

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 231/2016
IN

C.P. 297/621A/CB/2015

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

IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 621A AND SECTION 177 READ WITH SECTION
178(8) OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF M/S INGERSOLL-RAND INTERNATIONAL (INDIA)
PRIVATE LIMITED

C.P. 297/621A/CB/2015 IN T.P.NO. 231/2016

1. Ingersoll-Rand International (India) Private Limited,
Plot No. 35,
KIADB Industrial Area,
Bidadi, - 562109.
2. Mr. Prasad Yeshwant Naik,
C-2/301, 6th Main, 15th Cross,
White House, R.T. Nagar,
Bangalore-560032.
3. Mr. Arjun Keshava Murthy Perikal,
37, 9th B Cross, 2nd Stage, West of Chord Road,
Mahalaxmipuram,
Bangalore-560086.
4. Ms. Shirin Salis Myvelia,
No.3345, 6th Cross, 13th Main,
HAL II Stage,
Indiranagar,
Bangalore-560008.

- APPLICANTS

PARTIES PRESENTED: Mr. K.Natesh No.287, 9th Main, 26th Cross, BSK
2nd Stage, Bangalore-560070- Authorised
representatives for the Applicants.

Heard on: 26/07/2016, 09/08/2016, 18/08/2016 and 26/10/2016.

ORDER

The Petition was originally filed before the Company Law Board, Southern Region, Chennai under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of section 177 of the Companies Act, 2013. 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. 231/2016.

The averments in the Company Petitions are briefed stated hereunder:-

- The Applicant Company “Ingersoll-Rand International (India) Limited” was incorporated on 15th March 2005 under the Companies Act, 1956 as a Public Limited Company.
- The Applicant Company was subsequently converted into a Private Limited Company with the approval of Members in the Extra-Ordinary General Meeting held on 27th April 2015 and the Registrar of Companies/Central Government has approved the same w.e.f. 5th June 2015 and its name was changed to “Ingersoll-Rand International (India) Private Limited” vide Registration No. CIN-U72200KA2005PTC035829. The Registered office of the company is situated at Plot No. 35, KIADB Industrial Area, Bidadi, Karnataka-562109.

The Authorized share capital of the Applicant Company is Rs. 2,00,00,000/- (Rupees Two Crores only) consisting of 20,00,000 (Twenty lakhs) Equity Shares of Rs 10/- each and the Issued, Paid up Capital is Rs 19,90,000/- (Rs. Nineteen Lakhs Ninety Thousand only) consisting of 1,99,000 (One lakh ninety nine thousand) of equity shares of Rs 10/- each.

The Main objects of the applicant Company is to carry on in India and elsewhere, the business of computer services in all disciplines (including CAD/CAM/CAE/CAS/RISC workstations and consultancy services) including software development, engineering and testing services, software and technical support, software design; to carry on the business of hardware maintenance, setting up of server and network infrastructure and to buy, sell, trade, transfer, manufacture,

install, which may seem capable of being profitably dealt with in connection therewith etc., Details of the objects of the company are mentioned in the Memorandum and Articles of Association of the Applicant Company.

According to the provisions of Section 177(1) of the Companies Act 2013 read with Rule 6 of the Companies (Meeting of Board and its Powers) Rules, 2013, the Board of Directors of every listed company and every public company falling under the classes are required to constitute an Audit Committee of the Board.

- a) Public company having paid up share capital of Rs 10 Crores or more;
or
- b) Public company having turnover of Rs 100 Crores or more; or
- c) Public company which have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs 50 Crores.

The proviso to rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014, provides a time period of one year from the date of commencement of the Companies (Meetings of Board and its Powers) Rules, 2014 or appointment of independent directors by the Company, whichever is earlier, for constitution of an audit committee, to the public companies falling under the proviso of Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014 and were not required to constitute an Audit Committee as per section 292A of the Companies Act, 1956. According to the provisions of Section 292A of the Companies Act, 1956, public company with paid up capital of not less than Rs. Five Crores is required to constitute an audit committee. The Companies (Meetings of Board and its Powers) Rules, 2014 came into effect on 1st April 2014 vide Central Government Notification dated 31st March 2014. Accordingly all the companies falling under the provisions of Section 177(1) read with Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014, are required to constitute an audit committee on or before 31st March 2015.

