

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

T.P.NO. 185/2016

IN

C.A. NO. 236/621A/CB/2015

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

IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 210(1) READ WITH SECTION 621A
OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF MYSORE REALTY PRIVATE LIMITED

C.A. NO. 236/621A/CB/2015 IN T.P.NO. 185/2016

1. Mr. Issac Silberman,
Shoshanim, 5,
Ramat Gan 53583,
Israel.
2. Mr. Shaul David Lotan,
128 Lamerchav St.,
Ramat Hasharon, 47226,
Israel.
3. Mr. Alfred Michael Arambhan,
Flat No.701, 11th Level, 9A,
Bomanji Petit Road,
Mumbai-400036.
4. Mr. Yaron Yosef Gelbhart,
101A, Moru Milan,
13th Road, Opp. Khar Gymkhana,
Khar (West), Mumbai-400052
5. Mr. Yosef Cimer,
24 Sadia Ofri, Petach-Tiqwa,
Israel, 24, Israel.
6. 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 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 220 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. 185/2016.

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

The 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 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 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 Applicant Company had closed its books of accounts on 31/03/2012 for the financial year 2011-12. By the virtue of provisions of section 210 of the Companies Act, 1956 herein after referred to as Act, the Applicants/petitioners ought to have laid before shareholders at the Annual General Meeting which should be held according to the provisions of section 166 of the Act, the profit & loss Account for the period ended 31st March 2012 and the Balance Sheet as on that date on or before 30th September 2012. Further, the company did not ask for extension of time from the Registrar of Companies, Karnataka at Bengaluru for holding the Annual General Meeting. However, the Annual General Meeting of the company was held on 11th September 2012 but Annual General Meeting was adjourned as accounts were not finalized. The adjourned Annual General Meeting was subsequently held on 30th August 2013 which was beyond the stipulated time. In the said meeting the profit & loss Account and the balance sheet of the company were laid before the Members.

With respect to the financial year ending 31st March 2013 the Company had closed its books of accounts by 31st March 2013. However, petitioners should have

laid in the Annual General Meeting to be held in accordance with provisions of section 166 of the Act, the profit & loss Account and the balance sheet for the year ending 31st March 2013 on or before 30th September 2013. The Company requested the Registrar of Companies, Karnataka at Bengaluru for extension of time to hold Annual General Meeting which was declined. The Annual General Meeting was held on 25th March 2014 wherein the profit & loss Account and the balance sheet of the company were laid.

With respect to the financial year ended 31st March 2014, the Ministry of Corporate Affairs has clarified vide Circular No.1/19/2013-CL-V dated 04/04/2014 that the relevant provisions of the Companies Act, 1956 shall be applicable with respect to laying of accounts. The Company had closed its books of accounts on 31st March 2014. In accordance with the provisions of Section 210 of the Act, the Applicants ought to have laid before the shareholders, at the Annual General Meeting, held in accordance with the provisions of section 210 of the Act, profit & loss Account for the period ended 31st March 2014 and the balance sheet as on that date on or before 30th September 2014. Further, the Company had not sought for any extension of time from the Registrar of Companies, Karnataka at Bengaluru for holding the Annual General Meeting beyond the due date. The Annual General Meeting of the Company for the financial year ended 31st March 2014 was held on 24th January 2015. At the meeting the Board of Directors laid before the members the profit & loss Account and the balance sheet of the company, which was beyond the stipulated time period.

The Applicants have given the details of the Annual General Meetings held in the 3 respective financial years as per table given below:-



Financial year ended	Due date of Annual General Meeting and laying of Accounts	Annual General Meeting held on	Date on which the Annual Accounts were laid before the shareholders	Duration of offence
31/03/2012	30/09/2012	11/09/2012 (however the adjourned AGM was held on 30/08/2013)	30/08/2013	334 days
31/03/2013	30/09/2013	25/03/2014	25/03/2014	176 days
31/03/2014	30/09/2014	24/01/2015	24/01/2015	116 days

We have heard the Practicing Company Secretary for the Applicants, who contended that, the delay was due to the fact that, the Directors were based in different places and as a result it became difficult for the Directors to co-ordinate with each other on various issues concerning the Company. As a result, there was considerable delay for taking important decisions.

Due to misunderstanding and lack of co-ordination between the promoters and the investors, a management deadlock arose and the parties had filed a petition before the Honourable Company Law Board (CLB), Chennai Bench. The CLB passed an order on 27/04/2016 pursuant to the Joint Memorandum of Compromise entered into by the parties.

As a result of the continuing disputes and the matter being sub-judice, there was a delay in holding the Annual General Meetings for the years 2012, 2013 and 2014, and filing of the financial statements and Annual Returns for the said years.

