

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

T.P.NO. 155/2016

IN

CA NO. 204/2015

(DATED: FRIDAY, THE 3RD DAY OF MARCH 2017)

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

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

AND

IN THE MATTER OF OMEGA HOSPITALS PRIVATE LIMITED

T.P.NO. 155/2016 IN CA NO. 204/2015

1. Omega Hospitals Private Limited
Pumpwell Bypass Road,
Kankanady,
Mangalore-575002.
2. Mr. Mukund Kumbla - Director,
Pratheeksha, Vyasa Rao Road,
Kadri, Managalore-575003
3. Mr. Suresh Surathkal – Managing Director,
Bhuvaneshwari Nilaya,
Iddya Surathkal,
Mangalore-575014
4. Mr. A.G.Jayakrishnan- Director,
Villa A, The Pyramid,
Falnir, Mangalore-575002
5. Mr. Mohanchandra Suvarna – Director,
H.No. 3-12-1078,
Kadri, Mangalore-575004.
6. Mr. Bhaskar Bhappal – Director,
J.B.Compound, Jeppu,
Mangalore-575002.

- APPLICANTS

PARTIES PRESENT: Sri Harishankar Mani/Anant Merathia, No.115, First Floor, Luz
Church Road, Mylapore, Chennai-600004. Counsel and
Authorised representative for the Applicants.

Heard on: 08/11/2016, 28/11/2016 and 19/12/2016.

ORDER

The Application is filed on behalf of the Applicants under Sec. 621A of Companies Act 1956 before the Company Law Board, Southern Region, Chennai and numbered as C.A No. 204/2015. 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. It was renumbered as T.P No. 155/2016 in this Tribunal. This Application is filed by the Applicants with a prayer to record compounding for violation of provisions of section 220 of the Companies Act, 1956.

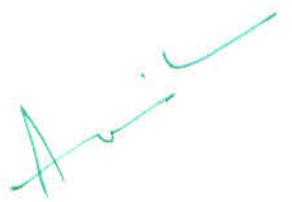
The averments in the Company Application are briefly stated hereunder:

The 1st Applicant is a company which was incorporated under the Companies Act, 1956 on 23rd March 1998 under the name and style "Omega Hospitals Private Limited" vide Corporate Identity No. U85110KA1998PTC023525. The Registered Office of the company is situated at # Pumpwell Bypass Road, Kankanady, Mangalore-575002

The Authorised Share Capital of the Applicant company as per latest Audited Balance Sheet is Rs. 2,10,00,000/- divided into 2,10,000 Equity Shares of Rs 100/- each and the Paid up Capital is Rs 1,99,03,800/- divided into 1,99,038 Equity Shares of Rs 100/-.

The main object of the 1st Applicant Company is to acquire establish, lease, take on lease and run Hospital(s) with the facilities of medical care and advanced treatment in super specialties and diagnostic centre (s) etc., Details of the main object of the Company are stated in the Memorandum and Articles of Association.

The petitioners in this case are the Company and the Directors as per details given below:-

- 1) Omega Hospitals Private Limited
 - 2) Suresh Surathkal, Managing Director
 - 3) Mukund Kumbla, Director
 - 4) A.G Jayakrishnan, Director
 - 5) Mohanchandra Suvarna, Director
 - 6) Bhaskar Bappal, Director.
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It is averred in the company Application that, the Applicants have filed the Company Application based on the report of inspection carried out by the Inspecting Officer under section 209A of the Companies Act, 1956. The Inspecting Officer observed that, the Balance sheet and Profit and Loss Account for the Financial year ended 31/03/2006 which was signed on 27th February 2006, was not filed with the Registrar of Companies, Karnataka, Bangalore. It is also observed that, the Balance sheet and Profit and Loss Account for the Financial year ended 31/03/2007, 31/03/2008, 31/03/2009, 31/03/2010 and 31/03/2011 were not signed and filed with the Registrar of Companies, Karnataka, Bangalore as of January 2013 and thus the Applicants have contravened the provisions of Section 220(3) of the Companies Act, 1956.

