

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH  
T.P.NO. 249/2016

C.A. 60/621A/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 450 AND 441 OF THE COMPANIES  
ACT, 2013

AND

IN THE MATTER OF M/S NARAYANA HRUDAYALAYA PRIVATE LIMITED

CA NO. 60/621A/CB/2016

1. M/S Narayana Hrudayalaya Private Limited.  
# 258/A, Bommasandra Industrial Area,  
Anekal Taluk,  
Bengaluru-560099.
2. Dr. Ashutosh Raghuvanshi,  
Managing Director,  
# 1050/1, Survey Park, Udita Comp.,  
UD02 1202,  
Santoshpur, Kolkata-700075
3. Dr. Devi Prasad Shetty,  
# "Narayana" 393, 2<sup>nd</sup> Cross,  
13<sup>th</sup> Main, 3<sup>rd</sup> Block, Koramangala  
Bengaluru-560034.
4. Mr. Viren Shetty,  
# "Narayana" 393, 2<sup>nd</sup> Cross,  
13<sup>th</sup> Main, 3<sup>rd</sup> Block, Koramangala  
Bengaluru-560034.

- APPLICANTS

PARTIES PRESENTED:

Mr. G.M. Ganapathi, Practicing Company Secretary  
and Authorised representative for the Applicants.

**ORDER**

The Petition is filed on behalf of Petitioners under Sec.621A of Companies Act 1956, read with Sec. 179 (3) and Sec.185 of Companies Act 2013. Originally the Compounding petition was filed before Company Law Board, Southern Region, Chennai. The Petition was numbered as C.A. 60/621A/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 1<sup>st</sup> applicant is a company which was originally incorporated as Private Company under the Companies Act, 1956 vide Certificate of Incorporation No. U85110KA2000PTC027497, the Registered Office of the company is situated at No. 258/A, Bommasandra Industrial Area, Anekal Taluk, Bangalore-560099.

The Authorised Share Capital of the applicant company as per the latest Audited Balance Sheet is Rs.3,000,000,000/- divided into 30,00,00,000 Equity Shares of Rs 10/- each and issued, subscribed and paid up capital is Rs. 2,000,000,000/- divided into 20,00,00,000 Equity Shares Rs 10/- each as on date. The main object of the company is for providing, giving and dispensing medical treatment, medical facilities, para-medical facilities, health care facilities etc., Details of the main object of the Company are stated in the petition.

It is averred that M/s Narayana Hrudayalaya Private Limited is a company registered under Companies Act, 1956 and is also engaged in the business of providing medical facilities, running hospitals, health care centres and nursing homes. It is wholly owned subsidiary of the 1<sup>st</sup> petitioner Company. M/s Narayana Health Institutions Private Limited is also a company registered under Companies Act, 1956 and is engaged in the business of running Health institutions and providing medical facilities, and it is also wholly owned subsidiary of 1<sup>st</sup> petitioner company. The 1<sup>st</sup> petitioner company granted unsecured inter-corporate loan to M/s Narayana Hospitals Private Limited and further made investment in equity shares of M/s Narayana Health Institutions Private Limited. Details of same are given in the table hereunder:

Sl. No.	Date of Transactions	Name of the entity	Nature of transaction	Amount Rs.
01	26.03.2015	Narayana Hospitals Private Limited	Unsecured inter-corporate Loan	2,00,00,000/-
02	26.03.2015	Narayana Health Institutions Private Limited	Investment in equity shares	8,00,000/-

It is further stated that, by virtue of provisions of section 179 (3) of Companies Act, 2013 such transactions required prior approval of the Board by means of resolution passed at the meeting of the Board before effecting such transaction.

In course of auditing, the fact of non compliance of provision of 179 (3) of Companies Act, 2013 were noticed, with regard to the above transactions with subsidiary companies. As 1<sup>st</sup> petitioner company did not obtain prior approval of the Board members, by means of resolutions passed at the meeting by the board. The company could not comply provisions of section 179 (3) of Companies Act, 2013 due to paucity of time and due to urgency of releasing of funds. Thus default was occurred unintentionally and without any malafide intention. Therefore this application is filed for compounding the offence taking a lenient view.