In this case, as per the financial statements dated 31st March 2014, the total borrowing of the Company including short and long term loan(s) is Rs 74,49,99,997/- The Company was not required to constitute any Audit Committee as per section 292A of the Companies Act, 1956 and has not appointed/inducted any independent directors on the Board, hence the company was

required to constitute an audit committee on or before 31st March 2015 as per Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014. The same has not been complied with.

Thus there was violation in compliance of section 177(1) of the Companies Act, 2013 read with Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2013.

It is further averred that, the company was required to constitute an Audit Committee on or before 31st March 2015. The default period is existing from 1st April 2015 to 5th June 2015 to the date of converting the company into a Private Limited.

Thus the suo-moto application is filed by the Applicants admitting the violation of provisions of section 177(1) of the Act. We have heard the Practicing Company Secretary who contended that Company was converted into a Private Limited Company w.e.f. 5th June 2015. Provisions of section 177(1) of the Companies Act, 2013 do not apply from the date of conversion and the period of default is from 1st April 2015 to 5th June 2015.

Report from the Registrar of Company, Karnataka at Bengaluru was received vide Ref. No. ROCB/PS/621A/035829/2015 dated 20th October 2015, it is reported that the 1st Applicant Company Ingersoll-Rand International (India) Limited being a public limited company having as aggregate outstanding loan exceeding Rs 50 Crores as on 31st March 2014 and it has to constitute Audit Committee on or before 31st March 2015 and to appoint independent directors on board to constitute audit committee. Thus, there was violation. The report further reads as per section 177(3) of the Companies Act, 2013 companies existing on or before the commencement of the Act are required to comply with the provisions of section 177(1) of the Companies Act, 2013 with the rules made thereunder within one year from the commencement of the Act or from the date of notification of the Rules, may be applicable and these came effect with notifications dated 26th March 2014 and 31st March 2014 respectively and hence the company should have complied within 31st March 2015. The company was converted into a private company w.e.f. 5th June 2015 and hence section 177(3) does not apply. Hence the period of offence is from 1st April 2015 to 5th June 2015.

We have seen the Memorandum of Association marked as Annexure-I. We have seen the certified copies of changes in Directors appearing on the portal of the Ministry of Corporate Affairs and E-Form 32 /DIR 12 which is marked Annexure A-II, certified copy of the financial statements dated 31st March 2014 which is marked A-III.

This Application was filed under section 621A of the Companies Act, 1956. The provisions of section 441 of the Companies Act, 2013 came into effect from 1st June 2016. Before erstwhile Company Law Board, Southern Region, Chennai this application was filed. Therefore, this application is to be decided under the provisions of section 621A of the Companies Act, 1956.

Section 177(1) of the Act reads as follows:

“The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee”.

The violation of 177(1) of the Act is punishable under section 178(8) of the Act, which reads as follows:-

“ in case of contravention of any of the provisions of Section 177 of the Act, 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 officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty five thousand rupees but which may extend to one lakh rupees or with Both”.

After going through the documents filed and the contents of the petition and submissions made by the Practicing Company Secretary and the observations of the Registrar of Companies, Karnataka Bengaluru the violation can be compounded by levying the compounding fee on the Applicants as follows:-

Sl. No.	Particulars	Violation of Sec.177 of the Companies Act, 2013	Grand Total Rs.
1	1 st Applicant Company	1,10,000/-	1,10,000/-
2	2 nd Applicant Director	30,000/-	30,000/-
3	3 rd Applicant Director	30,000/-	30,000/-
4	4 th Applicant Director	30,000/-	30,000/-

In pursuant to our Order dated 07/11/2016 mentioned herein above, the Applicants have paid the compounding fee by depositing 4 Demand Drafts of Citibank, Bangalore drawn on 16/11/2016 in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai" as detailed below:-

Sl. No.	Particulars of Applicant	Fee Amount/D.D Rs.	DD No. & Date
1	1 st Applicant Company	1,10,000/-	352362 dt. 16/11/2016
2	2 nd Applicant-Director	30,000/-	352363 dt. 16/11/2016
3	3 rd Applicant-Director	30,000/-	352364 dt. 16/11/2016
4	4 th Applicant-Director	30,000/-	352365 dt. 16/11/2016

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 22nd DAY OF NOVEMBER 2016