

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

T.P.NO. 151A/2016
C.A. 200A/621A/CB/2015

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

IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A READ WITH SECTION 75(1) OF THE COMPANIES ACT, 1956
AND

IN THE MATTER OF M/S DHARAMSHI RESORTS PRIVATE LIMITED

C.A. 200A/621A/CB/2015 AND T.P NO. 151A/2016

1. M/S Dharamshi Resorts Private Limited,
No. 33, Komal Mansion,
M.T.B. Road, Near Minerva Circle,
Bangalore- 560002.
2. Mr. Kushalchand Dhanji Shah,
898, 10th Cross,
22nd Main J.P. Nagar,
II Phase, Bangalore-560078. -

APPLICANTS

PARTIES PRESENTED:

Mr. K. Dushyantha Kumar, Practicing
Company Secretary, No. 71, Shop Street,
9th Cross, 2nd Block, Jayanagar,
Bangalore-560011 Authorised
representatives for the Applicants.

Heard on: 26/07/2016, 10/08/2016, 24/08/2016, 26/8.2016 02/09/2016, 28/09/2016
and 18/10/2016

ORDER

The Petition was originally filed before the Company Law Board, Southern Region, Chennai under Section 621A of the Companies Act, 1956 for purpose of compounding for violation of provisions of section 75(1) of the Companies Act, 1956. It was numbered as C.A No. 200A/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 renumbered as T.P No. 151A/2016.

The company is a Private Limited Company Registered under the name and style "Dharamshi Resorts Private Limited" on 01/01/1993 vide Registration No. U85110KA1993PTC013843. The Registered office of the company is situated at # 33, Komal Mansion, M.T.B. Road, Near Minerva Circle, Bangalore- 560002.

The Authorized share capital of the Company is Rs 25,00,000/- (Rs. Twenty five lakhs only) consisting of 2,50,000 (two lakh fifty thousand) Equity Shares of Rs 10/- each and the paid up share capital is Rs 25,00,000/- (Rs. Twenty five lakhs only) consisting of 2,50,000 (two lakh fifty thousand) equity shares of Rs 10/- each.

The main objects of the Company is to carry on the business of Resorts, Resort owners Developers and manage the same collection of rent, repairs, acquisition of immovable properties in the name of the Company; to carry on the business of acquisition, purchase, run, take on lease or otherwise of lands, guest houses, hotels, clubs, bars, restaurants, refreshment rooms etc., Details of the objects are mentioned in the Memorandum of Association of the Company Petition.

The Company is presently managed by Board of Directors as stated hereunder:-

- a) Sri Kirti Dhanji Shah
- b) Sri Rahul Khushalchand Dharamshi
- c) Sri Mehul Kushalchand Dharamshi
- d) Sri Kushalchand Dhanji Shah
- e) Ms. Vaishali Rahul Dharamshi

The averments in the Company petition filed by the applicant who is a director of company are briefed hereunder:-

The Board of Directors failed to file Form No. 2 with the Registrar of Companies, Karnataka, Bengaluru in respect of allotment of shares made on 27/10/2008 within the due date i.e., on or before 26/11/2008. It is further averred that, due to circumstances beyond the control of the company the return could not be filed within the due date. However, the return was filed on 31/10/2014. Thus there was delay. According to petitioner there was delay of 2165 days in filing the

return with Registrar of Companies, Karnataka, Bangalore. Therefore, it is prayed this Tribunal may be please to compound the violation by levying compounding fee.

Section 75(1) of the Companies Act, 1956 reads as follows:

“Whenever a company having a share capital makes any allotment of its shares, the company shall within thirty days thereafter, -

“ (a) file with the Registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and occupations of the allottees, and the amount, if any, paid or due and payable on each share”.

According to petitioner there was allotment of shares on 27/10/2008. The company should have filed return of allotment with the Registrar of Companies, Karnataka, Bangalore within 30 days which is on or before 26/11/2008. However, the Company filed the return on 31/10/2014 with the Registrar of Companies. Thus there was violation of provisions of section 75(1) (a) of the Act. Section 75(4) of the Companies Act, 1956 provides for penalty which reads as follows:

“If default is made in complying with this section, every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues”.

Report of Registrar of Companies, Karnataka, Bangalore is received vide bearing No.ROCB/SVK/13843/621A/75(1)/2015 dated 18/08/2015 which interalia also mention about a complaint regarding Oppression from one group of management In his report, it is stated that, there was delay of 2163 days in filing the return. The default is from 27/11/2008 to 30/10/2014. The Return of Allotment was filed in PAS 3 on 31/10/2014

We have heard the Practicing Company Secretary for the Applicant/Director, he stated that return could not be filed due to some unavoidable circumstances. He contended that, there was compliance of provisions of section 75(1) but there was delay. The return was filed though belatedly by paying additional fees. He prayed lenient view may be taken. This suo-moto application is filed by the Applicant.

We have seen the copies of Memorandum and Articles of Association of the Company. After considering the materials on record and after going through the report of the Registrar of Companies, Karnataka, Bengaluru and after considering the submissions of the Practicing Company Secretary, the violation can be compounded by levying compounding fee on the Applicant Director as stated below hereunder:-

Sl. No.	Particulars	Violation of Sec.75(1) of Companies Act, 1956 Delay of 2163 days (As per the report of ROC)	Grand Total Rs.
1	2nd Applicant, (Director of the Company)	50 x 2163 days	1,08,150/-
	Total		1,08,150/-

(Rupees One Lakh Eight thousand one hundred and fifty only)

In pursuant to our order dated 26.10.2016 mentioned herein above, the Applicants have paid the compounding fee by depositing Demand Draft bearing No. 242363 dated 8.11.2016 for Rs. 1,08,150/- (Rupees One Lakh eight thousand one hundred and fifty) of HDFC Bank, 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, Bangalore for appropriate action.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE  DAY OF NOVEMBER 2016