

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.NO. 06/2016

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

IN THE MATTER OF COMPANIES ACT, 2013
UNDER SECTION 96 READ WITH SECTION 441
OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF YENKAY ASSOCIATES PRIVATE LIMITED

C.P.NO. 06/2016

1. Yenkey Associates Private Limited,
'CANBERRA' UB City
24, Vittal Mallya Road,
Bangalore-560001.
2. Mr. Swamy Narasimha Prasad,
D-204, Adarsh Nivas,
70, Kanakapura Road,
J.P.Nagar, 6th Phase,
Bangalore-560078.

APPLICANTS

PARTIES PRESENTED:

Mr. Sudhir V.Huyalkar, 16/8, Ground Floor,
2nd Cross, Gupta Layout, South End Road,
Basavanagudi, Bangalore-560004
Practicing Company Secretary,
Authorised Representative for the Petitioners.

Heard on: 20/09/2016 and 17/10/2016.

ORDER

This Petition is filed under Section 96 read with section 441 of the Companies Act, 2013 with a prayer for compounding of certain violation committed under provisions of the Companies Act, 2013.

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

The Petitioner Company was incorporated under the Companies Act, 1956 on 11/04/1962 as a Private Limited Company in the name and style of "Yenkay Associates Private Limited" vide Registration No. U50400KA1962PTC003485. The Registered office of the company is situated at 'Canberra' UB City, # 24, Vittal Mallya Road, Bangalore-560001.

As per the latest Balance Sheet the Authorized share capital of the Petitioner company is Rs. 5,00,000/- (Rupees Five Lakhs) consisting of 50,000 (Fifty thousand) Equity Shares of Rs 10/- each and the issued, Subscribed and the paid up share capital of the company is Rs 3,00,400/- (Rupees Three lakh four hundred only) divided into 30,040 (Thirty thousand forty) Equity Shares of Rs. 10/- each.

The Main objects of the Petitioner Company is to carry on the business of manufacturers, importers, dealers in assemblers of, hirer, repairers, cleaners, stores, warehouses of garage and service station equipment; to carry on the business of manufacturers, importers, of motor cars, motor cycles, buses, vans, lorries, trucks and to buy, sell, let on hire, repair, alter and deal in machinery of all description 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 Application that, the 1st Applicant Company could not conduct its Annual General Meeting for the year ending 31st March 2015 within the prescribed time limit for the financial year 2014-15. The Annual General Meeting was held after its due date. The reason is that 1st Applicant Company could not complete the preparation of accounts on or before due date of Annual General Meeting due to certain unavoidable reasons. Therefore, there was delay and 1st Applicant Company could complete the finalization and audit of accounts after due date of Annual General Meeting. However, the Annual General Meeting was held on 03/06/2016 and thereby there was delay of 246 days. The Applicant Company suo-moto filed this application admitting violation and prayed for compounding. Thus there was violation of provisions of section 96 which is punishable under section 99 of the Companies Act, 2013 which reads as follows:-



“ If any default is made in holding a meeting of the Company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.”

We have heard the Practicing Company Secretary for Applicants on 17/10/2016. The Practicing Company Secretary contended that, the default occurred due to unavoidable circumstances and totally inadvertent for not holding Annual General Meeting within the stipulated time and there was no mala fide or fraudulent intention on the part of Company or its Director in not conducting Annual General Meeting within the stipulated time. The Practicing Company Secretary for Applicants would further contend that, this is a suo-moto application by the Company for compounding of violation.

The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/SVK/3485/441/2016 dated 16/08/2016 has stated in his report that, the Company has admitted the default and has offered to compound the offence and the Compounding Application may be decided on merits.

We have seen the Memorandum and Articles of Association of the Company, Copy of the Board Resolution of the Applicant Company wherein the Board of Directors resolved for filing compounding Application. After considering the materials on record and after taking into account the submissions made by the Practicing Company Secretary that lenient view may be taken, we hereby levy compounding fee under section 99 of the Companies Act, 2013 for the delay in holding Annual General Meeting on the 1st Applicant Company and its Director the 2nd Applicant as shown in the table given below:-



Sl. No.	Particulars	Violation of Sec.96 of Companies Act, 1956	Delay of 246 days	Total Rs.
1	1 st Applicant Company	Rs. 20,000/-	246 x 100/- = 24,600/-	44,600/-
2	2 nd Applicant Director	Rs. 20,000/-	246 x 100/- = 24,600/-	44,600/-

In pursuant to our Order dated 25th October 2016 mentioned herein above, the Applicants have paid the compounding fee by depositing 2 Demand Drafts of, HDFC Bank Ltd., Bengaluru, drawn on 27/10/2016 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	44,600/-	604711 dt. 27/10/2016
2	2 nd Applicant Director	44,600/-	028771 dt. 27/10/2016

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 10th DAY OF NOVEMBER 2016