

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 252/2016

C.A. 144/621A/CB/2016

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

IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 621A AND SECTION 139(6) READ WITH SECTION
147 OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF M/S DIABSOLUT TECHNOLOGY PRIVATE LIMITED

C.A. 144/621A/CB/2016 & T.P.NO. 252/2016

1. M/S DIABSOLUT TECHNOLOGY PRIVATE LIMITED,
7th Floor, HM Vibha Tower,
Hosur Road,
Near Forum Mall,
Bengaluru-560029.
2. Ms. Pauliene Selvanandan - Director
1322, 2G CRS Behind Prem Nivas Convent,
K.K.Halli, Ramaiah Layout,
Bangalore-560084.
3. Mr. Chetan Chandrashekar- Director
U24, 1st Cross, Nagappa Street,
Palace Guttahalli,
Bangalore-560003.

- APPLICANTS

PARTIES PRESENTED: Mr. C. Dwarakanath, # 31, Vidya Bhavan, 3rd Floor,
Rear Block, Opp. Karanji Anjaneya Temple, West
Anjaneya Temple Street, Basavanagudi,
Bangalore-560004 Practicing Company Secretary
and Authorised representative for the Applicants.

Heard on: 26/07/2016, 09/08/2016, 12/08/2016, 23/08/2016, 06/09/2016,
30/09/2016 and 21/10/2016

ORDER

The Petition is filed on behalf of Petitioners under Sec.621A of the Companies Act 1956 and under Section 139(6) read with Section 147(1) of the Companies Act 2013. Originally the Compounding petition was filed before Company Law Board, Southern Region, Chennai. 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 numbered as T.P.No. 252/2016. This petition is filed by the Petitioners with a prayer to record compounding of the offence. Contents of the Company Petition are briefly stated hereunder:

The 1st applicant is a company which was incorporated under the Companies Act, 2013 on 18th June 2014 under the name and style of "Diabsolut Technology Private Limited vide Corporate Identity No. U72400KA2014PTC074913, with registered office at No.91, First Floor, 7th Cross, Paramount Gardens, Thalaghattapura, Kanakapura Road, Bangalore-560062. The 1st Applicant Company has shifted its Registered Office to Regus Gem Business Centre, 1st & 2nd Floor, IBIS Hotel Block, 26/1, Hosur Road, Bommanahalli, Bangalore-560068, with effect from 4th November 2014, and again the 1st Applicant Company has shifted its Registered Office to 7th Floor, HM Vibha Tower, Hosur Road, Near Forum Mall, Bengaluru-560029 with effect from 1st June 2016 (vide supplementary Affidavit filed by the Applicants on 3rd August 2016)

The Authorised Share Capital of the applicant company as per the latest Audited Balance Sheet is Rs. 1,00,000/- (Rupees One Lakhs only) consisting of 10,000 (Ten thousand) Equity Shares of Rs 10/-each.

The main object of the company is to carry out the business in India and abroad of design, development, manufacture and research etc., to set up the business of maintenance of software systems and electronic data processing and outsourcing centers etc., and to carry on the business as consultants in the field of computer software and other allied fields etc., Details of the main object of the Company are stated in the Memorandum and Articles of Association.

The 1st Applicant Company was incorporated on 18th June 2014 and accordingly, as per provisions of section 139(6) of the Companies Act, 2013, the 1st Applicant Company was required to appoint the Statutory Auditors within the stipulated period failing which such appointment should have been made by conducting extra ordinary general meeting within 90 days and to file e-form ADT-1 with the Registrar of Companies, Karnataka at Bengaluru. The 1st Applicant Company could not appoint the statutory auditor within the stipulated period i.e., on or before 17th July 2014 and not conducted the extra-ordinary general meeting for such appointment within the due date. Thereby the 1st Applicant Company inadvertently failed to comply the aforesaid requirement within the stipulated time. However, the 1st Applicant Company has appointed Mr. Srinath Rao (Proprietor of M/s Srinath Rao & Associates), Chartered Accountant, # 2998, "Sridhar" 17th Cross, 2nd Main, Banashankari, 2nd Stage, Near Uma Maheshwara Temple (K.R.Road) Bangalore-560070 as Statutory Auditor at the extra-ordinary general meeting held on 16th March 2015 and thereby filed the ADT-1 alongwith annexures with the Registrar of Companies, Karnataka at Bengaluru on 31st March 2015. Thus there was delay of 181 days in appointing Statutory Auditor and in conducting extra-ordinary general meeting of the 1st Applicant Company. It is further stated that there was no deliberate intention on the part of the 1st Applicant Company and there was no mens rea in regard to the contravention and did not cause any detriment to the public at large. So it is prayed to compound the violation.

