

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH  
T.P.NO. 122/2016

C.A. 16/621A/CB/2014

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

IN THE MATTER OF COMPANIES ACT, 1956  
UNDER SECTION 621A OF AN OFFENCE UNDER SECTION 269 (1) OF  
THE COMPANIES ACT, 1956  
AND

IN THE MATTER OF M/S CARMEL ASIA HOLDINGS PRIVATE LINTIED

C.A. 16/621A/CB/2014 IN T.P.NO. 122/2016

1. M/S Carmel Asia Holdings Private Lintied,  
# 56B/34, 1<sup>st</sup> Main,  
Vyalikaval, Lower Palace Orchards,  
Bangalore-560003.
2. Shri B. Ramesh Babu,  
# E 604, Temple Bells, 26/1  
Industrial Suburb, Yeshwanthapur,  
Bangalore-560022.
3. Shri Yeduguri Sandinti Jagan Mohan Reddy,  
# 269/S/98, Sagar Society,  
Road No.2,  
Banjara Hills,  
Hyderabad-500034.
4. Smt. Yeduguri Sandinti Bharathi Reddy,  
# 269/S/98, Sagar Society,  
Road No.2,  
Banjara Hills,  
Hyderabad-500034.

- APPLICANTS

PARTIES PRESENTED: Mr. Sundharesan J, Practicing Company Secretary  
and Authorised representative for the Applicants.

Heard on: 04/08/2016, 30/08/2016, 08/09/2016, 04/10/2016, 25/10/2016  
09/11/2016 and 25/11/2016

**ORDER**

The Petition is filed on behalf of Petitioners under Sec.621A of the Companies Act 1956, Originally the Compounding petition was filed before Company Law Board, Southern Region, Chennai. The Petition was numbered as C.A. 16/621A/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 No. 122/16.

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> Petitioner is a company which was incorporated as Private Limited Company under the Companies Act, 1956 vide Certificate of Incorporation No. U85110KA2005PTC037807 on 30/11/2005 in the name and style of "Carmel Asia Holdings Private Limited", the Registered Office of the company is situated at No. 56B/34, 1<sup>st</sup> Main, Vyalikaval, Lower Palace Orchards, Bangalore-560003.

The Authorised Share Capital of the petitioner company as per the latest Audited Balance Sheet is Rs.200,000,000/- (Rupees twenty crores only) divided into 20,000,000 (Two Crores) Equity Shares of Rs 10/- each and issued, subscribed and paid up capital is Rs. 152,202,910 (Rupees Fifteen Crores Twenty two lakhs two thousand nine hundred and ten only) comprising of 15,220,291 (One Crore fifty Two lakhs twenty thousand two hundred and ninety one only) Equity Shares Rs 10/- each as on date.

The main object of the 1<sup>st</sup> Petitioner company is to carry on business as an investment company and to invest the moneys of the company in the purchase of shares, stocks, debentures, debenture stocks, bonds. To apply for and obtain the membership interest and trading privileges in various stock exchanges and security exchanges. To invest in television, media, telecommunications, power generation industry, real estate etc., Details of the main object of the Company are stated in the petition.





The 1<sup>st</sup> Petitioner Company M/s Carmel Asia Holdings Private Limited, represented by its Director Shri B. Ramesh Babu has made an application for compounding of offence under section 621A of the Companies Act, 1956 for the offence committed under section 269(1) of Companies Act, 1956. The Applicants/petitioners approached the erstwhile Company Law Board, now National Company Law Tribunal for the default committed by the petitioners under section 269(1) of the Companies Act, 1956 with a prayer for compounding of the offence for the financial years 2005-06, 2006-07, 2007-08, 2009-10, 2010-11 and 2011-12. The total No. of days are 2313.

The Practicing Company Secretary of the Petitioner Company has informed that the composition of the Board of Directors of the Applicant Company during the period of default is as follows:

1. Sri Y.S.Jagan Mohan Reddy,
2. Sri B.Ramesh Babu
3. Smt. Y.S Bharathi Reddy

The Registrar of Companies, Karnataka, Bangalore vide letter No. ROCB/DROC/INSP/CARMEL/2013 dated 5/02/2013 has submitted a inspection report of the Company, wherein they have observed as follows:

On and from the commencement of Companies (Amendment) Act, 1988, every public company or a private company which is subsidiary of public company, having a paid up capital of Rs 5 crores should have a managing or whole-time director or manager.

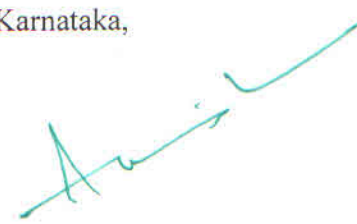

It is observed that the company is the subsidiary of M/s Sandur Power Company Limited from the financial year 2005-06 to 2011-12, by virtue of section 4 (1) (c) of the Companies Act, 1956 the company is a subsidiary of a public limited company and will be a deemed limited company.

