

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 134/2016

C.A. 292/621A/CB/2014

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

IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A READ WITH SECTION 299 OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF M/S PERSONAL PERFORMANCE CONSULTANTS
INDIA PRIVATE LIMITED

C.A. 292/621A/CB/2014

1. M/S Personal Performance Consultants India Private Limited
2nd Floor, # 570 & 571,
3rd Block, Koramangala,
Bangalore-560034
2. Mr. Paul Matthew Emerson,
13904 Nevada Ave S,
Savage,
Minnesota, 55378,
United States of America
3. John Michael Prince,
No. 546, Harrington road,
Wayzata, MN, 55391,
United States of America.
4. Mr. Amber Alam,
107, Parimala Sunrise Apartments,
Near Mope Farm Circle,
Whitefield,
Bangalore-560066

- APPLICANTS

PARTIES PRESENTED:

Mr. Rajesh Dwarka Sharma, Practicing Company
Secretary and Authorised representative for the
Applicants.

Heard on: 25/07/2016, 08/08/2016, 23/08/2016 and 31/08/2016

ORDER

The Petition was originally filed before the Company Law Board, Southern Region, Chennai under Section 621A of the Companies Act, 1956 for purpose of compounding for violation of provisions of section 299 of the Companies Act, 1956. It was numbered as CA 292/621A/CB/2014. 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 renumbered as T.P 134/2016.

The averments in the petition are briefed hereunder:



The 1st applicant is a company Registered under the name and style of "PERSONAL PERFORMANCE CONSULTANTS INDIA PRIVATE LIMITED" incorporated vide Registration No. U74910KA2005PTC036515 on 09/06/2005. The Registered office of the company is situated at 2nd Floor, No. 570 & 571, 3rd Block, Koramangala, Bangalore-560034. The Applicant Nos. 2 and 4 are Directors of the Applicant Company and Applicant No. 3 was the past Director of the applicant company. The Authorized share capital of the applicant company as per averments in the petition as on 31/03/2014 is Rs. 2,00,00,000/- (Rupees Two Crores only) consisting of 20,00,000 (Twenty lakhs) Equity Shares of Rs 10/- each.

The Main objects of the Applicant Company is to carry on the business of providing the services of employee assistance programmes including but not limited to provision of systematic counseling service programmes, staff and management consultation etc.,

It is averred in the Petition that the Directors have submitted their general notice of disclosures as required under sub-section (3) of section 299 of the Companies Act, 1956 for the financial years 2012-13 and 2013-14. However, the Board could not convene any Board Meetings during the financial years 2012-13 and 1st two quarters of financial year 2013-14 and as a result the general notice of disclosure given by the Directors as per the provisions of sub-section (3) of section 299 of the Companies Act, 1956 could not be taken note and read in the Board Meeting and thereby non compliance of sub section (3) of section 299 of the Companies Act, 1956. In fact in the Board Meeting held on 20/05/2014 the company had taken note of the general notice of disclosures submitted by the Directors under sub-section (3) of section 299 of the companies Act, 1956 for the financial years 2012-13 and 2013-14.

It is further averred that the default is not intentional and is not of such nature as will cause prejudice to the interests of the Members or creditors or others dealing with the Company. The default in any way not affected the public interest and the default is not willful. The Board of Directors of the Company in the meeting held on 20/06/2014 passed a resolution for suo-moto application for compounding the violation

We have heard the Practicing Company Secretary Sri Rajesh Dwarka Sharma for the Petitioners. In the course of hearing the Practicing Company Secretary has filed copies of disclosures statements of the Directors. Further the Practicing Company Secretary filed Sworn Affidavit of the Director of the Company stating that the company had not entered into any contracts or arrangements in which any Directors of the company were interested or concerned during the financial year 2011-12 and 2013-14.

