

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 256/2016

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

IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A UNDER SECTION 166 OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF M/S GARDNER AEROSPACE PRANITA PRIVATE
LIMITED

1. M/S Gardner Aerospace Pranita Private Limited,
No. 261/70, Gollarahatti,
Near Sun Valley Country Club,
Magadi Main Road,
Vishwaneeddham Post,
Bangalore-560091.
2. Mr. Srinivasa Rao Amula
No.245, 6th Cross, 6th Block,
Nagarabhavi, II Stage,
Bangalore-560072.
3. Mr. Bhanu Prakash Chinnamutive
No.183, G Cross, 3rd Block,
Nagarabhavi, 2nd Stage,
Bangalore-560072.
4. Mr. David Marvin Hughes,
12, New Market Gardens,
Rainhill, St.Helens, United Kingdom,
WA95FR, United Kingdom.

- PETITIONERS

PARTIES PRESENTED:

Mr. K.V. Omprakash, Advocate and Mr. S.Yasar
Arafath, Advocate of M/s Conscientia Law
Associates, 76/1, 1st Floor, 7th Cross, Wilson
Garden, Bangalore-560027 Authorised
representatives for the Petitioners.

Heard on: 16/08/2016 and 02/09/2016

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 166 of the Companies Act, 1956. 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. 256/16/621A/2016.

The averments in the petitions are briefed hereunder:-

The Petitioner Company was incorporated under the Companies Act, 1956 on 22/06/1998 as a Private Limited Company in the name and style of M/s GARDNER AEROSPACE PRANITA PRIVATE LIMITED vide Registration No. CIN-UN34300KA1998PTC023872. The Registered office of the company is situated at # 261/70, Gollarahatti, Near Sun Valley Country Club, Magadi Main Road, Vishwaneeddam Post, Bangalore-560091.

The present Authorized share capital of the Petitioner company is Rs. 6,25,00,000/- (Rupees Six Crores Twenty five lakhs only) consisting of 1,50,000 (One lakh fifty thousand) Equity Shares of Rs 100/- each and 4,75,000 (Four Lakh Seventy Five Thousand only) Preference Shares of Rs. 100/- each. The Subscribed Capital is Rs. 5,00,35,100/- (Rupees Five Crores Thirty Five Thousand and One Hundred only) divided into 1,28,240 (One Lakh Twenty Eight Thousand Two Hundred forty Only) Equity Shares of Rs 100/- each and 3,72,111 (Three Lakh Seventy Two Thousand One Hundred and eleven only) Preference Shares of Rs 100/- each.

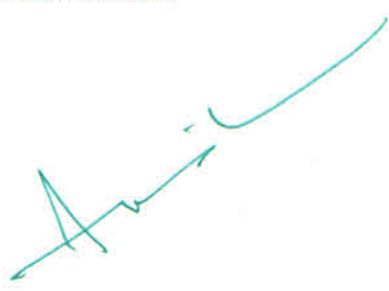

The Main objects of the Petitioner Company is to carry on the business of Designing, manufacturing, marketing, assembling, altering, service for automobile, engineering industries and dealing in components for the Aerospace Industry and to carry on the business of importing and trading of machineries and machine tools and to act as authorized agents in India for the principals outside India etc. Details of the objects of the company are mentioned in the Memorandum of Association of the Petitioner Company.

The Petitioner No. 2, Mr. Srinivasa Rao Amula is the Managing Director of the Petitioner Company since 22/06/1998.

The Petitioners No. 3, Mr. Bhanu Prakash Chinnamutiv and No. 4, Mr. David Marvin Hughes are the Directors of the Petitioner Company from 22/06/1998 and 12/06/2012 respectively.

The Petitioner Company's financial year is 1st April to 31st March.