However, the company has not appointed a managing or whole-time director or manager as required u/s 269 of the Act for the financial years from 2005-06 to 2011-12. Hence, there is a violation of section 269 of the Act during the financial years 2006-07 to 2010-11.

The Petitioner Company vide its letter dated 10/09/2013 has submitted the reasons for non-compliance of section 269(1) of the Companies Act, 1956 as to why the applicants have not appointed Managing Director or Whole Time Director. It is urged that the Company was incorporated as a Private Limited company and had become a subsidiary of M/s Sandur Power Company Ltd., w.e.f. 06<sup>th</sup> September 2005. There was no Managing Director or Whole Time Director as the company did not have major operations and non-appointment of such Director may be reconsidered as procedural lapse and unintentional and has requested for condonation.

The Practicing Company Secretary has informed that the Company is a subsidiary of M/s Sandur Power Company Limited from 2005-06 to 2011-12. The Company being a subsidiary of a Private Limited Company it became deemed limited company under section 4(1)(C) of the Companies Act, 1956 and as accepted that the Company has violated the provisions of section 269 of the Companies Act, 1956 for the financial years from 2005-06 to 2011-12. The company was of the opinion that since it does not have much activities and operations and is managed by the parent company M/s Sandur Power Company Limited, it is not required to appoint a separate Whole Time Director for the company under section 269 of the Companies Act, 1956 and has submitted that the alleged default is not intentional and is not of such nature as would prejudice the interest of the members or creditors or others dealing with the 1<sup>st</sup> Applicant Company and no harm is caused to the public interest. The Petitioner Company has accordingly applied for compounding and has accepted the default period from 2005-06 to 2011-12.

The Practicing Company Secretary has also informed Mr. Eswaraiah Honahalli Veeranna has been appointed as Whole Time Director from October 2013 and filed requisite Form 25C with the Registrar of Companies, Karnataka, Bangalore vide SRN No. B90547878.





The Registrar of Companies, Karnataka, Bangalore vide letter dated 08/01/2014 has informed in the report that "as per Provisions of the Section 629A of the Companies Act, 1956, if a company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act or any condition limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extent to five thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day during which the contravention continues. Any offence covered by this section is compoundable. The application is by 4 applicants including the Company".

Section 269(1) of the Companies Act, reads as follows:-

"On and from the commencement of the Companies (Amendment) Act, 1988 every public company, or a private company which is a subsidiary of a public company, having a paid-up share capital of such sum as may be prescribed, shall have a managing or whole-time director or a manager."

We have heard the Practicing Company Secretary for the company on 4/08/2016, 30/08/2016, 08/09/2016, 4.10.2016, 25.10.2016, 09/11/2016 and 25.11.2016. We have seen the affidavits dated 26/09/2016 and 14/11/2016 filed by Mr. Ramesh Babu, Director who is 2<sup>nd</sup> Applicant. We have seen the report of the Registrar of Companies, Karnataka at Bangalore and also we have seen the Memorandum and Articles of Association of the Company and the Board Resolution dated 17<sup>th</sup> September 2013 authorizing the Company to file compounding application. We have seen the copies of inspection report under section 209 of the Companies Act, 1956. We have seen the Show Cause Notice and the reply and also the financial statements.



The compound of the offence has been considered in view of affidavits dated 26/09/2016 and 14/11/2016 given by Mr. Ramesh Babu, Director and also submission made by the Practicing Company Secretary for the company on 4/10/2016 and 25/10/2016 that there is no investigations pending or initiated against the company or any of the officer of the company for any offence under the Companies Act, 2013 or Companies Act, 1956.

This order is limited for compounding of the violation under the provisions of Section 269 of the Companies Act, 1956.

This suo-moto application is filed by the Applicants for compounding the violation under section 269 (1) which is punishable under section 629A of the Companies Act, 1956. The offence can be compounded by levying compounding fee on the Applicants as given below:-

Sl. No.	Particulars	Violation of Sec.269(1) of Companies Act, 1956	No. of days delay	Total Rs.
1	1 <sup>st</sup> Applicant Company	3,000/-	2313x 75/- =1,73,475/-	1,76,475/-
2	2 <sup>nd</sup> Applicant-Director	3,000/-	2313x 75/- =1,73,475/-	1,76,475/-
3	3 <sup>rd</sup> Applicant-Director	3,000/-	1888x 75/- =1,41,600/-	1,44,600/-
4	4 <sup>th</sup> Applicant-Director	3,000/-	454 x 75/- = 34,050/-	37,050/-

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 15<sup>th</sup> December 2016 for compliance.

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

DATED THIS THE 29<sup>th</sup> DAY OF NOVEMBER, 2016