

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

T.P.NO. 184/2016

IN

C.A. NO. 235/621A/CB/2015

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

IN THE MATTER OF COMPANIES ACT, 1956  
UNDER SECTION 166 READ WITH SECTION 621A  
OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF M/S MYSORE REALTY PRIVATE LIMITED

C.A. NO. 235/621A/CB/2015 and T.P.NO. 184/2016

1. M/S Mysore Realty Private Limited,  
No. 1031/1, Gitanjali Layout,  
HAL 3<sup>rd</sup> 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, 11<sup>th</sup> Level, 9A,  
Bomanji Petit Road,  
Mumbai-400036.
5. Mr. Yaron Yosef Gelbhart,  
101A, Moru Milan,  
13<sup>th</sup> 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, 9<sup>th</sup> Main, 26<sup>th</sup> Cross, BSK 2<sup>nd</sup> 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 166 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. 184/2016.

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

The 1<sup>st</sup> 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 3<sup>rd</sup> Stage, Bangalore-560075.

The Authorized share capital of the 1<sup>st</sup> 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 1<sup>st</sup> 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 and Articles of Association of the Petitioner Company.

It is averred in the Company Petition that, the 1<sup>st</sup> 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 even that of adjourned 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 1<sup>st</sup> 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, thereby the 1<sup>st</sup> Applicant Company could not finalize the accounts and audit in a timely manner for the financial years 2011-12, 2012-13 and 2013-14. Consequently, the provisions of section 166 of the Companies Act, 1956 were violated for default in holding Annual General Meeting or Adjourned Annual General Meeting 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 1<sup>st</sup> Applicant Company is defaulted in holding the Annual General Meetings for the financial years 2011-12, 2012-13 and 2013-14, due to the reasons beyond control of the 1<sup>st</sup> Applicant Company. However, the 1<sup>st</sup> Applicant Company hold the Annual General Meeting for the financial year ending 31/03/2012, 31/03/2013 and 31/03/2014 on 30/08/2013, 25/03/2014 and 24/01/2015 respectively and filed the relevant documents with the Registrar of Companies, Karnataka, Bengaluru with a delay of 620 days. The provisions of section 166 of the Companies Act, 1956 would only apply. Section 99 of the Companies Act, 2013 was notified w.e.f. 01/06/2016. Therefore, penalty provisions of section 168 of the Companies Act, 1956 would only apply for the violation of provisions of section 166 of the Companies Act, 1956. Thus there was violation of provisions of section 166(1) punishable under the provisions of section 168 of the Companies Act, 1956 for the financial years 2011-12, 2012-13 and 2013-14. Section 168 of the Companies Act, 1956 reads as follows:-

“if default is made in holding a meeting of the company in accordance with section 166, or in complying with any directions of the Tribunal or the Central Government, as the case may be under sub-section (1) of section 167, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees and in the case of a continuing default, with a further fine which may extend to two thousand five hundred rupees for every day after the first during which such default continues”.



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 <sup>st</sup> Applicant Company	332	174	114	620
2	2 <sup>nd</sup> Applicant Director	332	174	114	620
3	3 <sup>rd</sup> Applicant Director	332	174	114	620
4	4 <sup>th</sup> Applicant Director	332	174	114	620
5	5 <sup>th</sup> Applicant Director	332	174	114	620
6	6 <sup>th</sup> Applicant Director	332	174	114	620
7	7 <sup>th</sup> Applicant Director *	332	-	-	332

\* 7<sup>th</sup> 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.

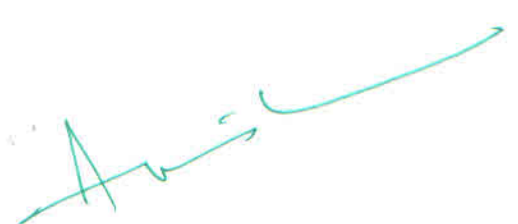
The 1<sup>st</sup> Applicant Company and its Directors suo-moto have filed this application to compound the offence, praying the Tribunal to compound the offence by taking a lenient view.

We have perused the documents filed by the Applicants. 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-IV. 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 filed 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.166 of Companies Act, 1956	Delay of 620 days	Total Rs.	Grand Total Rs.
1	1 <sup>st</sup> Applicant Company	Rs. 5,000/-	620 x 50/-	31,000/-	36,000/-
2	2 <sup>nd</sup> Applicant Director	Rs. 5,000/-	620 x 50/-	31,000/-	36,000/-
3	3 <sup>rd</sup> Applicant Director	Rs. 5,000/-	620 x 50/-	31,000/-	36,000/-
4	4 <sup>th</sup> Applicant Director	Rs. 5,000/-	620 x 50/-	31,000/-	36,000/-
5	5 <sup>th</sup> Applicant Director	Rs. 5,000/-	620 x 50/-	31,000/-	36,000/-
6	6 <sup>th</sup> Applicant Director	Rs. 5,000/-	620 x 50/-	31,000/-	36,000/-
7	7 <sup>th</sup> Applicant Director	Rs. 5,000/-	332 x 50/-	16,600/-	21,600/-

In pursuant to our Order dated 18<sup>th</sup> 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 <sup>st</sup> Applicant Company.	36,000/-	276517/02.11.2016
2	2 <sup>nd</sup> Applicant Director	36,000/-	276518/02.11.2016
3	3 <sup>rd</sup> Applicant Director	36,000/-	276519/02.11.2016
4	4 <sup>th</sup> Applicant Director	36,000/-	276520/02.11.2016
5	5 <sup>th</sup> Applicant Director	36,000/-	276521/02.11.2016
6	6 <sup>th</sup> Applicant Director	36,000/-	276522/02.11.2016
7	7 <sup>th</sup> Applicant Director	21,600/-	276523/02.11.2016

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 14<sup>th</sup> DAY OF NOVEMBER 2016