

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 182/2016
IN
C.A. NO. 233/621A/CB/2015

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

IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 159 READ WITH SECTION 621A
OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF M/S MYSORE REALTY PRIVATE LIMITED

C.A. NO. 233/621A/CB/2015

1. M/S Mysore Realty Private Limited,
No. 1031/1, Gitanjali Layout,
HAL 3rd Stage,
Bangalore-560075
2. Mr. Issac Silberman,
Shoshanim, 5,
Ramat Gan 53583,
Israel.
3. Mr. Shaul David Lotan,
128 Lamerchav St.,
Ramat Hasharon, 47226,
Israel.
4. Mr. Alfred Michael Arambhan,
Flat No.701, 11th Level, 9A,
Bomanji Petit Road,
Mumbai-400036.
5. Mr. Yaron Yosef Gelbhart,
101A, Moru Milan,
13th Road, Opp. Khar Gymkhana,
Khar (West), Mumbai-400052
6. Mr. Yosef Cimer,
24 Sadia Ofri, Petach-Tiqwa,
Israel, 24, Israel.
7. Mr. Aaron Jonathan Solomon,
Flat 701/A, People's Cosmopolitan CHS Ltd.,
TIPS III, Plot No.21, St. Teresa Road,
Bandra (west)
Mumbai-400050.

APPLICANTS

PARTIES PRESENTED: Mr. K.Natesh, # 287, 9th Main, 26th Cross, BSK 2nd Stage, Bangalore-560070, Practicing Company Secretary and Authorised Representative for the Applicants.

Heard on: 29/07/2016, 09/08/2016, 07/09/2016, 26/09/2016 and 07/10/2016.

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 159 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. 182/2016.

The averments made in the company application are briefed hereunder:-

The 1st Applicant Company was incorporated under the Companies Act, 1956 on 01/02/1995 as a Private Limited Company in the name and style of MYSORE REALTY PRIVATE LIMITED vide Registration No. U45200KA1995PTC017072. The Registered office of the company is situated at # 1031/1, Gitanjali Layout, HAL 3rd Stage, Bangalore-560075.

The Authorized share capital of the 1st Applicant company is Rs. 3,66,14,940/- (Rs. Three Crores Sixty Six Lakhs Fourteen Thousand Nine Hundred and Forty only) divided into:

- a) 10,04,000 (Ten Lakh Four Thousand) Class A Equity Shares of Rs 10/- (Rupees Ten only) each.
- b) 20,000 (Twenty Thousand) Class B Equity Shares of Rs. 10/- (Rupees Ten only) each.
- c) 24,06,544 (Twenty Four Lakh Six Thousand Five Hundred Forty Four) Series A Non-cumulative Compulsory Convertible Preference Shares of Rs 10/- each and

- d) 2,30,950 (Two Lakh Thirty Thousand Nine Hundred Fifty) Series B Non-cumulative Compulsory Convertible Preference Shares of Rs 10/-each.

The Issued, Subscribed and Paid up Share Capital of the Company is Rs 3,65,68,970/- (Rs. Three Crores Sixty Five Lakhs Sixty Eight Thousand Nine Hundred Seventy only) divided into:

- a) 10,00,000 (Ten Lakhs) Class A Equity Shares of Rs 10/- each.
b) 20,000 (Twenty Thousand) Class B Equity Shares of Rs 10/- each
c) 24,06,543 (Twenty Four Lakh Six Thousand Five Hundred Forty Three) Series A Non-Cumulative Compulsory Preference Shares of Rs 10/- each
d) 2,30,354 (Two Lakh Thirty Thousand Three Hundred Fifty Four) Series B Non-Cumulative Compulsory Preference Shares of Rs 10/- each.

The Main objects of the 1st Applicant Company is to undertake construction and management of properties, projects, construction and development works and works relating to properties and/or infrastructure of any person or governmental authorities including management of construction of buildings of all descriptions, land, flats, maisonettes, dwelling houses, shops, offices, industrial estates, townships; and to carry on business in India and or abroad as construction managers etc., Details of the objects of the company are mentioned in the Memorandum of Association of the Petitioner Company.

It is averred in the Company Petition that, the 1st Applicant Company could not conduct the Annual General Meetings for the financial years 2011-12, 2012-13 and 2013-14 within the prescribed time and that Annual General Meetings was held after due date. It is further averred that, the main reason for the delay was that the Directors of the 1st Applicant Company were based in different places due to which, it has

become difficult for the Directors to co-ordinate with each other on various issues concerning the Company. As a result, there was considerable delay while making important decisions in matters relating to corporate law compliances. So there was delay in completing the preparation of accounts and as a result holding of Annual General Meeting was delayed and further it resulted in delay for filing of Annual Returns for the said period, which was beyond 60 days from the due date of Annual General Meeting. Thus the Company and its Directors violated section 159 of the Companies Act, 1956 for not filing Annual Returns within the stipulated time.

