

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 244/16

C.A. 17/621A/CB/2016

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

IN THE MATTER OF COMPANIES ACT, 2013 (18 OF 2013)
SECTION 621A AND SECTION 181 READ WITH SECTION 450 AND 441
OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF M/S LOWE'S SERVICES INDIA PRIVATE LIMITED

CA NO. 17/621A/CB/2016

1. M/S Lowe's Services India Private Limited,
7th Floor, Building Mountain Ash (H2)
Manyata Embassy Business Park
(Special Economic Zone)
Bangalore-560045.
2. Mr. Lalit Ahuja,
Adarsh Palm Retreat, 2nd Phase, Villa-321,
Devarabisanahalli,
Off Outer Ring Road, Bangalore-560103.
3. Mr. Dharani Pragada Narayana,
6722, Vista Lodge Loop Castle Pines, 80108, USA.
4. David Ray green,
#118, Red Brook Lane, Mooresville, North Carolina, 28117, USA
5. Ms. Hannah Hyunjin Kim,
2910, Hanson Drive, Charlotte, North Carolina, 282072618, USA
6. Mr. Randall James Moon,
105, Billingsgate Ct. Mooresville, North Carolina, 28117, USA
7. Mr. Matthew Vernon Hollifield,
121, Elizabeth Brook Drive,
Davidson, North Carolina, 280367788, USA.
8. Mr. Lance Burrell Cook
144, Cherry Tree Drive, Mooresville 28117, USA
9. Mr. Kevin Robert O'Brien
Westmoreland Farm RD Davidson, NC 280368038, USA - APPLICANTS

PARTIES PRESENTED:

Mr. T.Sathya Prasad, Practicing Company Secretary
and Authorised representative for the Applicants.

ORDER

1. The Petition is filed on behalf of Petitioners under Sec.621A of Companies Act 1956 and under Section 181 read with Sec. 450 and 441 of Companies Act 2013. Originally the Compounding petition was filed before Company Law Board, Southern Region, Chennai. The Petition was numbered as C.A. 17/CB/2016. 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. This petition is filed by the Petitioners with a prayer to record compounding of the offence. Contents of the Company Petition are briefly stated hereunder:

The 1st applicant is a company which was originally incorporated under the name and style of "ANSR Management Services India Private Limited" on 28th June 2013 as Private Limited Company. The Registered Office of the company is situated in 7th Floor, Building Mountain Ash (H2) Manyata Embassy Business Park, Special Economic Zone, Bengaluru-560045. The applicant company subsequently changed its name to "Lowe's Services India Private Limited" vide General Body Meeting held on 12/04/2014.

2. The Authorised Share Capital of the applicant company as per the latest Audited Balance Sheet is Rs. 3,20,00,000/- (Rupees Three Crore and Twenty Lakhs only) consisting of 32,00,000 (Thirty Two Lakhs) Equity Shares of Rs 10/-each. The issued, Subscribed and Paid up capital of the Applicant Company is Rs 71,40,700/- (Rs. Seventy One Lakhs Forty Thousand and Seven Hundred only) consisting of 7,14,070 (Seven Lakhs Fourteen thousand and Seventy) Equity Shares of Rs 10/-each. The main object of the company is to carry out the business in the Information Technology area and other connected areas. Details of the main object of the Company are stated in the Petition.
3. The Board of Directors in their meeting held on 23/03/2015 and 01/06/2015 discussed and approved the Operating Expenditure Plan for the year 2015-16 and considered the proposal for donation to M/s Habitat for Humanity India Trust. Accordingly a cheque dated 30/06/2015 for Rs 30.00 Lakhs (Rupees Thirty Lakhs only) was issued to M/s Habitat for Humanity India Trust. The amount given as donation is exceeding 5% of average net profit for 3 years immediately preceding financial year, in which case the Company ought to have taken consent of the members before issuing cheque as per provisions of Section 181 of Companies Act, 2013.
4. Since donation was given without approval of the members of the Company and it was also exceeding 5% of Net Profit, it was decided to pray the Tribunal for Compounding as there was violation of provisions of Section 181 of Companies Act, 2013.

Subsequently in the Extra Ordinary General Meeting (EGM) held on 31/08/2015, the members ratified the donation given to M/s Habitat for Humanity India Trust. The Board of Directors of the Company approved making application for compounding. It is further alleged that application is filed suo-moto by the company and its Directors and contravention was purely unintentional. Thus it is prayed to permit the Petitioners to compound the violation.

5. We have heard the Practicing Company Secretary who is appearing for the petitioners. She contended that Petitioners voluntarily filed this petition for compounding as they violated the provisions of Section 181 of Companies Act, 2013. She contended that violation was not willful and is unintentional. She urged the Petitioners have filed all necessary documents in support of their contentions that the action of Board of Directors in donating to M/s Habitat for Humanity India Trust, was approved by the members in the Extra Ordinary General Meeting (EGM) convened for the purpose. The Practicing Company Secretary for Petitioners further contended, the donation was given to a reputed Charitable Trust which is involved in serving the humanity. Thus the Practicing Company Secretary urged any lenient view may be taken as donation was made for public purpose.
6. The 1st Petitioner is Company and Petitioners No. 2 to 9 are Directors. It is admitted and undisputed fact that company donated Rs 30.00 lakhs to M/s Habitat for Humanity India Trust without approval from the Members, thereby the Company and its Officers violated the provisions of Section 181 of Companies Act, 2013. According to section 181 of Companies Act 2013 which reads as follows:

“The Board of Directors of a company may contribute to bonafide charitable and other funds:

Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five percent, of its average net profits for the three immediately preceding financial years.”

