

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 257/2016

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

IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A UNDER SECTION 210 OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF M/S GARDNER AEROSPACE-BENGALURU
PRIVATE LIMITED

(Formerly known as Gardner Aerospace Pranita Private Limited)

1. M/S Gardner Aerospace-Bengaluru Private Limited,
No. 261/70, Gollarahatti,
Near Sun Valley Country Club,
Magadi Main Road,
Vishwanceddam Post,
Bangalore-560091.
2. Mr. Srinivasa Rao Amula
No.245, 6th Cross, 6th Block,
Nagarabhavi, II Stage,
Bangalore-560072.
3. Mr. Bhanu Prakash Chinnamutiv
No.183, G Cross, 3rd Block,
Nagarabhavi, 2nd Stage,
Bangalore-560072.
4. Mr. David Marvin Hughes,
12, New Market Gardens,
Rainhill, St.Helens, United Kingdom,
WA95FR, United Kingdom.

- PETITIONERS

PARTIES PRESENTED:

Mr. K.V. Omprakash, Advocate and Mr. S.Yasar
Arafath, Advocate of M/s Conscientia Law
Associates, 76/1, 1st Floor, 7th Cross, Wilson
Garden, Bangalore-560027 Authorised
representatives for the Petitioners.

Heard on: 16/08/2016, 02/09/2016, 19/09/2016, 06/10/2016, 26/10/2016 and
21/11/2016

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 210 of the Companies Act, 1956. 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 numbered as T.P No. 257/16.

The averments in the petition are briefed hereunder:-

The 1st Petitioner Company was incorporated under the Companies Act, 1956 on 22nd June 1998 as a Private Limited Company in the name and style of GARDNER AEROSPACE PRANITA PRIVATE LIMITED vide Registration No. CIN-UN34300KA1998PTC023872. The Registered office of the company is situated at # 261/70, Gollarahatti, Near Sun Valley Country Club, Magadi Main Road, Vishwaneeddam Post, Bangalore-560091. When the proceedings are pending, Counsel for Petitioners has informed that, the name of the 1st Petitioner Company has changed from GARDNER AEROSPACE PRANITA PRIVATE LIMITED to GARDNER AEROSPACE-BENGALURU PRIVATE LIMITED w.e.f. 16th November 2016. He has also filed the copy of the proceedings of the Registrar of Companies, Karnataka at Bangalore along with Memorandum and Articles of Association of the 1st Petitioner Company. Therefore, the 1st Petitioner Company is referred to as GARDNER AEROSPACE-BENGALURU PRIVATE LIMITED.

The Petitioner No. 2, Mr. Srinivasa Rao Amula is the Managing Director of the Petitioner Company since 22/06/1998. The Petitioners No. 3, Mr. Bhanu Prakash Chinnamutiv and No. 4, Mr. David Marvin Hughes are the Directors of the Petitioner Company from 22/06/1998 and 12/06/2012 respectively. The Petitioner Company's financial year is 1st April to 31st March.

The present Authorized share capital of the 1st Petitioner company is Rs. 6,25,00,000/- (Rupees Six Crores Twenty five lakhs only) consisting of 1,50,000 (One lakh fifty thousand) Equity Shares of Rs 100/- each and 4,75,000

(Four Lakh Seventy Five Thousand only) Preference Shares of Rs. 100/- each. The Subscribed Capital is Rs. 5,00,35,100/- (Rupees Five Crores Thirty Five Thousand and One Hundred only) divided into 1,28,240 (One Lakh Twenty Eight Thousand Two Hundred forty Only) Equity Shares of Rs 100/- each and 3,72,111 (Three Lakh Seventy Two Thousand One Hundred and eleven only) Preference Shares of Rs 100/- each.

The Main objects of the 1st Petitioner Company is to carry on the business of Designing, manufacturing, marketing, assembling, altering, service for automobile, engineering industries and dealing in components for the Aerospace Industry and to carry on the business of importing and trading of machineries and machine tools and to act as authorized agents in India for the principals outside India etc. Details of the objects of the company are mentioned in the Memorandum of Association of the Petitioner Company.