The Practicing Company Secretary filed clarification Note through an Affidavit signed by the Director Mr. Yaron Yosef Gelbhart dated 16/08/2016 stating that, Ms. Yael Livni Lotan was first appointed as Director on 25/07/2008 and she resigned on 11/03/2009. She was said to have been again appointed as Additional Director on 16/08/2013 to hold office till the Annual General Meeting of that financial year. However, the Annual General Meeting was not held in the financial year and as a circumstance she ceased to be a Director. Thus it is stated in the clarification Note signed by the Director Mr. Yaron Yosef Gelbhart, that Ms. Yael Livni Lotan was not a Director during the financial years 2011-12 and 2012-13.

She was appointed as Additional Director from 05/06/2014 and subsequently she was reappointed as Director. Since she was appointed as Director after the financial year 2013-14, she was not accountable for default.

The Practicing Company Secretary has enclosed Form DIR-12 filed with the Registrar of Companies, Karnataka at Bengaluru for appointment of Ms. Yael Livni Lotan as Additional Director and also her re-appointment as Director.

We have received the report from the Registrar of Companies, Karnataka at Bengaluru who stated that, there was violation of provisions of section 210(1) of the Act in respect of delay in laying the audited financial statements before the Annual General Meeting consequently for 3 financial years ending 31/03/2012, 31/03/2013 and 31/03/2014 and the violation is punishable under section 210(5) of the Act. It is also stated that one Mr. H.P Basavaraju filed Company Petition No.11/2013 before the Company Law Board, Chennai and further stated that Ms. Yael Livni Lotan was a Director for the financial year ending 31/03/2013 and that she has not preferred compounding application.

The Practicing Company Secretary submitted clarification Note signed by the Director Mr. Yaron Yosef Gelbhart, the 4th Applicant that, Ms. Yael Livni Lotan was not a Director during the financial year 2012-13 and furnishing the details.

The Practicing Company Secretary further filed Affidavit of 4th Applicant/Director along with order of the Company Law Board in CP/11/2013 that the same was disposed off by the Company Law Board basing on Joint Memorandum of Compromise Memo that C.P No.11/2013 was dismissed as Compromised.

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 210(1) of the Act reads as follows:-

“At every annual general meeting of a company held in pursuance of section 166, the Board of directors of the company shall lay before the company (a) a balance sheet as at the end of the period specified in sub-section (3); and (b) a profit and loss account for the period.

Thus, it is clear as per the above provisions that at every annual general meeting held in accordance with section 166 of the Act, the Board of directors of the company shall present before the company a) a balance sheet as at the end of the financial year (b) a profit and loss account for the period ending the financial year.

As per section 166 of the Act, the Annual General Meeting should be held within 6 months from the date of closing of financial year.

This suo-moto application is filed by the Applicants who are the Directors admitting violation that, the profit & loss Account and the balance sheet of the company laid before the Annual General Meeting on the dates other than due dates for the 3 financial years the details of which are stated above. Thus there was violation of provisions of section 210(1) of the Act which is punishable under section 210(5) of the Act which reads follows:-

“If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Rs 10,000/-, or with both”.

The Registrar of Companies, Karnataka, Bangalore in his report has recommended for imposing maximum penalty on the Applicants for each financial year separately. We have seen the documents filed along with petition viz., 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 contents of the Company Petition filed under section 621A of the Companies Act, 1956 and further submissions made by the Practicing Company Secretary and after considering the report of Registrar of Companies, Karnataka, Bangalore, we levy compounding fee on the Applicants as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.210(1) of the Companies Act, 1956 – for the financial year ending			Total
		2011-12	2012-13	2013-14	
1	1 st Applicant Director	5,000/-	5,000	5,000	15,000/-
2	2 nd Applicant Director	5,000/-	5,000	5,000	15,000/-
3	3 rd Applicant Director	5,000/-	5,000	5,000	15,000/-
4	4 th Applicant Director	5,000/-	5,000	5,000	15,000/-
5	5 th Applicant Director	5,000/-	5,000	5,000	15,000/-
6	6 th Applicant Director	5,000/-	-	-	5,000/-

In pursuant to our Order dated 07/11/2016 mentioned herein above, the Applicants have paid the compounding fee by depositing 6 Demand Drafts of Kotak Mahindra Bank, Mumbai – Khar (West) drawn on 18/11/2016 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 - Director	15,000/-	233260 dt. 18/11/2016
2	2 nd Applicant-Director	15,000/-	233261 dt. 18/11/2016
3	3rd Applicant-Director	15,000/-	233262 dt. 18/11/2016
4	4 th Applicant-Director	15,000/-	233263 dt. 18/11/2016
5	5 th Applicant-Director	15,000/-	233264 dt. 18/11/2016
6	6 th Applicant-Director	5,000/-	233265 dt. 18/11/2016

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