The matter has been heard on 29/07/2016, 09/08/2016, 07/09/2016 26/09/2016 and 07/10/2016. The Practicing Company Secretary has made submissions that the 1st Applicant Company is defaulted in holding the Annual General Meetings for the financial years 2011-12, 2012-13 and 2013-14. Subsequently the Company had held adjourned Annual General Meetings for each of the financial years and filed the requisite Annual Returns, complying with the previously defaulted provisions of the Act. Hence, prayed for Compounding the violation with minimum compounding fees.

The Registrar of Companies, Karnataka, Bangalore in his report bearing No. ROCB/SVK/17072/621A/2015 dated 31/08/2015 stated that, the Registrar office has received complaint regarding the reversal of share application money and the matter has been taken up with the Company separately and has given no objection if the compounding applications are decided on merits after levying penalty for each financial year.

The period of each financial year wise default as per Registrar of Companies, Karnataka, Bengaluru report is shown hereunder:-

Sl. No.	Name of the Applicant	No. of default days For the financial year			Total No. of days
		2011-12	2012-13	2013-14	
1	1 st Applicant Company	333	155	136	624
2	2 nd Applicant Director	333	155	136	624
3	3 rd Applicant Director	333	155	136	624
4	4 th Applicant Director	333	155	136	624
5	5 th Applicant Director	333	155	136	624
6	6 th Applicant Director	333	155	136	624
7	7 th Applicant Director*	333	-	-	333

* 7th Applicant Director Mr. Aaron Jonathan Solomon ceased to be the Director w.e.f. 16/08/2013. Hence Practicing Company Secretary confirmed that, he is not officer in default for the financial years 2012-13 and 2013-14.

Section 159, provides for the penalty under section 162 of the Companies Act, 1956 which reads as follows:

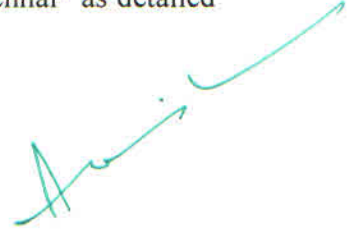
“the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues”.

We have perused the documents filed by the Petitioners. We have seen the certified extract copy of the Board Resolution dated 24/03/2015 wherein the Board has passed a resolution to file necessary Compounding Application which is marked as Annexure-V. We have seen the Memorandum and Articles of Association of the company which is marked as Annexure-I, and the Annual Return filed for the financial years 2011-12, 2012-13, 2013-14 which is marked as Annexure-II and after

going through the Company Petition under section 621A of the Companies Act, 1956 and further submissions made by the Counsel for Petitioners and the observations of the Registrar of Companies, we hereby levy the compounding fee on the Applicant Nos. 1 to 7 as set out in the table given hereunder:-

Sl. No.	Particulars	Violation of Sec.159 of Companies Act, 1956	Total Rs.
1	1 st Applicant Company.	624 x 50/- = 31,200/-	31,200/-
2	2 nd Applicant Director	624 x 50/- = 31,200/-	31,200/-
3	3 rd Applicant Director	624 x 50/- = 31,200/-	31,200/-
4	4 th Applicant Director	624 x 50/- = 31,200/-	31,200/-
5	5 th Applicant Director	624 x 50/- = 31,200/-	31,200/-
6	6 th Applicant Director	624 x 50/- = 31,200/-	31,200/-
7	7 th Applicant Director	333 x 50/- = 16,650/-	16,650/-

In pursuant to our Order dated 18th October 2016 mentioned herein above, the Applicants have paid the compounding fee by depositing 7 Demand Drafts of Bank of India, Khar Branch, Mumbai drawn on 02/11/2016 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.	31,200/-	276504/02.11.2016
2	2 nd Applicant Director	31,200/-	276503/02.11.2016
3	3 rd Applicant Director	31,200/-	276505/02.11.2016
4	4 th Applicant Director	31,200/-	276506/02.11.2016
5	5 th Applicant Director	31,200/-	276507/02.11.2016
6	6 th Applicant Director	31,200/-	276508/02.11.2016
7	7 th Applicant Director	16,650/-	276509/02.11.2016

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 4th DAY OF NOVEMBER 2016