

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

T.P.NO. 261/2016

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

**IN THE MATTER OF COMPANIES ACT, 1956 AND
IN THE MATTER OF COMPANIES ACT, 2013
UNDER SECTION 129 READ WITH SECTION 441
OF THE COMPANIES ACT, 2013**

AND

**IN THE MATTER OF SMARTOWNER SERVICES INDIA
PRIVATE LIMITED**

T.P.NO. 261/2016

1. Smartowner Services India Private Limited,
Ground Floor, Alpha Block,
Sigma Tech Park,
Varthur-Whitefield Road,
Near Ramagondanahalli,
Bangalore-560066.
2. Mr. Narendra Nambudumada Subbaiah, Director
#500, Embassy Crown,
24 Aga Abbas Ali Road,
Bangalore-560042.
3. Mr. Vikram Chari, Director
8th Floor, Delta Block, Sigma Tech Park,
Varthur Whitefield Road,
Near Ramagondanahalli, Whitefield,
Bangalore-560066.
4. Mr. Balaji Parthasarathy, Director
Villa 52/1, Adarsh Palm Meadows,
Ramagondanahalli PO,
HAL-Varthur Road,
Bangalore-560066.
5. Mr. Shripati Acharya, Director
Villa 106, Phase-1, Palm Meadows,
Ramagondanahalli, Whitefield,
Bangalore-560066.

APPLICANTS

PARTIES PRESENTED:

Ms. M.R.Prathibha Priya, # 28, Flat No.103,
Ground Floor, Divya Regency, Tata Silk Farm, 1st
Main, Bangalore-560004 Practicing Company
Secretary, Authorised Representative for the
Petitioners.

Heard on: 09/09/2016, 05/10/2016 and 20/10/2016

ORDER

This Company Application was originally filed before the Company Law Board, Southern Region, Chennai. 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 it was taken on file and numbered as T.P No. 261/2016.

The averments in the Company Application filed under section 621A of the Companies Act, 1956 are briefly stated hereunder:-

The 1st Applicant Company was incorporated under the Companies Act, 1956 on 19th June 2012 as a Private Limited Company in the name and style of "Smartowner Services India Private Limited" vide Registration No. U74999KA2012PTC064449. The Registered office of the company is situated at Ground Floor, Alpha Block, Sigma Tech Park, Varthur-Whitefield Road, Near Ramagondanahalli, Bangalore-560066.

The petition has made averments as follows:-

The Authorized share capital of the Petitioner company is Rs. 42,00,000/- (Rupees Forty two Lakhs only) consisting of 4,20,000 (Four Lakh twenty thousand) Equity Shares of Rs 10/- each and the Subscribed and paid up share capital of the Company is Rs 40,63,400/- (Rupees Forty lakhs sixty three thousand four hundred only) divided into 4,06,340 (Four lakh six thousand three hundred forty) Equity Shares of Rs. 10/- each.

The Main objects of the Petitioner Company is to offer a technology platform and online portal to automate the listing and workflow process for the owners of assets, including a listing engine that displays information in an elegant and user-friendly manner comparable to the best websites in the world etc., Details of the objects of the company are mentioned in the Memorandum and Articles of Association of the Petitioner Company.


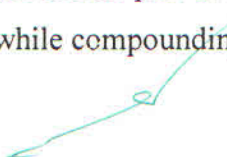


As per proviso of Section 96 of the Companies Act, 2013, every company shall in each year hold General Meeting as its Annual General Meeting in addition to any other meeting and not more than 15 months shall elapse between the date of one Annual General Meeting of the company and that of the next and further, the Annual General Meeting shall be held within a period of 6 months from the date of closing of the financial year. According to sub-section 2 of Section 129 of the Companies Act, 2013, at every Annual General Meeting of the Company, the Board of Directors of the Company shall lay before such meeting the financial statements for the financial year. For the financial year ended 31st March 2014, the Annual General Meeting of the Company should be held on or before 30th September 2014 and the financial statements should have been laid before the shareholders of the Company at its Annual General Meeting of the Company. However, the Annual General Meeting was held on 28th November 2014 and financial statements were laid before Annual General Meeting and it was approved. Thus there was delay of 58 days in holding the Annual General Meeting. There was compliance of provisions of section 96 of the Companies Act, 2013.

The Annual General Meeting was not held within the prescribed time and as a result there was default on compliance of provisions of section 129 (2) of the Companies Act, 2013. The Applicants inadvertently failed to comply with the requirements of laying the financial statements before the company at the Annual General Meeting within the due date. It is also averred that there was no deliberate intention on the part of the Applicants.

This suo-moto application is filed by the Applicants under section 621A of the Companies Act, 1956 for compounding.

We have heard the Practicing Company Secretary for Applicants on 09/09/2016, 05/10/2016 and 20/10/2016. She contended that, there was delay in holding the Annual General Meeting for the financial year ending 31st March 2014. She submitted that delay occurred in holding the Annual General Meeting is that, the company could not complete the Annual financial audit. She contended that Annual General Meeting was held on 28th November 2014, soon after completion of Audit and financial statement was placed before the shareholders in the Annual General Meeting and it was approved. She contended that there is no deliberate intention on the part of the company and its Directors. She prayed to take lenient view while compounding the offence because of very low profits.



We have seen the documents filed along with the application. We have seen the Memorandum and Articles of Association of the Company and also true copies of financial statements of the company and it is referred as Annexure A4. We have seen copy of the Notices issued for convening the Annual General Meeting on 28th November 2014, it is marked as Annexure A5. We have seen the Minutes of the Annual General Meeting held on 28th November 2014 and also the consent of the shareholders for holding Annual General Meeting of the Company at a shorter notice.

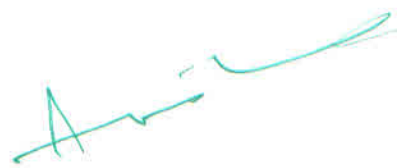

This Application was filed under section 621A of the Companies Act, 1956. The provisions of section 441 of the Companies Act, 2013 came into effect from 1st June 2016. Before erstwhile Company Law Board, Southern Region, Chennai this application was filed. Therefore, this application is to be decided under the provisions of section 621A of the Companies Act, 1956.

Section 129 of sub-section (2) of the Companies Act, 2013 which reads as follows:-

“at every annual general meeting of a company, the board of directors of the company shall lay before such meeting financial statements for the financial year”

Section 129 (7) of the Companies Act is the penal provisions for the violation which reads as follows:-

“if a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.”



The Tribunal received report from Registrar of Companies, Karnataka at Bangalore, who has recommended the application may be decided on merit. Considering the submissions made by the Practicing Company Secretary for the petitioners and also after going through the report of the Registrar of Companies, Karnataka, Bangalore and the documents filed by the petitioners and there was delay of only 58 days in complying the provisions of section 129(2) of the Companies Act, 2013, the violation can be compounded by levying the compounding fee as follows:-

Sl. No.	Particulars	Violation of Sec.129 of Companies Act, 2013	Total Rs.
1	2 nd Applicant Director	75,000/-	75,000/-
2	3 rd Applicant Director	75,000/-	75,000/-
3	4 th Applicant Director	75,000/-	75,000/-
4	5 th Applicant Director	75,000/-	75,000/-

The compounding fee levied shall be paid by the Petitioners within 15 days from the date of this order and call this matter on 17th November 2016 for compliance.

2-11-16
(RATAKONDA MURALI)
MEMBER, JUDICIAL

2/11/2016
(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE *2nd* DAY OF NOVEMBER, 2016