

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 273/2016

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

IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A READ WITH SECTION 383A OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF M/S IZMO LIMITED
(Formerly known as LOGIX MICROSYSTEMS LIMITED)

T.P. No. 273/621A/2016

1. M/S Izmo Limited
177/2C, Billekahalli Industrial Area,
Bannerghatta Road,
Bangalore-560076.
2. Mr. Sanjay Soni
Flat No.9,
Prestige Casablanca Apartments,
12/1, Airport Road,
Bangalore-560017
3. Mr. Shashi Soni
Flat No.9,
Prestige Casablanca Apartments,
12/1, Airport Road,
Bangalore-560017

- APPLICANTS

PARTIES PRESENTED: Mr. S. Manjunath, Advocate, # 9, "Manjushree"
3rd Floor, West Link Road, Malleswaram,
Bangalore-560003, Authorised representative for
the Applicants.

Heard on: 16/08/2016 and 01/09/2016.

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 383 of the Companies Act, 1956. Consequent upon the establishment of

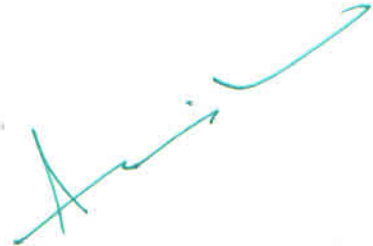

National Company Law Tribunal Bench at Bengaluru, the said case was transferred to this Tribunal on abolition of Company Law Board, Southern Region, Chennai Bench and numbered as T.P No. 273/16/621A/2016.

The averments in the petition are briefed hereunder:-

The Petitioner Company originally incorporated on 08/09/1995 in the name and style of M/s LOGIX MICROSYSTEMS LIMITED and subsequently changed to M/s IZMO LIMITED with effect from 06/08/2014 vide Registration No. L72200KA1995PLC018734. The Registered office of the company is situated at # 177/2C, Billekahalli Industrial Area, Bannerghatta Road, Bangalore-560076.

The Applicant Nos. 2 and 3 are the Directors of the 1st Applicant Company. The Authorized share capital of the applicant company as per the latest Audited Balance sheet on 31/03/2015 is Rs. 13,20,00,000/- (Rupees Thirteen Crores twenty lakhs only) consisting of 1,32,00,000 (One crore thirty two lakhs) Equity Shares of Rs 10/- each. The Company is a listed company on Bombay Stock Exchange and National Stock Exchange.

The Main objects of the Applicant Company is to carry on the business as manufacturers of, dealers in, importers and exporters of electronic equipments of all kinds and description, to carry on the business as manufacturers and dealers in scientific instruments and research instruments required in the field of electronics and vacuum technology, to establish a research and development unit, to carry on the business of electrical engineers etc., details of the objects of the company are mentioned in the company petition.



It is averred in the Petition that the company has made an application under section 621A read with section 383A of the Companies Act, 1956 for compounding the offence due to non appointment of Company Secretary. The Petitioner has mentioned in the application that the Company was not able to find a suitable candidate for the position of Company Secretary during the period 03/03/2010 to 09/11/2014. The Company has also submitted the Annual Reports for the year ending 31/03/2015. The Counsel for petitioners has submitted that the accounts are audited and the Counsel also informed that earning per share is low (Rs 0.22 per share of face value of Rs 10/- each). As per section 383A of the Companies Act, 1956, every specified company to have a whole time company secretary.

The Counsel for petitioner has also informed that, Mrs. Chitra, M.A, NS 201, Shriram Surabhi Apt. Off Kanakapura Road, Bangalore-560062 has been appointed as Company Secretary w.e.f. 10/11/2014 and her Form DIR-12 has been filed with Ministry of Corporate Affairs. The Counsel for Petitioner informed that the company trying to appoint a company secretary but could not find a suitable candidate. The Counsel for Petitioner also informed that the company has hired the services of a Company Secretary in Practice on a retainership basis to ensure compliances of applicable Laws.

We have heard the Counsel for Petitioner Sri S. Manjunath. In the course of hearing the Counsel for Petitioner has filed copies of Annual Reports for the year 2014-15, Copy of Form DIR-12 filed with the Ministry of Corporate Affairs for appointment of Company Secretary and extract of Board Resolutions dated 10/11/2014.

He prayed for compounding for the violation taking a lenient view. Report from the Registrar of Companies, Bengaluru was received on 6th June 2016 who recommended for compounding and further report that petition may be decided on merits.

We have gone through the documents filed by the Petitioners, we have seen copy of Board Resolution dated 13/02/2016 where in Board resolved to file compounding application for violation of various provisions of the Companies Act, 1956.

Section 383A of the Companies Act, 1956 reads as follows:

(1) Every company having such paid-up share capital as may be prescribed shall have a whole-time secretary and where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company.

(1A) 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:-

Provided that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole-time secretary.

Thus it is clear that, the Company and the Directors herein violated the provisions of section 383A of the Companies Act, 1956. After considering the documents filed, report of the Registrar of Companies, Karnataka, Bengaluru and submissions made by the Counsel for the Petitioner, we are of the opinion that violation can be compounded by levying the compounding fee as shown below in the table:

Sl. No.	Particulars	Violation of Sec.383A of Companies Act, 1956 - Delay of 1706 days (as per Registrar of Companies, Karnataka Bengaluru Report)	Grand Total Rs.
1	1 st Applicant Company	1706 x 50/-	85,300.00
2	2 nd Applicant	1706 x 50/-	85,300.00
3	3 rd Applicant	1706 x 50/-	85,300.00
	Total		2,55,900.00

(Rupees Two lakhs Fifty five thousand nine hundred only)

In pursuant to our Order dated 17/09/2016 mentioned herein above, the Applicants have paid the compounding fee by depositing Demand Draft for Rs. 2,55,900/- (Rupees Two lakh fifty five thousand nine hundred only) of HDFC Bank, Bangalore drawn on 03/10/2016 in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai" as detailed hereunder:-

Sl. No.	D.D No.	Date	Amount Rs.
1	001885	03/10/2016	85,300/-
2	001886	03/10/2016	85,300/-
3	001887	03/10/2016	85,300/-
	Total		2,55,900/-

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