We have heard the Practicing Company Secretary of the 1st Applicant Company 26/07/2016, 09/08/2016, 12/08/2016, 23/08/2016, 06/09/2016, 30/09/2016 and 21/10/2016 who contended that there was delay in appointing the Statutory Auditor and in conducting extra-ordinary general meeting within the stipulated time. The Practicing Company Secretary has further stated that the violation is unintentional and is not deliberate and no loss has caused to the public at large. He prayed to take lenient view while compounding the violation, as the 1st Applicant Company and its Officers violated the provisions of Section 139(6) of the Companies Act, 2013. According to section 139(6) of the Companies Act 2013:

“Notwithstanding anything contained in sub-section(1), the first auditor of a company, other than a Government Company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

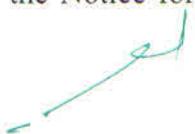
The contravention of Section 139 is punishable under section 147(1) of the Companies Act, 2013 which reads as follows:

“the company shall be punishable with fine which shall not be less than Rs 25,000/- but which may extend to Rs 5,00,000/- and every officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to 1 (one) year or with fine which shall not be less than Rs 10,000/- but which may extend to Rs 1,00,000/- 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. Before erstwhile Company Law Board, Southern Region, Chennai this Application was filed. Therefore, this Application is to be disposed of under the provisions of section 621A of the Companies Act, 1956.

The Registrar of Companies, Karnataka, Bengaluru vide letter bearing No. ROCB/AHN/621A/074913/2016 dated 9th March 2016 has informed in the report that the 1st Applicant Company has 4 Directors, two of them were appointed three months after incorporation, but petition is filed only by the First Directors. There is a delay of 181 days for conducting EGM. The Practicing Company Secretary submitted that, the other two Directors viz., Mr. Sally Abd Elsayed and Mr. Joseph Diab were appointed as Additional Directors after 17th July 2014, hence they are not officers at default.

We have seen the documents along with petition viz., Memorandum of Association and Articles of Association of the 1st Applicant Company. We have seen the Board Resolution dated 4th May 2015, wherein the Board has passed a resolution to file necessary Compounding Application. We have seen certified copy of the Notice for convening the extra-ordinary general meeting along with



Minutes of the extra-ordinary general meeting held on 16th March 2015 and certified copy of Form GNL-1 filed with the Registrar of Companies, Karnataka at Bengaluru and also certified copy of Form ADT-1 (along with annexures thereto) with payment challan.

We have received report from the Registrar of Companies, Bengaluru who stated that violation can be compounded by levying compounding fee on the Applicants. 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 levy compounding fee under section 147(1) of the Companies Act, 2013 for the delay in appointing Statutory auditor and in conducting extraordinary general meeting on the 1st Applicant Company and its 2 Directors, the Applicant Nos.2 and 3 as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.139 read with section 147(1) of Companies Act, 2013	Total Rs.
1	1 st Applicant Company	Rs. 60,000/-	60,000/-
2	2 nd Applicant Director	Rs. 25,000/-	25,000/-
3	3 rd Applicant Director	Rs. 25,000/-	25,000/-

In pursuant to our Order dated 4th November 2016 mentioned herein above, the Applicants have paid the compounding fee by depositing 3 Demand Drafts of State Bank of India, Basavanagudi Branch, Bengaluru drawn on 11/11/2016 in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai" as detailed below:-

Sl. No.	Particulars of Applicant	Fee Amount/D.D Rs.	DD No. & Date
1	1 st Applicant company- Diabsolut Technology Private Limited	60,000/-	301231 dt. 11/11/2016
2	2 nd Applicant Director- Ms. Pauliene Selvanandan	25,000/-	301232 dt. 11/11/2016
3	3 rd Applicant Director Mr. Chetan chandrashekar	25,000/-	301233 dt. 11/11/2016

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 21st DAY OF NOVEMBER 2016