

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

T.P.NO. 161/2016

IN

CA NO. 210/2015

(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 285
OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF OMEGA HOSPITALS PRIVATE LIMITED

T.P.NO. 161/2016 IN CA NO. 210/2015

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 was originally filed on behalf of the Applicants under Sec. 621A of Companies Act 1956 before the Company Law Board, Southern Region, Chennai. The Application was numbered as CA 210/2015 on the file of Company Law Board. 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 is renumbered as T.P No. 161/2016 on the file of this Tribunal. This petition is filed by the Applicants with a prayer to compound the violation of provisions of section 285 of the Companies Act, 1956.

The averments in the Company Application are briefly stated hereunder:

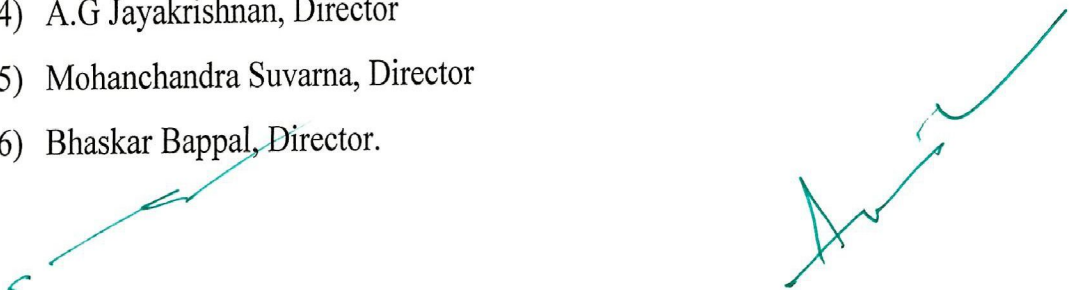
The 1st Applicant is a company which was incorporated under the Companies Act, 1956 on 23rd March 1998 under the name and style "Omega Hospitals Private Limited" vide Corporate Identity No. U85110KA1998PTC023525. The Registered Office of the company is situated at # Pumpwell Bypass Road, Kankanady, Mangalore-575002

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 Kumbha, Director
- 4) A.G Jayakrishnan, Director
- 5) Mohanchandra Suvarna, Director
- 6) Bhaskar Bappal, Director.



It is averred in the company Application that, the Applicants filed this 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, no Board Meetings were held during the Quarters July, August, September of 2008, Jan, Feb-March of 2009, Apr-May-June of 2009, Jan-Feb-March of 2010, Apr-May-June of 2010, Oct-Nov-Dec. of 2010, Jan-Feb-March of 2011, April-May-June of 2011, July-Aug-September 2011, Jan-Feb-March of 2012 and July-Aug-Sept. of 2012 and has said there was violation of the provisions of Section 285 of the Companies Act, 1956.

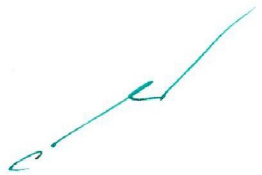
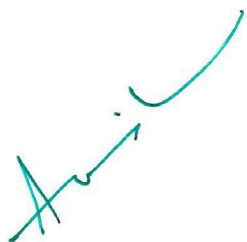
It is further averred that, the 1st Applicant Company which was incorporated on 23rd March 1998 was functioning well till 2005, after which the disputes started in the Management. This has resulted into the non compliance of certain provisions of the Companies Act, 1956. The reasons for non-compliance of Section 285 of the Companies Act, 1956 as stated are here under:-

- 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 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 till 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.
- Dr. Joe Verghese group of Directors were in the habit of disrupting the process of conducting the Board Meetings.
- Due to the said reasons holding and conducting of Board Meetings used to create more friction between the two groups of Directors, affecting the normal functioning of the Hospital. Hence, the Management could not conduct the Board Meetings for the quarters of July-Aug-Sept.2008 till July-Aug-Sept.2012.