It is further averred that, the 1st Applicant Company which was incorporated on 23rd March 1998 was functioning well till 2005, after which the disputes started in the Management. This has resulted into the non-compliance of certain provisions of the Companies Act, 1956, the reasons stated hereunder for non-compliance of Section 220 of the Companies Act, 1956 are as follows:-

- Since the paid up share capital of the company was less than Rs 2 Crores, appointment of full time Company Secretary was not mandatory. However, non-availability of a fulltime Company Secretary has resulted in non-compliance of certain sections and provisions of the Companies Act, 1956.
- The growing difference between the Directors managing the Company caused a formation of two groups of Directors one being headed by Dr. Joe Verghese and other by Dr. Mukunda Kumbla, the founders and promoters of the Company.
- The company was managed by the group of Directors headed by Dr. Mukund Kumbla since 2007. The non-cooperation by Dr. Joe Verghese group has disturbed the normal function of the company and conducting of regular Board Meetings and Annual General Meetings since the year 2007.
- The required Statutory Approval could not be obtained and hence led to non-compliance.
- The Statutory Auditor for the year ended 31st March 2007 did not complete the Audit due to the non-cooperation from the Dr. Joe Verghese group of Directors.

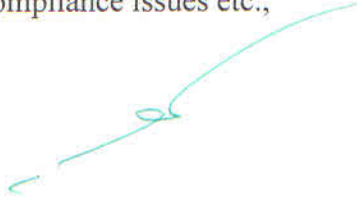
- The Hon'ble Regional Director, Chennai vide their dated 14/05/2009 permitted the Management to remove the Statutory Auditor. Accordingly the Statutory Auditor was removed and a new Statutory Auditor was appointed in the Extra Ordinary General Meeting held on 31st August 2009 to conduct the Statutory Audit for the financial year ended 31st March 2007. Due to the delay in completing the Statutory Audit for the financial year 2006-07 as stated above, copies of Balance Sheet and Profit and Loss Account could not be filed with the Registrar of Companies, Karnataka, Bangalore within 30 days from the latest day on or before which the Annual General Meeting should have been held in accordance with the provisions of the Companies Act, 1956.

It is also averred that, the Company Law Board, Chennai vide its order dated 15/11/2011 has declared the company as "*Company having Management Dispute*".

However, the 1st Applicant Company has stated that, the offence was made good that, all the Balance Sheet and Profit and Loss Account were filed with the Registrar of Companies, Karnataka, Bangalore since from 2006-07 to 2012-13 on 15th October 2014 under CLSS,2014 Scheme in the prescribed e-form 23AC and 23ACA.

The further averments made in the Application are stated as follows:-

- 1) That there was management dispute between two groups of shareholders of the company since 2007 wherein one group was led by the 2nd Applicant herein, who has held 53.36% of the paid-up share capital of the company and had five Directors on the Board. The other group was led by one Dr. Joe Verghese who has held 46.64% of the paid-up share capital with four Directors on the board until 2015. During the year 2015, one of the shareholders sold majority of the shares to Dr. Mukund and thus making his group own about 58.63% of the paid-up share capital of the company with six directors on the board.
- 2) It is further stated that, due to the acts of Dr. Joe Verghese's group and the inters share holder disputes between the two groups the day to day management of the company has severely suffered which led to two company petitions filed before the erstwhile Hon'ble Company Law Board, Chennai and other litigations in local courts at Mangalore.

- 3) That in the background of these litigations several restraints were imposed on the company by way of stay orders from a judicial forum/court or non-cooperation in the holding of board or general body meeting by the group led by Dr. Joe Vergehese. Due to this the company led to default in statutory compliances and in the process there were violations of certain sections of the Companies Act, 1956.
 - 4) It is further stated that, the said violations have taken place inadvertently and have been due to the helpless situation the Applicants were facing since 2006-07, even if they were trying to adhere to statutory compliances, the said non-cooperation of the other group and the litigations pending in the courts led to a stalemate of management decisions.
 - 5) The Applicants from time to time for the last 10 years made efforts to amicably resolve the management disputes and also attempted settlement of the same with the other group but unfortunately have not seen reciprocation of the same from the other group. The Applicants have done their best to keep the operations of the company running which is that of running a hospital in Mangalore.
 - 6) The Applicants thereby sincerely plead the indulgence of this Tribunal with respect to the same as the Applicants would be in a position to establish by way of this Memo that they were genuinely constrained and were not able to fulfill certain statutory obligations due to court orders in the background of the management disputes.
 - 7) The Applicants provide a chronological synopsis of the orders of the Hon'ble company Law Board, Chennai and the local court at Mangalore due to which board and general body meetings could not be held, certain agenda items could not be implemented from time to time, and the audit of the company could not be done either for a long period of time.
 - 8) The Applicants also highlighted the crucial order of the Hon'ble company Law Board, Chennai passed on 13/11/2013 whereby finally the Hon'ble company Law Board, Chennai appointed an Independent Chairman and a Statutory Auditor to complete the audit of the company for the period 01/04/2007 to 31/03/2013 and also hold the general body and board meetings subsequent to the said appointments to streamline the operations of the company and approve the audited accounts, make good of the pending compliance issues etc.,
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Since there was management dispute and time and again issue was before the Hon'ble Company Law Board, Chennai and due to unawareness on the part of the Managing Director, the said default was occurred. The period of default is from 2006-07 to 2010-11. The Counsel for Applicants contended that the hospital is running in losses as on 31/03/2014. The Counsel for Applicants has made submissions orally and through memo filed for the issues relating to the violation of provisions of Section 220 of the Companies Act, 1956 which reads as follows:-

