with the Registrar of Companies within the stipulated time due to administrative issues.

The application was filed before the Company Law Board, Southern Region, Chennai.

The report of Registrar of Companies, Karnataka, Bangalore was received vide letter No. ROCB/AHN/621A/Co.71272/2015 dated 31/05/2016 along with copy of the Show Cause Notice dated 28th July 2015 and copy of requesting letter of authorized signatory to the Registrar of Companies, Karnataka, Bangalore.

In his report the Registrar of Companies, Karnataka, Bangalore informed that, complaints were filed in Special Court for Economic Offences, Bangalore bearing C.C.No.407/2015 C.C.No.410/2015, C.C.No.411/2015 C.C.No.412/2015. Further, Registrar of Companies, Karnataka, Bangalore reported that complaint were filed basing on the provisional balance sheet submitted by the 1st Applicant Company for the period ended 31/03/2015.

The Applicants also admitted filing of complaint by the Registrar of Companies, Karnataka, Bangalore pending on the filing of Special Court for Economic Offences, Bangalore.

It is clear after prosecution was launched against the Applicants then only they filed this Application before the Registrar of Companies, Karnataka, Bangalore for compounding, No prior permission is required from the Special Court for Economic Offences, Bangalore for compounding where prosecution is pending for violation by the Tribunal by virtue of powers conferred under section 621A of the Companies Act, 1956.



The offence can be compounded either before or after prosecution is launched against the Applicants. 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 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 same.

The provisions of section 220(1 & 3) read with the provisions of section 162 of the Companies Act, 1956 are as follows:-

Section 220(1) of the Companies Act, 1956 reads as follows:

“After the balance sheet and the profit and loss account have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar within thirty days from the date on which the balance sheet and the profit and loss account were so laid, or where the annual general meeting of a company for any year has not been held, there shall be filed with the Registrar within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act.”

- (a) Three copies of the balance sheet and the profit and loss account, signed by the managing director, manager, or secretary of the company, or if there be none of these, by a director of the company, together with three copies of all documents which are required by this Act to be annexed or attached to such balance sheet or profit and loss account.

Provided that in the case of a private company, copies of the balance sheet and copies of the profit and loss account shall be filed with the Registrar separately”

Section 220(3):-“if default is made in complying with the requirement of sub-sections (1) and (2), the company, and every officer of the company who is in default, shall be liable to the like punishment as is provided by Section 162 for a default in complying with the provisions of Section 159, 160 or 161.

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 for the Applicants on 28/10/2016, 16/11/2016, 06/12/2016, 13/12/2016 and 21/12/2016. It is stated that, the company could not place its accounts due to administrative issues. It is contended that, the Annual General Meeting was however held on 27th November 2014 and audited accounts financial statements were laid before Annual General Meeting and there was compliance. However, the 1st Applicant Company filed the Annual Return forms for the relevant period i.e., e-Forms 23AC and 23ACA for the financial year ending 31/03/2014 with the Registrar of Companies, Karnataka, Bangalore on 29/02/2016 with a delay of 430 days. Thereby there was violation of provisions of section 220 of the Companies Act, 1956 for the financial year 2013-14. Hence, Applicants prayed for Compounding the violation with minimum compounding fees.

We made it clear that, this order is confined for compounding of violation of provisions of section 220 of the Companies Act, 1956 only.

We have perused the report of the Registrar of Companies, Karnataka, Bangalore vide his letter bearing No. ROCB/AHN/621A/Co.71272/2015 dated 31/05/2016 and also perused the documents filed by the Applicants. We have seen the Affidavit filed by the 3rd Applicant Director. We have seen the Memorandum and Articles of Association and certified copy of the Annual Return of the Company for the financial year 2013-14 filed on 29/02/2016 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, we hereby levy the compounding fee on the Applicant Nos. 1 to 3 as set out in the table given hereunder:-

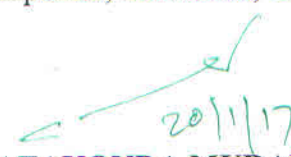


Sl. No.	Particulars	Violation of Sec.220 of Companies Act, 1956 No. of days delay	Total Rs.
1	1 st Applicant Company	430 x 50/- = 21,500/-	21,500/-
2	2 nd Applicant Director	430 x 50/- = 21,500/-	21,500/-
3	3 rd Applicant Director	430 x 50/- = 21,500/-	21,500/-

In pursuant to our Order dated 06/01/2017 mentioned herein above, the Applicants have paid the compounding fee by depositing 3 Demand Drafts of IDBI Bank, Bangalore drawn on 12/01/2017 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 Company	21,500/-	008703 dt. 12/01/2017
2	2 nd Applicant- Director	21,500/-	008704 dt. 12/01/2017
3	3 rd Applicant- Director	21,500/-	008705 dt. 12/01/2017

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 20th DAY OF JANUARY 2017.