

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

**T.P.NO. 142/2016**

**IN**

**C.A. NO. 138/621A/CB/2015**

**(DATED: WEDNESDAY THE 15<sup>TH</sup> DAY OF FEBRUARY 2017)**

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

**IN THE MATTER OF COMPANIES ACT, 2013  
SECTION 297 READ WITH SECTION 621A  
OF THE COMPANIES ACT, 1956**

**AND**

**IN THE MATTER OF  
NXTGEN DATA CENTER AND CLOUD SERVICES LIMITED**

**T.P NO. 142/2016 IN C.A.NO. 138/621A/CB/2015**

1. M/s NXTGEN DATA CENTER AND CLOUD SERVICES LIMITED,  
Plot No.72 & 73 EPIP Area,  
Hoodi Village, K.R.Puram Hobli,  
Whitefield, Bangalore-560066.
2. Mr. Ritesh Khandelwal – Director,  
# 341, 7<sup>th</sup> Cross, Laxmi Road,  
Shantinagar, Bangalore-560027
3. Mr. Sadashivappa Rudra Prasad – Director,  
# 13, 3<sup>rd</sup> Cross, 7<sup>th</sup> Block,  
Jayanagar, Bangalore-560086.
4. Mr. Srinivas Rajgopal Anasrapu- Director  
No.81, Ferns City, Doddanekundi, Marathahalli,  
Bangalore-560037.
5. Mr. Viral Bhakulesh Thakkar – Director,  
No.11/12, Ram Vatika CHS, 3<sup>rd</sup> Floor,  
Prathana Samaj Road,  
Vile Parle (E), Mumbai-400057.
6. Mr. Dakshinamoorthy Satyamoorthy – Director,  
B-7, 1764, South City, Arekere MICO Layout,  
Bangalore-560076.
7. Mr. Varma Bhaskar Kalidindi - Director  
Flat No.204, Bougain Villea APTs,  
Near Food World, Dharam Karan Road,  
Ameer Pet, Hyderabad-500016.
8. Mr., Kannan Venkataraman – Director,  
A-203, Shriram Srishti Apts.  
Sumangali Seva Ashram Road,  
R.T.Nagar P.O, Bangalore-560032. -

Applicants

PARTIES PRESENT:

Ms. Bhavana Chakragiri, Practising Company  
Secretary, No. 987, 3<sup>rd</sup> Cross, 6<sup>th</sup> Main, 6<sup>th</sup> Block,  
HMT Layout, Vidyananyapura, Bangalore-560097  
and authorised Representative for the Applicants

Heard on: 23/08/2016, 01/09/2016, 14/09/2016, 22/09/2016,  
03/10/2016, 26/10/2016, 21/11/2016, 19/12/2016 and 19/01/2017

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**O R D E R**

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 297 of the Companies Act, 1956 and it was numbered as C.A 138/621A/CB/2015. 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. 142/2016.

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

The 1<sup>st</sup> Applicant Company was incorporated under the Companies Act, 1956 on 26<sup>th</sup> April 2012 under the name and style of NxtGen Datacenter and Cloud Services Limited vide Registration No. CIN-U72200KA2012PLC063726. The Registered office of the company is situated at Plot No. 72 & 73 EPIP Area, Hoodi Village, K.R.Puram Hobli, Whitefield, Bangalore-560066.

The Authorised share capital of the company is Rs. 10,00,00,000/- divided into 1,00,00,000 equity shares of Rs. 10/- each and paid up capital is Rs. 2,96,56,000/- divided into 29,65,600 equity shares of Rs.10/- each.

The Main objects of the 1<sup>st</sup> Applicant Company is to carry on the business of Software designing, development, customization, implementation, maintenance testing and benchmarking, to import, export, sell, purchase software packages, programs and solutions and to provide internet / web based applications, to undertake IT enabled services like call centre management, medical and legal transcription, and all types of tabulating machine, accounting machines, calculators, and in providing consultancy services in all above mentioned areas etc., Details of the objects of the Company are mentioned in the Memorandum of Association of the 1<sup>st</sup> Applicant Company.






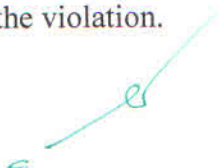

The averments in the petition that, 1<sup>st</sup> Applicant Company entered into Asset Purchase Agreement dated 2<sup>nd</sup> July 2013 with Nxtgen Datacenter and Cloud Technologies Private Limited earlier known as PVRR Data City Private Limited having its Registered Office at Plot No.72 & 73, EPIP Area, Hoodi Village, K.R.Puram Hobli, Whitefield, Bangalore-560066. Pursuant to which substantial part of moveable assets and other assets of the 1<sup>st</sup> Applicant Company were sold, transferred, conveyed, assigned and delivered to Nxtgen Datacenter and Cloud Technologies Private Limited.

It is further averred that, as per provisions of section 297 (1) of the Companies Act, 1956, a public company shall entering into a contract or arrangement for sale of goods, materials and services with a private limited company in which the director of the public company is a director or member of the public limited company, shall take prior approval of its board of directors prior to such transaction. The paid up share capital of the public limited company is Rs 1,00,00,000/- or more, prior approval of the Central Government shall be required for such transaction.