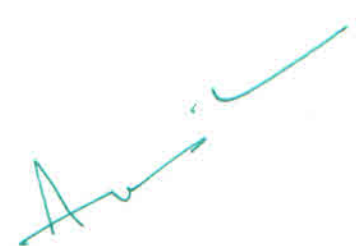



The Practicing Company Secretary further filed Copies of Company Order dated 13/03/2015 passed by the Regional Director for violation of section 285 of the Companies Act, 1956. The Practicing Company Secretary further contended that even though Directors have submitted general notice of disclosure statement it could not read in the Board Meeting, as the company could not convene any Board Meeting for the financial year 2012-13 and for 1st two quarters of the financial year 2013-14. The Practicing Company Secretary further contended that in Board Meeting held on 20/05/2014, the company had taken note of general notice of disclosure statement submitted by the Directors.

He prayed for compounding for the violation taking a lenient view. Report from the Registrar of Companies, Bengaluru was received vide letter No. ROC-STA/Section 621-A/Sec 217 & 299/Co No.36515/Report/2014 dated 08/08/2014 who recommended for compounding and further stated in the report that petition may be decided on merits.

We have gone through the documents filed by the Petitioners, we have seen copy of Board Resolution dated 26/02/2014 where in Board resolved to file compounding application for violation of various provisions of the Companies Act, 1956.

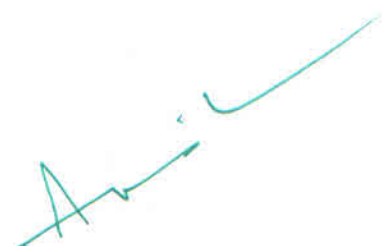

We have also seen the extract of the Board Meeting held on 20/05/2014 to the effect that the Board has taken note of general notice of disclosures of the Directors for the financial years 2012-13 and 2013-14.



Section 299(3) of the Companies Act, 1956 reads as follows:

- (a) For the purpose of sub sections (1) and (2), a general notice given to the Board by a Director, to the effect that he is a director or a member of specified body corporate or is a member of a specified firm and is regarded as concerned or interested in any contract or arrangement which may, after the date of notice, be entered into with that body corporate or firm, shall be deemed to be a sufficient disclosure of concern or interest in relation to any contract or arrangement so made.
- (b) Any such general notice shall expire at the end of the financial year in which it is given, but may be renewed for further period of one financial year at a time, by a fresh notice given in the last month of the financial year in which it could otherwise expire.
- (c) No such general notice, and no renewal thereof, shall be effect unless either it is given at a meeting of the Board, or the Director concerned takes reasonable steps to secure that it is brought up and read at the first meeting of the Board after it is given."

Thus it is clear the Company and the Directors herein violated the provisions of section 299 (3) of the Companies Act, 1956. After Considering the documents filed, report of the Registrar of Companies, Karnataka, Bengaluru and submissions made by the Practicing Company Secretary we are of the opinion that violation can be compounded by levying the compounding fee as shown below in the table:



Sl. No.	Particulars	Violation of Sec.299 (3) of Companies Act, 1956	Delay of 547 days	Total Rs.	Grand Total Rs.
1	1 st Applicant Company	1,000/-	547 x 50/-	27,350/-	28,350.00
2	2 nd Applicant	1,000/-	547 x 50/-	27,350/-	28,350.00
3	3 rd Applicant	1,000/-	547 x 50/-	27,350/-	28,350.00
4	4 th Applicant	1,000/-	547 x 50/-	27,350/-	28,350.00
	Total				1,13,400.00

In pursuant to our Order dated 17/09/2016 mentioned herein above, the Applicants have paid the compounding fee by depositing Demand Draft for Rs. 1,13,400/- (Rupees One lakh thirteen thousand four hundred only) of City Bank, Bangalore drawn on 23/09/2016 in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at par" as detailed hereunder:-

Sl. No.	D.D No.	Date	Amount Rs.
1	234508	23/09/2016	28,350/-
2	234509	23/09/2016	28,350/-
3	234510	23/09/2016	28,350/-
4	234511	23/09/2016	28,350/-
	Total		1,13,400/-

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 7th DAY OF OCTOBER 2016