We have heard the practicing company secretary for the petitioners, it is contended on behalf of the petitioners that in the Board meeting held on 30/06/2015, the above 2 transactions with the related companies were ratified and approved. Further contention of practicing company secretary is that all necessary documents are filed by the petitioners. It is also contended that the other directors Mrs. Shakunthala Shetty and Dr. Varun Shetty resigned from the Board dated 06/05/2015. The practicing company secretary has filed the copies of resignation letters of two whole time directors Mrs. Shakunthala Shetty and Dr. Varun Shetty. Petitioners filed audited financial statement for the financial year 2013-14 as Annexure-I. The petitioners also filed Memorandum and Articles of Association of 1<sup>st</sup> petitioner company it is marked as Annexure-II. The petitioners filed list of Directors and Secretary of the company as Annexure-III. The petitioners also filed statement of transactions with subsidiary companies, marked as Annexure-IV. The petitioners filed Board Resolution copy dated 30/06/2015, wherein the board approved by way of resolution the above two transactions with its subsidiaries marked as Annexure-VII. Thus the 1<sup>st</sup> petitioner company in its board meeting held on 30/06/2015 approved the transactions by way of Board Resolution. The petitioner suo-moto filed this application admitting violation and prayed for compounding. There was delay of 96 days in approving the transactions by the Board of Directors. There is no penal provision provided under section 179(3) of Companies Act, 2013. Therefore, provision of section 450 of Companies Act, 2013 is applicable. Any violation of section 179 of Companies Act, 2013 is punishable under 450 of Companies Act, 2013. The company and every officers of the company are liable for punishment. As seen from the records 1<sup>st</sup> petitioner is company represented by Managing Director-Dr. Ashutosh Raghuvanshi. Thus Dr. Ashuthosh Raghuvanshi, Managing Director of the Company is also individually liable for violation alongwith two other Directors Dr. Devi Prasad Shetty and Mr. Viren Shetty. The Company as well as its

Managing Director and two other Directors in all four in number are liable for paying compounding fee. Heard the Practicing Company Secretary on 22.8.2016 and on a query by Member, he confirmed that Managing Director is also personally liable. Hence he is considered as 4<sup>th</sup> Applicant.

It is the contention of practicing company secretary that 1<sup>st</sup> petitioner company is engaged in providing medical facilities and the subsidiary companies are also engaged in doing business of rendering medical facilities etc. Considering the nature of business run by the 1<sup>st</sup> petitioner and its subsidiaries, we direct the petitioners to pay the compounding fee as detailed hereunder:

Sl. No.	Particulars	Violation of Sec.179(3) of Companies Act, 2013	Delay of 96 days	Total Rs.
1	1 <sup>st</sup> Applicant Company	Rs. 5,000/-	96 x 200/- = 19,200/-	24,200.00
2	2 <sup>nd</sup> Applicant	Rs. 5,000/-	96 x 200/- = 19,200/-	24,200.00
3	3 <sup>rd</sup> Applicant	Rs. 5,000/-	96 x 200/- = 19,200/-	24,200.00
4	4 <sup>th</sup> Applicant	Rs. 5,000/-	96 x 200/- = 19,200/-	24,200.00
			<b>Total</b>	<b>96,800.00</b>

In pursuant to our Order dated 22/08/2016 mentioned herein above, the Applicants have paid the compounding fee by depositing 4 Demand Drafts of, HDFC Bank Ltd., Electronic City Branch, Bengaluru, drawn on 31/08/2016 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	M/s Narayana Hrudayala Limited	24,200/-	006934 dt. 30/08/2016
2	Dr. Ashutosh Raghuvanshi	24,200/-	006935 dt. 30/08/2016
3	Dr. Devi Prasad Shetty	24,200/-	006937 dt. 31/08/2016
4	Mr. Viren Shetty	24,200/-	006938 dt. 31/08/2016
	Total - Rs.	<b>96,800/-</b>	

(Rupees Ninety six thousand eight 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

*A*  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

DATED THIS THE *6<sup>th</sup>* DAY OF SEPTEMBER 2016