

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

T.P.NO. 145/2016

IN

C.A.NO. 142/2015

DATED: TUESDAY THE 28th DAY OF FEBRUARY 2017

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

**IN THE MATTER OF COMPANIES ACT, 1956 AND
IN THE MATTER OF COMPANIES ACT, 2013 UNDER SECTION 441
FOR COMPOUNDING OF OFFENCE UNDER SECTION 96 READ WITH
SECTION 129 OF THE COMPANIES ACT, 2013**

AND

**IN THE MATTER OF
M/s VIHAAN DIRECT SELLING (INDIA) PRIVATE LIMITED**

T.P.NO. 145/2016 IN C.A. No. 142/2015

1. M/s Vihaan Direct Selling (India) Private Limited,
Unit No. 2201 A, 22nd Floor,
WTC Brigade Gateway, Rajajinagar Extension,
Malleshwaram West,
Bangalore-560055.
2. Mr. Suryanarayana Kantha Vijaysarathy – Director
No.2609A, 8th Main Road,
Banashankari 2nd Stage,
Bangalore-560070

- **APPLICANTS**

PARTIES PRESENT:

Mr. B. Rajeswara Rao, No.40, Ground Floor, 1st
Main, K.R.Garden, Murugeshpalya, Bangalore-
560017. Practicing Company Secretary and
Authorised Representative for the Applicants.

Heard on: 17/10/2016, 03/11/2016, 24/11/2016, 21/12/2016, 05/01/2016 and
30/01/2017.

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 Sections 96 and 129 of the Companies Act, 2013 and it was numbered as C.A 142/621A/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. 145/2016.

The averments made in the company Application are briefed hereunder:-

The 1st Applicant Company was incorporated under the Companies Act, 1956 on 10th October 2011 as a Private Limited Company in the name and style of "Vihaan Direct Selling (India) Private Limited" vide Registration No. CIN **U52399KA2011PTC060730**. The Registered office of the company is situated at Unit No. 2201 A, 22nd Floor, WTC Brigade Gateway, Rajajinagar Extension, Malleshwaram West, Bangalore-560055.

As per the latest Balance Sheet the Authorized share capital of the 1st Applicant Company is Rs. 10,00,000/- divided into 1,00,000 of Equity Shares of Rs 10/- each and the paid up share capital of the Company is Rs. 10,00,000/- consisting of 1,00,000 Equity Shares of Rs 10/- each.

The Main objects of the 1st Applicant Company is to carry on the business of establishing and developing either through direct selling or through independent representatives the business of providing the customers all kinds of home care, personal care, nutrition, home tech products, electronics products, numismatic and jewellery and other products made out of gold, platinum, palladium, rodium, silver and precious and non-precious stones; to purchase and sell merchandise of every kind and nature for importation from and exportation throughout the world to and from the sale of foreign merchandise in domestic markets and of domestic merchandise in foreign countries. etc.,

It is averred in the Company Application that, the 1st Applicant Company could not finalise the financial statements and lay before the 3rd Annual General Meeting held on 30th September 2014 within the prescribed time limit due to the complaint of a third party. The Economic Offences Wing (EoW), has frozen the Bank Accounts and Seized Accounts, Books and offices of the Applicant Company. This has resulted in disruption of the Company's operations. The company could not close the Books properly and handover the same to Auditors for Audit in time and thereby Audit of Books of Accounts could not be completed before 30th September 2014. Due to this the documents and information required for laying annual returns in the 3rd Annual General Meeting could not be complied within the time. However, the 1st Applicant Company immediately on completion of finalization of the financial statements, has convened the Adjourned Annual General Meeting on 10th April 2015 and laid the financial statements before the Adjourning Annual General Meeting. It is further averred that, the Company has filed all the required documents up to date with the Registrar of Companies, Karnataka, Bangalore.

The 1st Applicant Company and its Director suo-moto filed this application admitting violation and prayed for compounding. Thus there was violation of provisions of section 129 (2) of the Companies Act, 2013 which reads as follows:-

“At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.”

