

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH  
T.P.NO. 259/2016

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

IN THE MATTER OF COMPANIES ACT, 2013  
SECTION 621A UNDER SECTION 220 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, 6<sup>th</sup> Cross, 6<sup>th</sup> Block,  
Nagarabhavi, II Stage,  
Bangalore-560072.
3. Mr. Bhanu Prakash Chinnamutive  
No.183, G Cross, 3<sup>rd</sup> Block,  
Nagarabhavi, 2<sup>nd</sup> 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, 1<sup>st</sup> Floor, 7<sup>th</sup> 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 220 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 numbered as T.P No. 259/16/621A/2016.

The averments in the petition 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 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 Chinnamutive 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 1<sup>st</sup> April to 31<sup>st</sup> March.

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 Company has sought the following relief(s):-

- a) The delay in complying with the provisions of Sections 220 of the Companies Act, 1956 be condoned;
- b) Not to take any action/prosecution against the Petitioners under Section 162 of the companies Act, 1956 for contravention of Section 220 of the Companies Act, 1956;
- c) The Offence may be compounded by imposing a lenient penalty against the Company and its officers in default.

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 up to 31/12/2014, but the company could not hold the Annual General Meeting within the due date. The Annual General Meeting was held on 21/04/2015 and as such, there was an inordinate delay of 111 days in finalizing the annual accounts and conducting Annual General Meeting for the financial year 2013-14. However, the Petitioner Company filed its financial statements with the Registrar of Companies, Karnataka, Bengaluru with a delay of 52 days (as



per Registrar of Companies report dated 29/03/2016) and thereby violating the provisions of Section 220 of the Companies Act, 1956. Thus the Petitioners have committed the delay of 52 days in filing the Annual Returns and financial statements for the financial year 2013-14. Further it is stated in the petition that, the default committed under section 220 of the Companies Act, 1956 has occurred inadvertently and is unintentional and also 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 1<sup>st</sup> Petitioner Company and its Directors suo-moto have filed this application to compound the offence, praying the Tribunal to compound the offence.

The Registrar of Companies, Karnataka, Bengaluru vide his letter bearing No.ROCB/MMM/621A/034086/2016 dated 29/03/2016 has stated that, the company has not complied with provisions of section 220 of the Companies Act, 1956 and further submitted that the Company has filed its balance sheet and profit and loss account for the financial year 2013-14 by paying additional fees on 21/04/2015 and the period of default is from 28/02/2015 to 21/04/2015, thereby there was a delay of 52 days and has made an observations that the compounding application may be decided on merits.

As per the provisions of section 220 (3) read with the provisions of section 162 of the Companies Act, 1956 is given below:-

Section 220 (3):-“if default is made in complying with the requirement of sub-sections (1) and (2), the company, and every officer of the company who is in default, shall be liable to the like punishment as is provided by Section 162 for a default in complying with the provisions of Section 159, 160 or 161.



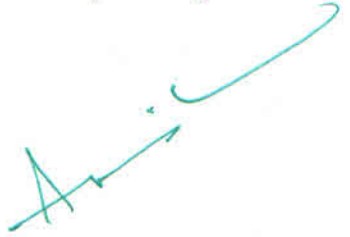



Section 162(1):- “If a company fails to comply with any of the provisions contained in section 159, 160 or 161, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to Rs 500/- for every day during which the default continues”.

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, the financial statements and related reports till the financial year 2013-14 shall be governed by the relevant 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 Annual Accounts 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.220 of Companies Act, 1956 Delay of 52 days (As per the report of ROC)	Grand Total Rs.
1	1 <sup>st</sup> Petitioner Company	100 x 52 days	5,200.00
2	2 <sup>nd</sup> Petitioner	100 x 52 days	5,200.00
3	3 <sup>rd</sup> Petitioner	100 x 52 days	5,200.00
4	4 <sup>th</sup> Petitioner	100 x 52 days	5,200.00
	<b>Total</b>		<b>20,800.00</b>

(Rupees Twenty thousand eight hundred 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. 399242 dated 01/10/2016 for Rs. 20,800/- (Rupees Twenty thousand eight hundred 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 7<sup>th</sup> DAY OF OCTOBER 2016