

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

T.P.NO. 233/2016

C.A/299/2015

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

**IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A READ WITH SECTION 178 OF THE COMPANIES ACT, 2013
AND**

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

T.P NO. 233/2016 IN C.A/299/2015

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

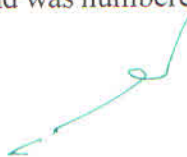
PARTIES PRESENT:

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

Heard on: 26.7.2016, 9.8.2016,26.10.2016,16, 8.11.2016, 17.11.2016 & 14.12.2016

ORDER

The Application 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 178 of the Companies Act, 2013 and was numbered as C.A./299/2015. 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. 233/2016.

The 1st Applicant Company was incorporated on the 15th day of March 2005, under the Companies Act, 1956, as a public limited company in 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 1st Applicant 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/- (Rs. Nineteen 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 1st Applicant 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 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. 178(1) of the Act read with Rule 6 of Rules, 2014. The Board took significant time to arrive at a definite decision, hence the non-compliance.

Sec 178(1) of the Companies Act, 2013 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 the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors: Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.”

Thus there was violation of provisions of section 178(1) of the Companies Act 2013 and penalty is provided to such violation in Sec. 178(8) of Companies Act, 2013 which reads as follows:-

“In case of any contravention of the provisions of section 177 and 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 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:

Provided that non-consideration of resolution of any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.”

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. Report of 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 submission that there was no intention to violate the provisions of the Companies Act, 2013. The Directors were under the impression that the company is in the process of conversion from Public Limited Company to Private Limited Company and hence forming nomination and remuneration committee may not be required when once it gets converted into a private Limited Company. The cause of action arose on 1st April 2015 and continued till 5th June 2015. Practicing Company Secretary requested the Tribunal to take a lenient view and impose a 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 178(1) of the Companies Act, 2013 and violation is punishable under Section 178(8) 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, 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.178(1) of the Companies Act, 2013	Grand Total Rs.
1	Applicant Company	1,00,000/-	1,00,000/-
2	Prasad Yeshwant Naik (2 nd Applicant)	25,000/-	25,000/-
3	Arjum Keeshava Murthy Perikal (3 rd Applicant)	25,000/-	25,000/-
4.	Shirin Myvelia Salis (4 th Applicant)	25,000/-	25,000/-

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.

23/12/16
(RATAKONDA MURALI)
MEMBER, JUDICIAL

Ashok
(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE *25* DAY OF DECEMBER 2016