

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 137/2016

C.A. 297/621A/CB/2014

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

IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A UNDER SECTION 285 READ WITH SECTION 629A OF THE
COMPANIES ACT, 1956

AND

IN THE MATTER OF M/S COLUMBIA SPORTSWEAR INDIA SOURCING
PRIVATE LIMITED

C.A. 297/621A/CB/2014

1. M/S Columbia Sportswear India Sourcing Private Limited,
3RD Floor, Corniche Al-Lateef Building,
No.25 Cunningham Road,
Bangalore-560052.
2. Mr. Bhargava Huchurao,
Sterling Terraces,
D-803, 100ft Road, Banashankari,
3rd Stage, III Phase,
Bangalore-560085.
3. Mr. Peter Jafferson Bragdon,
7921 SE31st Avenue,
Portland, OR 97202

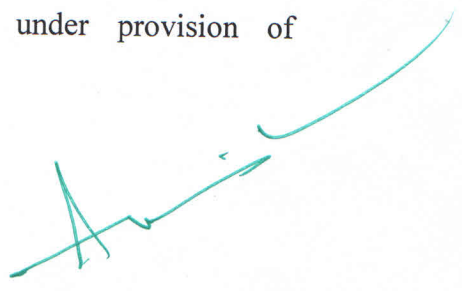

- APPLICANTS

PARTIES PRESENTED: Mr. Arjun Rao, Advocate and Mr. Rishi Aneja,
Advocate of M/s AZB & Partners, AZB House,
No.67/4, 4th Cross, Lavelle Road, Bengaluru-
560001 representative for the Petitioners.

Heard on: 25/07/2016, 08/08/2016 and 30/08/2016

ORDER

This Petition is filed under Sec.621A of Companies Act, 1956 read with Section 285 of the Companies Act, 1956 with a prayer for compounding of certain violation committed under provision of Companies Act, 1956.



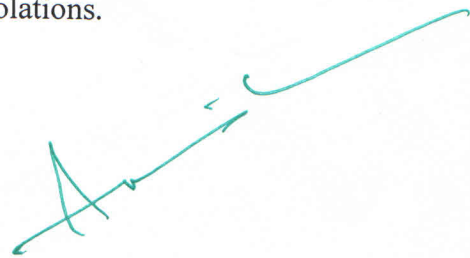
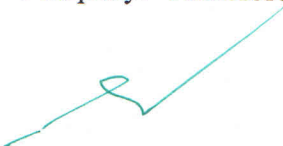
The 1st applicant is a company Registered under the name and style "Columbia Sportswear India Sourcing Private Limited" incorporated vide Registration No. U74900KA2011FTC060888 on 21/10/2011. The Registered office of the company is situated at 3RD Floor, Corniche Al-Lateef Building, No.25 Cunningham Road,Bangalore-560052.

The Authorized share capital of the applicant company as per the latest Audited Balance sheet on 31/03/2013 is Rs. 10,00,000/- (Rupees Ten lakhs only) consisting of 1,00,000 (one lakh) Equity Shares of Rs 10/- each.

The Main objects of the Applicant Company is to carry on the sourcing apparel products, sportswear products, other clothing and accessories, to provide marketing support/merchandise support/other services for the sale of apparel / sportswear, to carry on business of whole sale distribution of Columbia products, in India and foreign markets etc., details of the objects are mentioned in the Memorandum of Association.

It is averred in the Petition that the company was incorporated on 21/10/2011. The company had to hold a Board Meeting on or before 31/12/2011. The Company did not hold its Board Meeting during the period from 21/10/2011 to 31/12/2011. It is also averred that the Board Meeting could not be held from 01/04/2012 to 30/06/2012, from 01/07/2012 to 30/09/2012 and from 01/10/2012 to 31/12/2012.

Thus Board Meeting was not held during the above period. The Company thus committed default in not conducting the Board Meetings for 4 times. The reason for not holding the Board Meeting was due to the fact that two Directors of the Company are the residents of different countries. The Company and the officers committed default of provisions of section 285 of the Companies Act, 1956. The petitioner is confirming that no financial loss or other injury was caused either to the company share holder or to the public due to non-compliance and it is a Private Company. Therefore, it is prayed to compound the violations.



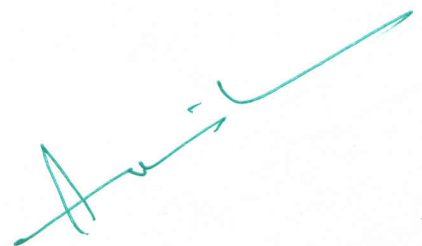
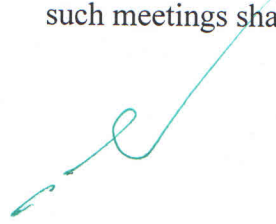
We have heard the learned counsel appearing for the Petitioners. The 1st Petitioner is a Company and Petitioner Nos. 2 and 3 are its Directors. The learned counsel filed written submissions contending that Board Meeting was not held on 4 occasions as stated supra. It is contended the default committed under the provisions of section 285 of the Companies Act, 1956 was inadvertent without any ulterior motive and merely an oversight on the part of the Directors of the Company as also two Directors of the Company are residents of different countries. It is contended that 3rd Director was subsequently appointed. It is further contended that appointment of the 3rd Director was to ensure requisite quorum for Board Meetings in India. Based on audited accounts produced before the Tribunal as of March 31, 2015 the company is doing an active business and the financial statements were filed to substantiate that company is actively doing its business. Further, the Board Meetings are being held subsequently on regular basis. It is contended that the affidavit of the present Director is filed to the effect that the Board Meetings are being conducted and no loss has caused to the Company.

We have seen the documents filed along with the Petition, we have seen the Memorandum and Articles of Association of the Company. We have seen the extract of the Board Meeting held on 21/06/2013. The Board passed Resolution to file application under section 621A for compounding for violation of provisions of section 285 of the Companies Act, 1956. The company filed balance sheet for the year ending 30/06/2012.

The learned counsel has filed the financial statement of the company for financial years 2012-13, 2013-14 and 2014-15 and also the Affidavit of the Directors.

Section 285 of the Companies Act, 1956 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”.



This is a suo-moto application filed by company and its Directors with a prayer to compound the violation of provisions of section 285 of the Companies Act, 1956. Report of the Registrar of Companies, Karnataka, Bengaluru was received vide letter No. ROCB/AHN/621A/60888/2014 dated 22/08/2014, who recommended for levying compounding fee on the petitioners for violation for not holding the Board Meetings on 4 times, punishable under section 629A.

We have carefully considered the documents filed and also the written submissions of the counsel for petitioners. We are of the view that violation can be compounded by levying compounding fee and accordingly we impose compounding fee for the sum specified in the table given below on the Applicants:-

Sl. No.	Particulars	Violation of Sec.285 of Companies Act, 1956 for each default	Grand Total Rs.
1	1 st Applicant Company	2000x4	8,000.00
2	2 nd Applicant	2000x4	8,000.00
3	3 rd Applicant	2000x4	8,000.00
	Total		24,000.00

In pursuant to our Order dated 08/09/2016 mentioned herein above, the Applicants have paid the compounding fee by depositing Demand Draft bearing No.222172 dated 20/09/2016 for Rs. 24,000/- (Rupees Twenty four thousand only) of State Bank of India, M.G.Road Branch, 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 Applicants, the offence stated in the petition is compounded. A copy of this Order be sent to Registrar of Companies, Karnataka, Bengaluru for appropriate action.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 26th DAY OF SEPTEMBER 2016