

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 135/2016**

C.A. 293/621A/CB/2014

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

**IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 621A READ WITH SECTION 217 OF THE COMPANIES
ACT, 1956
AND**

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

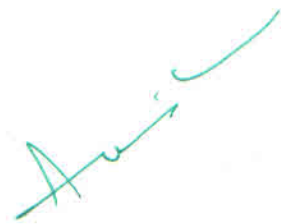
C.A. 293/621A/CB/2014 & T.P.NO. 135/2016

1. M/S Personal Performance Consultants India Private Limited
2nd Floor, # 570 & 571,
3rd Block, Koramangala,
Bangalore-560034
2. Mr. Paul Matthew Emerson - Director
13904 Nevada Ave S,
Savage,
Minnesota, 55378,
United States of America
3. Mr. John Michael Prince - Director
No. 546, Harrington road,
Wayzata, MN, 55391,
United States of America.

- **APPLICANTS**

PARTIES PRESENTED: Mr. Rajesh Dwarka Sharma, No.1/1, 2nd Floor, 1st
Main, II Cross, Thimmaiah Garden, R.T.Nagar,
Bangalore-560032 Practicing Company
Secretary and Authorised representative for the
Applicants.

Heard on: 25/07/2016, 08/08/2016, 23/08/2016, 31/08/2016, 21/09/2016
19/10/2016 and 26/10/2016.

ORDER

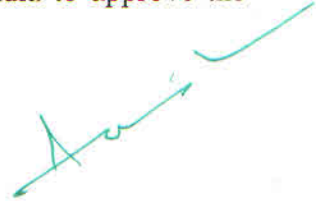

The Petition was originally filed before the Company Law Board, Southern Region, Chennai under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of section 217 of the Companies Act, 1956. It was numbered as CA 293/621A/CB/2014. Consequent upon the establishment 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 135/2016.

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 9th June 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 3 are Directors 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 1st 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 and training, staff recruitment and outplacement services, critical incident management under contract to business, industry and governmental agencies intended to help their management and employees resolve their work-place and personal problems etc.,

It is averred that, the 1st Applicant company could not hold any board meetings during the financial year 2012-13 due to lack of quorum to hold a valid board meeting as the directors were not available at a convenient time or place for convening the same and also quorum was not available in India to approve the Board's report for the financial year ended 2011-12.



As per the provisions of sub-section (4) of section 217 of the Companies Act, 1956:-

“the Board’s report and any addendum thereto shall be signed by its Chairman if he is authorized in that behalf by the Board; and where he is not so authorized, shall be signed by such number of Directors as are required to sign the balance sheet and profit and loss account of the Company by virtue of Sub-sections (1) and (2) of section 215 of the Companies Act, 1956”.

It is averred that, there was violation of provisions of sub-section 4 of section 217 of the Companies Act, 1956 which is punishable under sub-section (5) of section 217 of the Companies Act, 1956.

It is further averred that, in the Board Meeting held on 20th May 2014, a resolution was passed ratifying the acts of the Directors of approving the Directors Report for the financial year ended 2011-12.

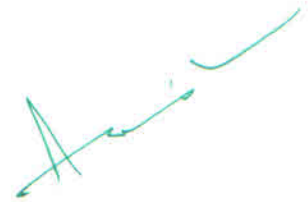

It is further averred that the default is not intentional and it is not of such nature as would cause prejudice to the interests of the Members or creditors or others dealing with the Company.

The punishment for such violation is provided under 217(5) of the Companies Act, 1956 which reads as follows:-

“If any person, being a Director of a company, fails to take all reasonable steps to comply with the provisions of sub-section (1) to (3), or being the Chairman signs the Board’s report otherwise than in conformity with the provisions of sub section (4), 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 twenty thousand rupees, or with both”

It is further averred that the Board of Directors in the meeting held on 26th February 2014 passed a resolution for moving application for compounding. Hence, this Petition.

We have heard the Practicing Company Secretary Sri Rajesh Dwarka Sharma for the Petitioners on 25/07/2016, 08/08/2016, 23/08/2016, 31/08/2016, 21/09/2016 and 19/10/2016. He has filed affidavit along with list of Directors of the 1st Applicant Company for each periods. As seen from the list Applicants 2 and 3 were the Directors for the financial year 2011-12.



As per the report of Registrar of Companies, Karnataka at Bengaluru, that two more Directors Mr. Amber Alam and Mr. Stephen Kelbey Ford have not joined in the Application for the compounding who were the Directors at default. The Practicing Company Secretary has filed Affidavit of Mr. Amber Alam stating that the Applicants Mr. John Michael Prince and Mr. Paul Mathew Emerson were the Directors during default period. It is stated in the Affidavit that Applicants 2 & 3 were the Directors from 10th January 2011 to 27th June 2013. From 10th January 2011 to 27th June 2013 Applicants 2 & 3 were only the Directors as per the details furnished by the Petitioner Company.

Thus as per Affidavit and the list Mr. Amber Alam and Mr. Mr. Stephen Kelbey Ford were not on the Board for the default period.

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.

We have gone through the documents filed by the Petitioners viz., certified copy of the resolution dated 26th February 2014, which is marked as Annexure 1. We have also seen the resolution of the Board Meeting held on 20th May 2014.

As per provisions of section 217(5) of the Companies Act, 1956, if any person, being a Director of a company, fails to take all reasonable steps to comply with the provisions of sub-section (1) to (3) is alone liable for punishment for violation. Therefore, the Applicants 2 & 3 who are the Directors of the company are alone liable. After considering the documents filed, report of the Registrar of Companies, Karnataka at Bengaluru and submissions made by the Practicing Company Secretary, we are of the opinion that violation can be compounded by levying, the compounding fee on Applicants No. 2 & 3 who are the Directors as shown below in the table:

Sl. No.	Particulars	Violation of Sec.217 of Companies Act, 1956	Total Rs.
1	2 nd Applicant Director	10,000/-	10,000/-
2	3 rd Applicant Director	10,000/-	10,000/-
	Total		20,000.00

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 22nd November 2016 for compliance.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 7th DAY OF NOVEMBER, 2016