It is further averred that, the paid up capital of the 1<sup>st</sup> Applicant Company as on the date of the Agreement was Rs 1,00,00,000/-. Consequently, the transaction with Nxtgen Datacenter and Cloud Technologies Private Limited falls within the purview of Section 297 (1) of the Companies Act, 1956 which require prior approval of the Central Government. However, due to inadvertence the 1<sup>st</sup> Applicant Company failed to obtain prior approval of the Central Government for the above transaction.

It is further averred that the Applicant suo-moto filed this application for compounding. It is averred the said violation is neither intentional nor wilfull and is not of such nature as to prejudice the interests of the Members or creditors or others dealing with the Applicants and it will not affect the public interests in any way.

It is further averred, that the Directors of the 1<sup>st</sup> Applicant Company are also the Member/Director of the Nxtgen Datacenter and Cloud Technologies Private Limited prior to such transactions and prayed the Tribunal to take lenient view in compounding the violation.



**Sec. 297(1) of Companies Act, 1956 reads as follows:**

- (1) Except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company-
- (a) for the sale, purchase or supply of any goods, materials or services;  
or
- (b) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company:

Provided that in the case of a company having a paid- up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government.

For violation of provisions of Sec. 297 the penalty is provided under 629A of the Companies Act, 1956.

“If a Company or any other person contravenes any provision of this Act for which no punishment- is provided elsewhere in this Act or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to five thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues”.

We have heard the Practicing Company Secretary for applicants. She filed copy of the Income Tax order issued by the Income Tax Officer, Ward – 5(1) (1), Bengaluru. She also filed Assessment Order. Applicants filed Memorandum and Articles of Association marked as A1. We have seen financials of the Company for the year ended 31/03/2013 and 31/03/2014 along with Auditor's Report marked as A3 and also seen the Asset Transfer Agreement dated 2<sup>nd</sup> July 2013 marked as A5 and also the Resolution dated 3<sup>rd</sup> February 2015 marked as A6.

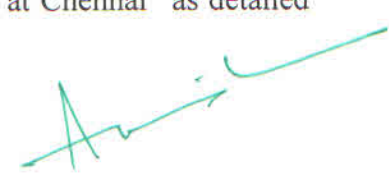


Practicing Company Secretary for applicants would contend that 1<sup>st</sup> Applicant Company entered into Asset Transfer Agreement with Nxtgen Datacenter and Cloud Technologies Private Limited. Practicing Company Secretary would further contend that 1<sup>st</sup> Applicant Company failed to obtain prior approval from the Central Government and it was due to inadvertence. Practicing Company Secretary for applicants would further contend that Applicants suo-moto filed this Application for compounding admitting default.

We have seen the report of the Registrar of Companies Karnataka, Bangalore vide letter No.ROCB/AHN/STA/SEC621A/063726/2015 dated 26<sup>th</sup> June 2015. There was delay of 581 days in filing compounding application from the date of entering into Asset Transfer Agreement with Nxtgen Datacenter and Cloud Technologies Private Limited. Considering the submissions made by the Practicing Company Secretary for Applicants and also the documents and the report of Registrar of Companies Karnataka, Bangalore, we levy compounding fee on the Applicants as shown hereunder:-

Sl. No	Particulars	Violation of Sec. 297(1) of the Companies Act, 1956	No. of Days Delay 581	Total
1.	1 <sup>st</sup> Applicant Company	1,000/-	581 x 20/- =11,620/-	12,620/-
2.	2 <sup>nd</sup> Applicant - Director	1,000/-	581 x 20/- =11,620/-	12,620/-
3	3 <sup>rd</sup> Applicant - Director	1,000/-	581 x 20/- =11,620/-	12,620/-
4	4 <sup>th</sup> Applicant Director	1,000/-	581 x 20/- =11,620/-	12,620/-
5	5 <sup>th</sup> Applicant Director	1,000/-	581 x 20/- =11,620/-	12,620/-
6	6 <sup>th</sup> Applicant Director	1,000/-	581 x 20/- =11,620/-	12,620/-
7	7 <sup>th</sup> Applicant Director	1,000/-	581 x 20/- =11,620/-	12,620/-
8	8 <sup>th</sup> Applicant Director	1,000/-	581 x 20/- =11,620/-	12,620/-

In pursuant to our Order dated 31/01/2017 mentioned herein above, the Applicants have paid the compounding fee by depositing 8 Demand Drafts of HDFC Bank, Jayanagar, Bangalore drawn on 13/02/2017 in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai" as detailed below:-

Sl. No.	Particulars of Applicant	Fee Amount/D.D Rs.	DD No. & Date
1.	1 <sup>st</sup> Applicant Company	12,620/-	017117 dt. 13/02/2017
2.	2 <sup>nd</sup> Applicant - Director	12,620/-	017118 dt. 13/02/2017
3	3 <sup>rd</sup> Applicant -Director	12,620/-	017119 dt. 13/02/2017
4	4 <sup>th</sup> Applicant Director	12,620/-	017120 dt. 13/02/2017
5	5 <sup>th</sup> Applicant Director	12,620/-	017121 dt. 13/02/2017
6	6 <sup>th</sup> Applicant Director	12,620/-	017122 dt. 13/02/2017
7	7 <sup>th</sup> Applicant Director	12,620/-	017123 dt. 13/02/2017
8	8 <sup>th</sup> Applicant Director	12,620/-	017124 dt. 13/02/2017

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 at Bangalore for appropriate action.

(RATAKONDA MURALI)  
MEMBER, JUDICIAL

(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

DATED THIS THE 15<sup>th</sup> DAY OF JANUARY 2017