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 violation came to an end with the appointment of Independent Chairman by order of Company Law Board, Chennai dated 13/11/2013 in C.P 64/2007. The Company has been conducting Board Meeting as per the rules and regulations laid down under the Companies Act, 2013 and the Companies Rules, 2014. Now the 1st Applicant Company at present is complying with conducting of Board Meetings at periodic intervals.

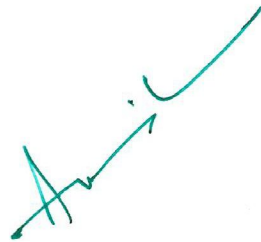
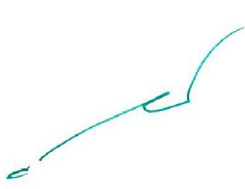
The further averments made in the Application are as follows:-

- 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 interse shareholder 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 Verghese. 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.
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- 5) The Applicants from time to time for the last 10 years made efforts to amicably resolve the management disputes and also attempted for 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 at 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 from 01/04/2007 to 31/03/2013 and also hold the general body and board meetings subsequent to the said appointment to streamline the operations of the company and approve the audited accounts, make good of the pending compliance issues etc.,

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 2008 to 2012 and the No. of delay is 1553 days. The Counsel for Applicants has contended that the hospital is running in loss as on 31/03/2014. The Counsel for Applicants has repeatedly made submissions orally and through memo filed for the issues related to the violation of provisions of Section 285 of the Companies Act, 1956 which reads as follows:-

“In the case of every company, a meeting of its Board of Directors shall be held at least once in every three months and at least four such meetings shall be held in every year”.



The penalty for the violation committed under the provisions of section 285 of the Companies Act, 1956 which is punishable under section 629A of the Companies Act, 1956 which reads as follows:-

“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 Rs 5,000/-, and where the contravention is a continuing one, with a further fine which may extend to Rs 500/- for every day after the first during which the contravention continues”.

We have seen the copy of the Show Cause Notice No. ROCB/MMM/SCN/SEC 285/023525/2015 dated 24/02/2015 issued by the Registrar of Companies, Karnataka, Bangalore which is marked as Annexure-IX. We have seen Memorandum and Articles of Association marked as Annexure-II and also we have seen annual accounts for the financial year 2013-14 marked as Annexure-I. We have seen the order of the Company Law Board, Chennai which is marked as Annexure- IIIA. We have seen the Affidavit of 2nd Applicant Dr. Mukund Kumbla,

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 under section 285 for violation 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.285 of Companies Act, 1956	No. of 1553 days delay	Total Rs.
1	1 st Applicant Company	1,000/-	1553 x 10/- =15,530/-	16,530/-
2	2 nd Applicant- Director	1,000/-	1553 x 10/- =15,530/-	16,530/-
3	3 rd Applicant- Managing Director	1,000/-	1553 x 10/- =15,530/-	16,530/-
4	4 th Applicant-Director	1,000/-	1553 x 10/- =15,530/-	16,530/-
5	5 th Applicant-Director	1,000/-	1553 x 10/- =15,530/-	16,530/-
6	6 th Applicant-Director	1,000/-	1553 x 10/- =15,530/-	16,530/-

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	16,530/-	State Bank of India, Kankanady, Mangalore,	433457 dt. 19/01/2017 ✓
2	2 nd Applicant-Director	16,530/-	Karnataka Bank, Mangalore	828876 dt. 19.01.2017 ✓
3	3 rd Applicant- Managing Director	16,530/-	Karnataka Bank, Mangalore	828885 dt. 19.01.2017 ✓
4	4 th Applicant-Director	16,530/-	HDFC Bank, Mangalore	011177 dt. 13/01/2017 ✓
5	5 th Applicant-Director	16,530/-	Karnataka Bank, Mangalore	828890 dt. 19/01/2017 ✓
6	6 th Applicant-Director	16,530/-	Corporation Bank, Mangalore	395778 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 ⁿ3 DAY OF MARCH, 2017.