

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 258/2016

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

IN THE MATTER OF COMPANIES ACT, 2013 UNDER SECTION 203,
SECTION 621A READ WITH SECTION 383A 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 Chinnamutiv
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, 02/09/2016 and 19/09/2016.





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 383A 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. 258/2016.

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, precision components for automobile and 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 Chinnamutive and No. 4, Mr. David Marvin Hughes are the Directors of the Petitioner Company from 22/06/1998 and 12/06/2012 respectively.

.It is averred in the Company Petition that:-

- a. The Petitioner Company is managed by a Board of Directors comprising of 6 Directors.
- b. The Petitioner Company's financial year is 1st April to 31st March.
- c. The Paid-Up Share Capital of the Petitioner Company was increased to 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 and 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 on 18/01/2012.
- d. Subsequent to increase in paid-up capital, the Petitioner Company was in the process of identifying potential and qualified Company Secretary, as such however unable to identify suitable candidate to fill in the post of whole-time company Secretary. As such the Petitioner Company was unable to comply with the provisions of Section 383A (1) of the Companies Act, 1956 and Section 203 of the Companies Act, 2013. However the petitioner Company appointed a Whole-Time Company Secretary on 08/07/2015 with a delay of 1267 days (803

days under Companies Act, 1956 and 464 days under companies Act 2013). A copy of Form DIR-12 filed with the Registrar of Companies, Karnataka, Bengaluru in respect of appointment of Whole-Time Company Secretary.

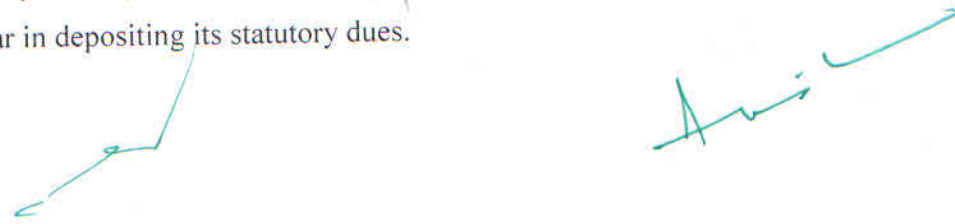
- e. The lapse in complying the provisions under Section 383A (1) of the Companies Act, 1956 and Section 203 of the Companies Act, 2013 is unintentional and the Petitioner Company has inadvertently contravened the said provisions of the Companies Act, 1956 and Companies Act, 2013.
- f. The Petitioners 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, 2013 and any other acts, rules and regulations relating thereto.

The Registrar of Companies, Karnataka, Bengaluru in his report stated that the Company has appointed whole time company secretary on 08/07/2015 and filed DIR 12 with the Registrar of Companies.

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

- a) The delay in complying with the provisions of Sections 383A of the Companies Act, 1956 and Section 203 of the Companies Act, 2013 be condoned;
- b) Not to take any action/prosecution against the Petitioners under Section 383A (1A) of the companies Act, 1956 and section 203(5) of Companies Act, 2013 for contravention of Section 383A (1) of the Companies Act, 1956 and section 203(5) of Companies Act, 2013.
- c) The Offence may be compounded by imposing a lenient penalty against the Company and its Directors.

The matter has been heard on 16/08/2016, 02/09/2016 and 19/09/2016. The Counsel for petitioners 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.




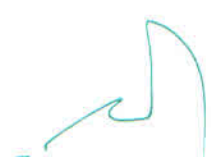
It is also reflects that Petitioner Company has taken reasonable efforts to comply with the provisions of section 383 A of the Companies Act, 1956. Section 383A of the Companies Act, 1956 speaks as follows:

“if a company fails to comply with the provisions of sub-section (1) 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.”

Section 203(5) of the Companies Act, 2013 reads as follows:-

“if a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.”.

We have perused the documents filed by the Petitioners. We have seen the Board Resolution dated 08/07/2015 wherein the Board has passed to appoint Mr. Sriram Venkataraman, as whole time Company Secretary. We have seen the Memorandum of Association 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	Continuous violation under section 383A of the Companies Act, 1956 and 203 of the Companies Act, 2013. Delay of 1267 days.	Total Rs.
1	1 st Petitioner Company	1267 x 100/-	1,26,700/-
2	2 nd Petitioner	1267 x 50/-	63,350/-
3	3 rd Petitioner	1267 x 50/-	63,350/-
4	4 th Petitioner	1267 x 50/-	63,350/-

In pursuant to our Order dated 29/09/2016 mentioned herein above, the Applicants have paid the compounding fee by depositing Demand Draft bearing No. 399260 dated 06/10/2016 for Rs. 3,16,750/- (Rupees Three lakhs sixteen thousand seven hundred fifty 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 15th DAY OF OCTOBER 2016