

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A. 02/2017 IN
TRANSFERRED PETITION No. 143/2016
IN COMPANY APPLICATION No. 139/2015

DATED TUESDAY, THE 28th DAY OF FEBRUARY, 2017

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

IN THE MATTER OF SECTION 621 A OF COMPANIES ACT 1956 READ WITH SECTION
441 OF COMPANIES ACT, 1956
AND
IN THE MATTER OF SUPERFINE CREDIT & INVESTMENTS PRIVATE LIMITED

1. M/s. Superfine Credit & Investments Pvt. Ltd.,
No.221, Upper Palace Orchards,
Bellary Road,
Bangalore – 560 080.
2. Mr. A.L. Annamalai,
Liquidator of M/s. Superfine Credit & Investments Pvt. Ltd.,
No.221, Upper Palace Orchards,
Bellary Road,
Bangalore – 560 080.

Applicants

Present : M/s. Uday Shankar Associates,
Advocates & Corporate Counsels,
Fortune Chambers, 1st Floor, No.8, Lalbagh Road,
Richmond Circle,
Bangalore – 560 027.

ORDER

This application is filed on behalf of applicants under Section 441 of Companies Act, 2013, read with Rule 11 of NCLT Rules with a prayer to permit the applicants to withdraw the main Company Application No.139/2015 which is re-numbered as TP 143/2016.

Originally, Company application No.139/2015 was filed before Company Law Board, Southern Region, Chennai, under Section 621-A of Companies Act, 1956 for compounding for violation of provisions of Section 497 of Companies Act, 1956. Consequent upon abolition of Company Law Board, the said application was transferred to this Tribunal and numbered as Transferred Petition No.143/2016.



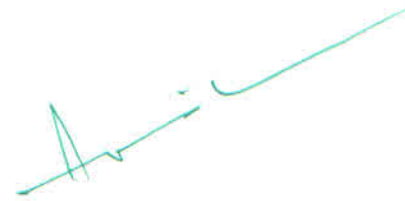
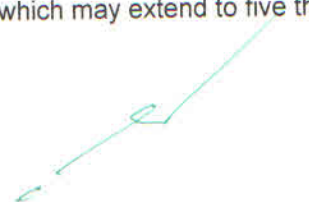

When the matter was coming up for hearing, the present application is filed for permission to withdraw the Company Application filed for compounding for violation of Section 497 of Companies Act, 1956.

It is averred in the application that Company Application was filed to compound the delay in filing Form 154 for the period from 25.08.2008 to 24.08.2014 relating to filing of interim accounts by the voluntary liquidator during voluntary liquidation. It is averred when the first applicant company was under voluntary liquidation and under the control of liquidator, then application for compounding was not required under law. It is averred EGM was held on 25.08.2008 and shareholders approved the members voluntary liquidation under Section 485 of the Companies Act, 1956, hereinafter referred to as an Act and a voluntary liquidator was appointed which was also published in the official gazette dated 25.08.2008. A resolution was also filed with the Registrar of Companies in Form 23.

It is further averred that final winding-up meeting was held on 29.01.2014 and Form 157 was filed on 12.11.2014. It is also averred the forms pending for the period from 25.08.2008 to 24.08.2014 were filed on 06.02.2015. It is further averred when Company was under liquidation, provisions of Section 621 of the Act are not applicable when once liquidation is commenced and completed, the Board of Directors ceases to have any powers. It is also averred that voluntary liquidator is exempted from the provisions as voluntary liquidator cannot be treated as officer of the Company under Section 621 (3) of the Act. Thus, it is prayed to grant permission to withdraw the petition.

We have heard the counsel appearing for the applicants.

This is a suo-motu application filed by a company and its voluntary liquidator under Section 621-A of the Act for compounding the violation of provisions under Section 497 of the Act. The case of the applicant that Form 153 as required under Section 551 (5) of the Act were not filed on time. The voluntary liquidator filed this compounding application admitting contravention of Section 497 and 551 of the Act. As per Registrar of Companies Report dated 2nd July, 2015, Non-compliance of provisions of Section 551 invites penal provisions contained in sub-section (5) of Section 551 which reads as "If a Liquidator fails to comply with any of the requirements of this section, he shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues".



Without going into the merits of the contentions raised by the voluntary liquidator, the permission to withdraw the compounding application can be granted since the same is filed suo-motu. However, an information to be sent to the Registrar of Companies, Karnataka at Bangalore, informing him about the withdrawal of compounding application at the instance of applicants and he can proceed accordingly as he deems fit as per law.

Without expressing any opinion on the points raised in the withdrawal application, as the main compounding application is moved by the applicant suo-motu and that they are withdrawing the said compounding application, therefore, permission can be granted.

In the result, I.A. 02/2017 is allowed. Permission is granted to the applicants to withdraw the main application T.P. No.143/2016 and copy of this order be communicated to the Registrar of Companies, Karnataka, at Bangalore for favour of information and proceed according to law as he deems fit.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

psp.