The 1st Petitioner Company has sought the following relief(s):-

- a) The delay in complying with the provisions of Sections 210 of the Companies Act, 1956 be condoned;
- b) Not to take any action/prosecution against the Petitioners under Section 210(5) of the companies Act, 1956 for contravention of Section 210 of the Companies Act, 1956;
- c) The Offence may be compounded by imposing a lenient penalty against the Company and its officers in default.

It is averred in the Company Petition that, during the financial year ending 31st March 2014, the Company could not finalize the accounts and audit thereof in a timely manner due to reasons beyond the control of the Company and was unable to conduct the Annual General Meeting of the Company on or before 30/09/2014. Even the company was granted extension of three months time up to 31/12/2014, but the company could not hold the Annual General Meeting within the due date. The Petitioner Company got its accounts finalized and audited but after due date of holding the Annual General Meeting and as a result there was failure to place and adopt the Audited Annual Accounts and Balance sheet of the company before its Annual General Meeting. However, the Company convened Annual General Meeting on 21st April 2015 and accounts were adopted. Thus there was violation of provisions of section 210 of the Companies Act, 1956. Further it is stated in the

petition that, the default committed under section 210 of the Companies Act, 1956 has occurred inadvertently and is unintentional and also stated that they shall be careful and shall not commit lapse in future and shall duly comply with all the provisions of the Companies Act, 1956 and any other Acts, Rules and Regulations relating thereto in future.

The 1st Petitioner Company and its Directors suo-moto have filed this application to compound the offence, praying the Tribunal to compound the offence.

The Registrar of Companies, Karnataka, Bengaluru vide his letter dated 29/03/2016 has stated that, the company has not complied with provisions of section 210 of the Companies Act, 1956 and further submitted that the Company has filed its balance sheet and profit and loss account for the financial year 2013-14 by paying additional fees on 21/04/2015 and the period of default is from 31st December 2014 to 21st April 2015 and has made an observations that the compounding application may be decided on merits.

The matter has been heard on 16/08/2016, 02/09/2016, 19/09/2016, 06/10/2016, 26/10/2016 and 21/11/2016. The company could not hold its 1st Annual General Meeting within the due date of incorporation. Admittedly the company held its Annual General Meeting on 21st April 2015. Thus there was violation of provisions of section 210 of the Companies Act, 1956.

Section 210(1) of the Companies Act, 1956, provides that:-

At every annual general meeting of a company held in pursuance of section 166, the Board of directors of the company shall lay before the company –

- (a) a balance sheet as at the end of the period specified in sub-section (3); and
- (b) a profit and loss account for that period.

For the violation of section 210(1) of the Companies Act, 1956 the punishment is provided under sub-section (5) of section 210 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 this section, 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 Rs 10,000/- or with both.”

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 perused the documents filed by the Petitioners. We have seen the Board Resolution marked as Annexure-I wherein the Board has passed a resolution to file necessary Compounding Application. We have seen the Memorandum of Association marked as Annexure-II and Minutes of Annual General Meeting held on 21st April 2015. We have seen Annual Accounts for the financial year 2013-14 and after going through the Company Petition under section 621A of the Companies Act, 1956 and further submissions made by the Counsel for Petitioners and the observations of the Registrar of Companies, we direct the Petitioners No. 2 to 4 to pay the compounding fee as detailed hereunder:-

Sl. No.	Particulars	Violation of Sec.210 of Companies Act, 1956	Grand Total Rs.
1	2 nd Petitioner- Managing Director	6,000/-	6,000/-
2	3 rd Petitioner- Director	6,000/-	6,000/-
3	4 th Petitioner-Director	6,000/-	6,000/-

The compounding fee levied shall be paid by the Petitioners within 15 days from the date of this order and call this matter on 14th December 2016 for compliance.

28/11/16
(RATAKONDA MURALI)
MEMBER, JUDICIAL

28/11/16
(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE *28th* DAY OF NOVEMBER, 2016