It is averred in the Company Petition that, during the financial year ending 31/03/2014, the Company could not finalize the accounts and audit thereof in a timely manner due to reasons beyond the control of the Company and was unable to conduct the Annual General Meeting of the Company on or before 30/09/2014. Even the company was granted extension of 3 months time upto 31/12/2014, but the company could not hold the Annual General Meeting within the due date. However, the Annual General Meeting was held on 21/04/2015. Thus the Petitioners have committed the delay of 111 days in holding the Annual General Meeting and thereby violating the provisions of section 166 of the Companies Act, 1956. As per the averments made in the Petition, the Petitioners stated that they shall be careful and shall not commit lapse in future and shall duly comply with all the provisions of the Companies Act, 1956 and any other Acts, Rules and Regulations relating thereto in future.



The Registrar of Companies, Karnataka, Bengaluru vide his letter bearing No.ROCB/MMM/621A/034086/2016 dated 24/03/2016 has also submitted that the Company conducted Annual General Meeting on 21/04/2015 and the period of default is from 31/12/2014 to 21/04/2015.

The Registrar of Companies, Karnataka, Bengaluru has further mentioned that "As per the applicable provisions of section 168..... If default is made in holding a meeting of the company in accordance with section 166, or in complying with any directions of the Tribunal or the Central Government as the case may be under sub-section (1) of the section 167, the company and every officer of the company who is in default, shall be punishable with fine which may extend to two thousand five hundred rupees for every day after the first during which such default continues". The Registrar of Companies, Karnataka, Bengaluru has made an observations that the compounding application may be decided on merits.

The Petitioner Company has sought the following relief(s):-

- a) The delay in complying with the provisions of Sections 166 of the Companies Act, 1956 be condoned;
- b) Not to take any action/prosecution against the Petitioners under Section 168 of the companies Act, 1956 for contravention of Section 166 of the Companies Act, 1956;
- c) The Offence may be compounded by imposing a lenient penalty against the Company and its officers in default.

The matter has been heard on 16/08/2016 and 02/09/2016. The Counsel for petitioners Sri K.V. Omprakash has informed in his written submission dated 02/09/2016, that the company has cleared all its statutory dues pertaining to the financial year 2013-14 and has been regular in depositing its statutory dues.

The Petitioners has also submitted a copy of the General Circular bearing No. 1/19/2013-CL-V dated 04/04/2014 issued by the Government of India, Ministry of Corporate Affairs clarifying that, till the financial year 2013-14, the provisions of the Companies Act, 1956. He has also submitted that pursuant to Article 20 of the Constitution of India, any law passed shall be applicable proactively unless retrospective effect is explicitly mentioned.

We have perused the documents filed by the Petitioners. We have seen the Board Resolution marked as Annexure-I wherein the Board has passed a resolution to file necessary Compounding Application. We have seen the Memorandum of Association marked as Annexure-II. We have seen Notice and Minutes of Annual General Meeting for the financial year 2013-14 marked as Annexure-IV and after going through the Company Petition under section 621A of the Companies Act, 1956 and further submissions made by the Counsel for Petitioners and the observations of the Registrar of Companies, we direct the Petitioners No. 1 to 4 to pay the compounding fee as detailed hereunder:-

Sl. No.	Particulars	Violation of Sec.166 of Companies Act, 1956	Delay of 111 days	Total Rs.	Grand Total Rs.
1	1 st Petitioner Company	10,000/-	111 x 500/-	55,500/-	65,500/-
2	2 nd Petitioner	10,000/-	111 x 500/-	55,500/-	65,500/-
3	3 rd Petitioner	10,000/-	111 x 500/-	55,500/-	65,500/-
4	4 th Petitioner	10,000/-	111 x 500/-	55,500/-	65,500/-
	Total				2,62,000/-

(Rupees Two lakhs Sixty two thousand only)

In pursuant to our Order dated 26/09/2016 mentioned herein above, the Applicants have paid the compounding fee by depositing Demand Draft bearing No. 399244 dated 01/10/2016 for Rs. 2,62,000/- (Rupees Two Lakh Sixty Two thousand only) of State Bank of Hyderabad, J.C.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 ^{7th} DAY OF OCTOBER 2016