

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 266/2016
DATED 16TH DECEMBER 2016

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

IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A READ WITH SECTION 185 OF THE COMPANIES ACT, 2013
AND

IN THE MATTER OF M/S ENDEAVOUR SOFTWARE TECHNOLOGIES
PRIVATE LIMITED

T.P NO. 266/2016

1. M/S Endeavour Software Technologies Private Limited,
88 & 883, 8th Main Road,
JP Nagar, III Phase, Bangalore 560 078.
2. Mr. Rahul Aggarwal,
S/o R.K. Gupta
Flat A4-1503, "Elita Promenade"
J P Nagar, 7th Phase, Kothanur Village,
Bangalore 560 078.
3. Mr. Avinash Misra,
S/o U C Mishra,
5900, Baywater Dr
Apt 2505, Plano
Texas 75093
United States of America.
4. Mr. Manish Garg,
S/o S K Garg
Flat G-601, Pride Apartments,
Bilekahalli, Bannerghatta Road,
Bangalore 560 078.
5. Mr. Vinay Kumar Shukla,
S/o S N Shukla
8585, Spicewood Springs Rd, Unit 425,
Austin Tx, 787594489, USA.

APPLICANTS

PARTIES PRESENT:

Mr S. Anil Kumar Jain,
Mr. Balu Sridhar,
Mr. Pankaj Mehta Practicing
Company Secretaries,
M/s A K Jain & Associates,
No. 2 (New No. 3) Raja Annamalai Road, First
Floor, Purasaiwakkam,
Chennai -600 084.



Heard on: 29.8.2016, 20.9.2016, 17.10.2016, 10.11.2016, 7.12.2016 & 2.12.2016

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 295 of the Companies Act, 1956 and was unnumbered. 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. 266/2016.

The company is a Private Limited Company Registered under the name and style "Endeavour Software Technologies Private Limited" on 16.9.2002 vide Registration No. U72200KA2002PTC031009. The Registered office of the company is situated at # 882 & 883, 8th Main Road, J P Nagar, III Phase , Bangalore 560 078.

The Authorized share capital of the Company is Rs 5,00,00,000/- (Rs. Five Crores only) consisting of 50,00,000 (five crore) Equity Shares of Rs 1/- each and the paid up share capital is Rs 1,20,770/- (Rs. One Lakh Twenty thousand seven hundred and seventy only) consisting of 120770 equity shares of Rs 1/- each.

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

During the course of business, the Applicant company had advanced loans to its Managing Director and whole time directors in several installments at the rate of interest of 15% p.a. vide Board Resolution passed in the meeting of Board of Directors of the applicant company held on 26.9.2011. The maximum loan outstanding as on 31.3.2014 and 31.3.2015 is tabled under:



Directors name	FY 2013-14		FY 2014-15	
	Interest Charged	Loan Balance	Interest Charged	Loan Balance
Mr. Rahul Aggarwal	33,346	870196	36369	36369
Mr. Manish Garg	46285	395285	39784	39784
Mr. Avinash Misra	49204	449846	94430	833754
Mr. Vinay Shukla	10918	126060	27745	253805

Sec 185 of the Companies Act, 2013 which deals with Loan to Directors, came into force with effect from September 12.2013. As per the provisions of the said section "No company shall directly or indirectly, advance any loan including any loan represented by a book debt to any of its directors or to any other person in whom the director is interested.

The Company had been advancing loans to its Managing Director and Whole time director as and when the request for advance of loan was made by them. Prior to September 12, 2013, the provisions of Sec. 295 of the Companies Act, 1956 were prevailing and were not applicable to Private Limited Companies. The company and its Directors were under impression that the provisions are still in force in the Companies Act, 2013, and continued to advanced loans to them. During the course of audit for the financial year ended March 31, 2015, it was brought to the notice of the Management that the company is prohibited from advancing loan to its directors and thus it has violated the provisions of Sec. 185 of the Companies Act, 2013. On getting aware of the violation, the Directors of the company have repaid the loans advanced to them and there is no due outstanding to the Company as on the date of this application. . Therefore, it is prayed this Tribunal may be please to compound the violation by levying compounding fee.



Section 185(1) of the Companies Act, 2013 reads as follows:

“no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person”

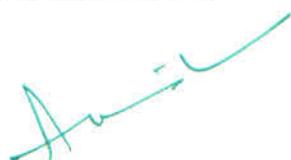
Thus there was violation of provisions of section 185(1) of the Companies Act 2013 and Sec. 185(2) provides for penalty which reads as follows:

“If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both”

Report of Registrar of Companies, Karnataka, Bangalore is received vide bearing No.ROCB/MMM/Sec. 621A/31009/2016 dated 01.4.2016.

We have heard the Practicing Company Secretary for the Applicant/Director. He stated that the loan was repaid by the directors. A Certificate from Sundararajan & Harish, CA's is filed to the effect that the directors have returned the advance they had drawn earlier. An affidavit is also filed on 7.12.2016. He prayed that lenient view may be taken. This suo-moto application is filed by the Applicants.

This application was filed before Company Law Board, Chennai under Sec. 621A of the Companies Act, 1956. The provisions of Sec. 441 of Companies Act came into effect from 1.6.2016. Hence, provisions of Sec. 621A of Companies Act, 1956 would apply to the facts of the case.

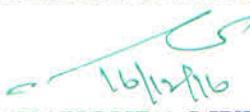


We have seen the copy of the Petition and the connected papers. After considering the materials on record and after going through the report of the Registrar of Companies, Karnataka, Bengaluru and after considering the submissions of the Practicing Company Secretary, the violation can be compounded by levying compounding fee on the Applicant company and its Directors as stated below hereunder:-

Sl. No.	Particulars	Violation of Sec.185(2) of Companies Act, 2013	Grand Total Rs. (in lakhs)
1	M/S Endeavour Software Technologies Private Limited (1 st Applicant Company)	1 x 6,00,000	6,00,000
2	Rahul Aggarwal (2 nd Applicant)	1 x 5,00,000	5,00,000
3	Avinash Mishra (3 rd Applicant)	1 x 5,00,000	5,00,000
4	Manish Garg (4 th Applicant)	1 x 5,00,000	5,00,000
5	Vinay Kumar Shukla (5 th Applicant)	1 x 5,00,000	5,00,000
	Total		26,00,000

(Rupees Twenty six lakh only)

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 2nd January 2017 for compliance.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 16th DAY OF DECEMBER 2016