It is also contended that the members approved the donation in the Extra Ordinary General Meeting (EGM) held on 31/08/2015. The Petitioner filed certified true copy of the minutes of Extra Ordinary General Meeting (EGM) dated 31/08/2015 and members ratified action of the directors in donating Rs 30.00 lakhs to the Trust.

7. We have seen Annexure-3 which is the Minutes of the Extra Ordinary General Meeting (EGM) of the Members of the Company dated 31/08/2015. The Minutes disclosed that Members ratified the donation made to M/s Habitat for Humanity India Trust and consent was given.

The petitioners have filed true copy of Memorandum of Association. They also filed certified true copy of Balance Sheet and Profit & Loss Account for the year ended 31/03/2015. The petitioners filed certified true copy of the Extract of Resolution passed in the Board Meeting held on 31/08/2015. The petitioner suo-moto filed this application admitting violation and prayed for compounding. There was delay of 162 days in getting approval from the Members for ratifying the donation made to the Trust. There is no penal provision provided under Section 181 of Companies Act, 2013. Therefore, provision of Section 450 of Companies Act, 2013 are applicable. Any violation of provisions of Section 181 of Companies Act, 2013 is punishable under Section 450 of Companies Act, 2013.

8. The Company and every officer of the Company are liable for punishment. The 1st petitioner is company and petitioners No.2 to 9 are directors. They have filed this petition permitting to compound the offence. The Practicing Company Secretary prayed for lenient view as the violation was subsequently ratified by the members in the Extra Ordinary General Meeting held on 31/08/2015. She also urged the donation was given by the Company for a Trust engaged in Public Services. In the circumstances stated as the offence is compoundable, therefore prays to compound the violation by taking lenient view.

The Petitioners have filed Notarized Copy of Calculation of Average profits for CSR as per Sec.198 of the Companies Act, 2013. The petitioners also filed certified true copy of the Registration of M/s Habitat for Humanity India Trust. This Trust to which the donation was made Registered under Foreign Contribution (Regulation) Act, 2010.

Taking into account the averments in the petition and also the documents filed by the petitioners and the submissions made by the Practicing Company Secretary for the petitioners, we directed the petitioners to pay the compounding fee as detailed hereunder:

Sl. No.	Particulars	Violation of Sec.181 of Companies Act, 2013	Delay of 162 days	Total Rs.
1	1 st Applicant Company	Rs.2,000/-	162 x 200/-	34,400.00
2	2 nd Applicant	Rs. 2,000/-	162 x 200/-	34,400.00
3	3 rd Applicant	Rs.2,000/-	162 x 200/-	34,400.00
4	4th Applicant	Rs.2,000/-	162 x 200/-	34,400.00
5	5 th Applicant	Rs.2,000/-	162 x 200/-	34,400.00
6	6 th Applicant	Rs.2,000/-	162 x 200/-	34,400.00
7	7 th Applicant	Rs. 2,000/-	162 x 200/-	34,400.00
8	8 th Applicant	Rs. 2,000/-	162 x 200/-	34,400.00
9	9 th Applicant	Rs.2,000/-	162 x 200/-	34,400.00
	Total			3,09,600.00

In pursuant to our Order dated 18/08/2016 mentioned herein above, the Applicants have paid the compounding fee by depositing Demand Draft bearing No. 1000194 dated 30/08/2016 of HDFC Bank, Bengaluru, drawn in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai" as detailed below:-

1 2 3,09,600/-

Sl. No.	Particulars	Violation of Sec.181 of companies Act, 2013	Delay of 162 days	Total Rs.
1	1 st Applicant Company	Rs. 2,000/-	162 x 200/-	34,400.00
2	2 nd Applicant	Rs. 2,000/-	162 x 200/-	34,400.00
3	3 rd Applicant	Rs. 2,000/-	162 x 200/-	34,400.00
4	4 th Applicant	Rs. 2,000/-	162 x 200/-	34,400.00
5	5 th Applicant	Rs. 2,000/-	162 x 200/-	34,400.00
6	6 th Applicant	Rs. 2,000/-	162 x 200/-	34,400.00
7	7 th Applicant	Rs. 2,000/-	162 x 200/-	34,400.00
8	8 th Applicant	Rs. 2,000/-	162 x 200/-	34,400.00
9	9 th Applicant	Rs. 2,000/-	162 x 200/-	34,400.00
	Total - Rs.			3,09,600.00

(Rupees Three Lakhs Nine Thousand six hundred only)

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.

6/9/16
(RATAKONDA MURALI)
MEMBER, JUDICIAL

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 6th DAY OF SEPTEMBER 2016