As per the provisions of section 220 (3) read with the provisions of section 162 of the Companies Act, 1956 is given below:-

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 seen the copy of the Show Cause Notice No. ROCB/MMM/SCN/SEC 220/023525/2015 dated 24/02/2015 issued by the Registrar of Companies, Karnataka, Bangalore which is marked as Annexure-XI. We have seen Memorandum and Articles of Association marked as Annexure-II and also we have seen the annual accounts filed in e-form 23AC and 23ACA along with the Challans filed with the Registrar of Companies, Karnataka, Bangalore for the financial years from 2006-07 to 2012-13 marked as Annexure-VII.

We have received report from the Registrar of Companies, Karnataka at Bangalore vide letter No. ROCB/MMM/Sec.621A/2014 dated 18/08/2015 who stated that offence can be compounded by levying compounding fee on the Applicants. Considering the submissions made by the Counsel for petitioners and after going through the contents of the application and documents filed, we hereby levy the compounding fee for violation of section 220(1) of the Companies Act, 1956 on Applicant Nos.1 to 6 as set out in the table given hereunder considering the prevalent management dispute and financial status of the Hospital.

Sl. No.	Particulars	Violation of Sec.220 of Companies Act, 1956 With No.of days delays					Total
		2006-07	2007-08	2008-09	2009-10	2010-11	
1	1 st Applicant Company	2753 x 10= 27530	2207 x 10= 22070	1842 x 10 = 18420	1477 x 10= 14770	1112 x 10 = 11120	93,910/-
2	2 nd Applicant-Director	2753 x 10= 27530	2207 x 10= 22070	1842 x 10 = 18420	1477 x 10= 14770	1112 x 10 = 11120	93,910/-
3	3 rd Applicant-Managing Director	2753 x 10= 27530	2207 x 10= 22070	1842 x 10 = 18420	1477 x 10= 14770	1112 x 10 = 11120	93,910/-
4	4 th Applicant-Director	2753 x 10= 27530	2207 x 10= 22070	1842 x 10 = 18420	1477 x 10= 14770	1112 x 10 = 11120	93,910/-
5	5 th Applicant-Director	2753 x 10= 27530	2207 x 10= 22070	1842 x 10 = 18420	1477 x 10= 14770	1112 x 10 = 11120	93,910/-
6	6 th Applicant-Director	2753 x 10= 27530	2207 x 10= 22070	1842 x 10 = 18420	1477 x 10= 14770	1112 x 10 = 11120	93,910/-

In pursuant to our Order dated 6th January 2017 mentioned herein above, the Applicants have paid the compounding fee by depositing 6 Demand Drafts of Karnataka Bank, Balmatta Road Branch, Mangalore, State Bank of India, Kankanady, Mangalore, HDFC Bank, Mangalore and Corporation Bank, Mangalore-Jeppu, Mangalore 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.	Name of the Bank	DD No. & Date
1	1 st Applicant Company	93,910/-	State Bank of India, Kankanady, Mangalore,	433454 dt. 19/01/2017 ✓
2	2 nd Applicant-Director	93,910/-	Karnataka Bank, Mangalore	828879 dt. 19.01.2017 ✓
3	3 rd Applicant-Managing Director	93,910/-	Karnataka Bank, Mangalore	828882 dt. 19/01/2017 ✓
4	4 th Applicant-Director	93,910/-	HDFC Bank, Mangalore	011175 dt. 13/01/2017 ✓
5	5 th Applicant-Director	93,910/-	Karnataka Bank, Mangalore	828888 dt. 19/01/2017 ✓
6	6 th Applicant-Director	93,910/-	Corporation Bank, Mangalore	395775 dt. 17/01/2017 ✓

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  DAY OF MARCH, 2017.