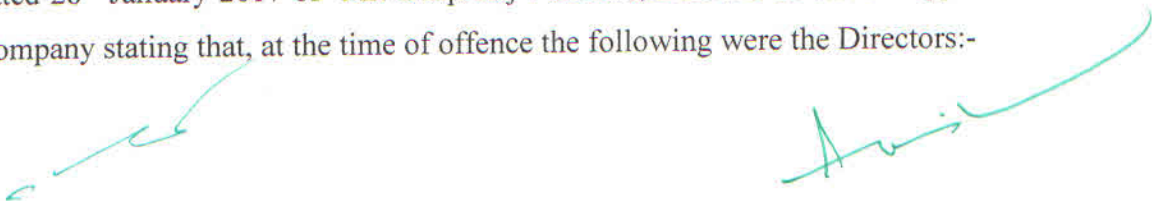
For violation of provisions of section 129 is punishable under section 129 (7) of the Companies Act, 2013 which reads as follows:-

“If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both”.

This Application was filed under section 621A of the Companies Act, 1956. The provisions of section 441 of the Companies Act, 2013 came into effect from 1st June 2016, this application was filed before erstwhile Company Law Board, Southern Region, Chennai. Therefore, this application is to be decided under the provisions of section 621A of the Companies Act, 1956.

We have heard the Practicing Company Secretary for Applicants on 17/10/2016, 03/11/2016, 24/11/2016, 21/12/2016, 05/01/2016 and 30/01/2017. The Practicing Company Secretary contended that, the default occurred due to the complaint of a third party the Economic Offences Wing (EoW), has frozen the Bank Accounts and Seized Accounts, Books and offices of the Applicant Company. This has resulted in disruption of the Company's operations. The Company could not close the Books properly and handover the same to Auditors for Audit in time and thereby Audit of Books of Accounts could not be completed before 30th September 2014. The Practicing Company Secretary for Applicants further contend that, this is a suo-moto application filed by the Company and its Directors for compounding of violation.

The Practicing Company Secretary for Applicants further filed Affidavit dated 28th January 2017 of Mr. Dilip Raj Pukkella, Director of the 1st Applicant Company stating that, at the time of offence the following were the Directors:-



- 1) Mr. Suryanarayana Kantha Vijaysarathy
- 2) Mr. Ravindernath Wahal Surendernath
- 3) Mr. Premdas Ramunni Kurup

It is also stated that, Mr. Premdas Ramunni Kurup and Mr. Ravindernath Wahal Surendernath have resigned from the office of the Director with effect from 26th February 2016 and 17th August 2016 respectively. It is also stated in the Affidavit that, Mr. Premdas Ramunni Kurup and Mr. Ravindernath Wahal Surendernath are ceased to be the Directors of the Applicant Company.

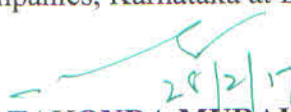
The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/AHN/CO 60730/2015 dated 9th July 2015 has stated in his report that, the Company has admitted the default and has offered to compound the offence and the Compounding Application may be decided on merits.

We have seen the Certified Copy of the Board Resolution dated 13th March 2015 of the 1st Applicant Company wherein the Board of Directors resolved for filing compounding Application which is marked as Annexure –IV, Minutes of the meeting of 3rd Annual General Meeting held on 30th September 2014 and Minutes of the Adjourned 3rd Annual General Meeting held on 10th April 2015 which are marked as Annexure-I, Copy of Form GNL-1 along with ROC Challan filed with Registrar of Companies-Karnataka at Bangalore. After considering the materials on record and after taking into account the submissions made by the Practicing Company Secretary that lenient view may be taken, we hereby levy compounding fee for delay in complying section 129 of the Companies Act, 2013 on the 2nd Applicant Director of the Applicant Company as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.129 of Companies Act, 2013	Total Rs.
1	2 nd Applicant-Director	Rs.75,000/-	75,000/-

In pursuant to our Order dated 08/02/2017 mentioned herein above, the Applicant have paid the compounding fee by depositing Demand Draft bearing No. 079951 dated 10/02/2017 for Rs.75,000/- (Rupees Seventy five thousand only) of The Jammu & Kashmir Bank Limited, Bangalore drawn in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai".

As the compounding fee has been remitted by the Applicant, 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 28th DAY OF FEBRUARY 2017