

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

T.P.NO. 232/2016

IN

C.A.298/2015

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

**IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A READ WITH SECTION 149 (4) OF THE COMPANIES ACT, 2013
AND**

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

T.P NO. 232/2016 C.A.298/2015

1. M/S 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 560 032
3. Mr.Arjun Keshava Murthy Perikal,
37, 9th B Cross, 2nd Stage, West of Chord Road,
Mahalaxmipuram,
Bangalore 560 086.
4. Mr. Shirin Myvelia Salis,
No. 3345, 6th Cross, 13th Main, HAL II Stage,
Indiranagar,
Bangalore 560 008.

- **APPLICANTS**

PARTIES PRESENT:

Mr K Natesh Kalidevapur, ,
Practicing Company Secretaries,
No.287, 26th Cross, 9th Main,
Banashankari 2nd Stage,Bangalore 560 070.

Heard on: 26.7.2016, 9.8.2016, 26.10.2016, 8.11.2016, 17.11.2016 & 14.12.2016

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 149(4) of the Companies Act, 2013 and was numbered as C.A 298/2015. 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. 232/2016.

The company was incorporated on the 15th day of March 2005, under the Companies Act, 1956, as a public limited company under the name and style of "Ingersoll-Rand International (India) Limited".

The 1st Applicant Company was subsequently converted into a private limited company with the approval of members in Extra-Ordinary General Meeting held on 27th April 2015 and the Central Government (the Registrar of Companies) effective from 5th June 2015 and consequently its name was changed to "Ingersoll-Rand International (India) Private Limited".

The Corporate Identification Number of the Company is U72200KA2005PTC035829.

The Authorized share capital of the 1st Applicant Company is Rs 2,00,00,000/- (Rs. Two Crores only) consisting of 20,00,000 (Twenty lakh) Equity Shares of Rs 10/- each and the paid up share capital is Rs 19,90,000/- (RsNineteen Lakhs Ninety thousand only). divided into 1,99,000 (One Lakh Ninety nine thousand) equity shares of Rs, 10/- each.

The main objects of the Company is to carry in India or elsewhere, the business of computer services in all disciplines (including CAD/CAM/CAE/CAS/RISC workstation and consultancy services) including software development, engineering and testing services, software and technical support, software design, software distribution, imparting training in computer software and hardware, software and system integration services, quality assurance, customer support and to provide consultancy and advisory services in related areas.

The 1st Applicant Company is presently managed by the Board of Directors as stated hereunder:-

- a) Shri. Prasad Yeshwant Naik
- b) Shri. Arjun Keshava Murthy Perikal
- c) Shri. Shirin Myvelia Salis

The averments in the Company Petition filed by the applicants are briefed hereunder:-



That the members of the Board were of the view that the Company be converted into a private company in order to enjoy the privileges of a private company and there was no distinct advantage in continuing as a public company. A private company is not required to comply with the provisions of Sec. 149(4) of the Act read with Rule 4 of Companies (Appointment and qualification of Directors) Rules, 2014. The Board took significant time to arrive at a definite decision, hence the non-compliance.

Sec 149(4) of the Companies Act, 2013 reads as follows:-

Sec. 149(4): "Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies".

Provisions of section 172 of the Companies Act 2013 provides for penalty which reads as follows:

"If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees."

Report of the Registrar of Companies, Karnataka, Bangalore is received vide bearing No.ROCB/PS/621A/035829/2015 dated 20.10.2015.

We have heard the Practicing Company Secretary. He made submissions that, the Directors were under the impression that the company is in the process of conversion from Public to Private Limited in which event, there is no need to appoint Independent director. The 1st Applicant Company has decided for conversion on 27.4.2015 and became private limited from 5th June 2015. The provisions of section 149(5) of the Act has allowed a time period of 1(one) year from the date of notification of Companies (Appointment and Qualification of Directors) Rules, 2014, (1st April 2014) for compliance of provisions of Sec. 149(4) of the Act and Rule 4 of the Companies (Appointment and Qualification of Directors) Rules 2014, to companies, existing on or before the date of commencement of the Act. Accordingly the company was required to induct independent directors on its Board on or before 31st March 2015. The cause of action arose from 1st April 2015 and continued till 5th June 2015. Hence Practicing Company Secretary requested to take a lenient view and impose nominal fine.




We have seen the copies of Memorandum and Articles of Association and also Board Resolution of the Company. It is clear that there was violation of provisions of section 149(4) of the Companies Act, 2013 and violation is punishable under Section 172 of the Companies Act, 2013. After going through the contents of the Application and submission made by the Practicing Company Secretary and other connected records, viz., copy of financial statements dated 31/03/2014, copy of Memorandum and Articles of Association and Board Resolution, we are of the opinion that the violation can be compounded by levying compounding fee on the Applicants as detailed hereunder:-

Sl. No.	Particulars	Violation of Sec.149(4) of the Companies Act, 2013	Grand Total Rs.
1	1 st Applicant Company	75,000/-	75,000/-
2	Prasad Yeshwant Naik (2 nd Applicant)	50,000/-	50,000/-
3	Arjum Keeshava Murthy Perikal (3 rd Applicant)	50,000/-	50,000/-
4.	Shirin Myvelia Salis (4 th Applicant)	50,000/-	50,000/-

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 6th January 2017 for compliance.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 23rd DAY OF DECEMBER 2016