

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

T.P.NO. 162/2016
C.A. 211/621A/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 303 OF THE COMPANIES ACT, 1956
AND

IN THE MATTER OF M/S DHARAMSHI RESORTS PRIVATE LIMITED

C.A. 211/621A/CB/2015 AND T.P NO. 162/2016

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 303 of the Companies Act, 1956. It was numbered as C.A No. 211/621A/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. 162/2016.

The Applicant 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 1st Applicant 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:-

It is averred in the Application filed under section 621A of the Companies Act, 1956 that the company appointed Mr. Mehul Kushalchand Dharamshi as Director w.e.f. 30.10.2008. The company should have filed return with the Registrar of Companies, Karnataka, Bangalore within 30 days which was on or before 28.11.2008. However, the same was filed on 31.10.2014. It is averred in the Application that there was a delay of 2162 days.

It is stated as per provisions of section 303(2) of the Companies Act, 1956 the company should have filed return within 30 days from the date of appointment.

Section 303(2) reads as follows:

“ The Company shall, within the periods respectively mentioned in this sub-section, send to the Registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors, managing directors, managers or secretaries, specifying the date of the change. The period within which the said return is to be sent shall be a period of thirty days from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be thirty days from the happening thereof.

For violation of section 303(2) of the Companies Act, 1956, the punishment is provided under section 303(3) which reads as follows:

“If default is made in complying with sub-section(1) & (2), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues”.

We have heard the Practicing Company Secretary. He made submission that there was delay in filing the returns in respect of appointment of Sr. Mehul Kushalchand Dharamshi, as Director of the company with the Registrar of Companies, Karnataka, Bangalore. He submitted that returns was however filed with the Registrar of Companies though belatedly but with additional fee. He contended that, due to unavoidable circumstances there was delay in filing the return.

We have seen the report of Registrar of Companies, Karnataka, Bangalore vide letter No..ROCB/SVK/13843/621A/303(2)/2015 dated 19/08/2015. In his report, it is stated that company failed to file Form 32 in respect of appointment of Director within the time allotted which is on or before 29.11.2008. He stated that default existed from 30.11.2008 to 30.10.2014. The form DR-12 was filed on 31.10.2014. According to Registrar of Companies, Karnataka, Bangalore there was a delay of 2160 days.

We have seen the copies of Memorandum and Articles of Association and also Board Resolution of the Company. It is clear that there was violation of provisions of 303(2) of the Companies Act, 1956 and violation is punishable under Section 303(3) of the Companies Act, 1956. After going through the contents of the Application and submission made by the Practicing Company Secretary and other connected records, we are of the opinion that the violation can be compounded by levying compounding fee on the Applicants as detailed hereunder:-

Sl. No.	Particulars	Violation of Sec.303 of the Companies Act, 1956 delay of 2160 days	Grand Total Rs.
1	Applicant, Company	25 x 2160 days	54,000/-
	Total		54,000/-

(Rupees Fifty four thousand 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. 237589 dated 8.11.2016 for Rs. 54,000/- (Rupees Fifty four thousand only) 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 9th DAY OF NOVEMBER 2016