

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 268/2016**

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

**IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A UNDER SECTION 166 OF THE COMPANIES ACT, 1956
AND**

**IN THE MATTER OF IDS SOFTWARE SOLUTIONS (INDIA)
PRIVATE LIMITED**

1. **IDS Software Solutions (India) Private Limited,
6th Floor, D-Tower,
Diamond District,
Airport Road,
Bangalore-560008.**
2. **Mr. Nicholas Emmanuel Somers, Director
42 Old Church Road,
Greenwich,
Connecticut,
06830 USA.**
3. **Mr. Philip Neal Cole- Director
15, St. Marys Grove,
London, W43LL,
United Kingdom**

- **APPLICANTS**

PARTIES PRESENTED: Mr. I.B Harikrishna, No.44/38, Veerabhadran Street, Valluvarkottam, Nungambakkam, Chennai-600034 – Practicing Company Secretary and Authorised representatives for the Applicants.

Heard on: 31/08/2016, 21/09/2016, 17/10/2016, 02/11/2016 and 21/11/2016.

ORDER

The Application 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 166 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. 268/16.

The averments in the Petition are briefed hereunder:-




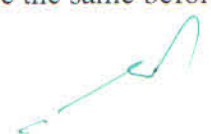

The 1st Applicant Company was incorporated under the Companies Act, 1956 on 7th June 2004 as a Private Limited Company in the name and style of IDS Software Solutions (India) Private Limited vide Registration No. CIN-U72200KA2004PTC034086. The Registered office of the company is situated at 6th Floor, D-Tower, Diamond District, Airport Road, Bangalore-560008.

The 1st Applicant Company's financial year was previously starting on January 1st and ending on December 31st and is currently starting on April 1st and ending of March 31st.

The present Authorized share capital of the 1st Applicant company is Rs. 1,00,00,000/- (Rupees One Crore only) consisting of 10,00,000 (Ten lakhs) Equity Shares of Rs 10/- each. The issued, subscribed and paid up capital is Rs. 1,00,000/- (Rupees one lakh only) consisting of 10,000 equity shares of Rs 10/- each.

The Main objects of the 1st Applicant Company is to carry on the business of Design and development of computer software, including systems packages and applications packages; to engage in the design and development on a Java based system and to provide ongoing support services to the leasing industry etc., Details of the objects of the company are mentioned in the Memorandum and Articles of Association of the 1st Applicant Company.

It is averred in the Company Application that, the 1st Applicant Company could not conduct its Annual General Meeting within the prescribed time limit for the financial year ending 31st December 2012 ~~or on~~ ^{or} before 30th June 2013. The Annual General Meeting was held on after its due date. 

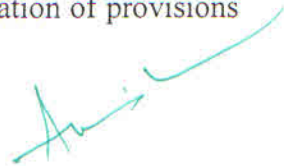

It is stated that the delay occurred as a result of delay in completing the consolidated, world-wide IDG Group Inc. Financial statements which were not completed till 24th June, 2013. In order to complete and approve the financials of the 1st Applicant Company, the IDS Group Inc., financials must be completed and approved. The completion of these financials by 24th June 2013 did not allow enough time to convene the Annual General Meeting to approve the financials and file the same before the required due date.  

It is averred that the 1st Applicant Company committed default due to unavoidable circumstances and it was not intentional and is not of such nature as to prejudice the interests of the members or creditors or others dealing with the company. The 1st Applicant Company unequivocally declares that the offence committed does not affect the public interest in any way, and no harm is caused to the public. Further, the 1st Applicant Company has shown its commitment to comply with the requirements of the Act by suo-moto filing this application for compounding the offence under section 621A of the companies Act 1956 and has taken action designed to prevent any future defaults.

The 1st Applicant 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 bearing No. ROCB/MMM/621A/034086/2016 dated 29/03/2016 has stated that, the company has not complied with provisions of section 166 of the Companies Act, 1956 and further submitted that the Company hold its Annual General Meeting on 26th August 2013. Thus there was delay of 57 days and has made an observations that the compounding application may be decided on merits. It is further stated in the report that, Mr. Kristopher Thomas Schmidt was also Director during the period when default was committed. The Authorised Representative of the Directors filed Affidavit stating that, Mr. Kristopher Thomas Schmidt is not currently employed with the 1st Applicant Company and he is not available.

We have heard the Practicing Company Secretary for the Applicants on 31/08/2016, 21/09/2016, 17/10/2016, 02/11/2016 and 21/11/2016. It is stated that, the company could not hold the Annual General Meeting within the due date, as there was inordinate delay in consolidation of accounts of the Holding Company IDS Group Inc. It is contended that the Audited Accounts financial statements could not be completed before Annual General Meeting on due date. There was delay in holding the Annual General Meeting and as a result the audited financial statements could not be filed before Annual General Meeting on due date. Admittedly the company held its Annual General Meeting on 26th August 2013 with a delay of 57 days. Thus 1st Applicant Company admitted violation of provisions



of section 166(1) of the Companies Act, 1956, in not holding Annual General Meeting for the financial year ending 31st December 2012 within the prescribed time, which reads as follows:-

“Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.”

For the violation of section 166 (1) of the Companies Act, 1956, the punishment is provided under section 168 of the Companies Act, 1956 which reads as follows:-

“if default is made in holding a meeting of the company in accordance with section 166, or in complying with any directions of the Tribunal or the Central Government, as the case may be under sub-section (1) of section 167, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees and in the case of a continuing default, with a further fine which may extend to two thousand five hundred rupees for every day after the first during which such default continues”.

We have perused the documents filed by the Applicants. We have seen the extract of the Minutes of the Board Resolution dated 6th August 2015 marked as Annexure-3. We have seen the Power of Attorney of the Directors marked as Annexure - 4. We have seen the Memorandum and Articles of Association marked as Annexure-2 and Certified copy of the latest annual return of the Company filed as on 11th September 2013 marked as Annexure-1 and after going through the Company Petition under section 621A of the Companies Act, 1956 and further submissions made by the Practicing Company Secretary for the Applicants and the observations of the Registrar of Companies, we are of the opinion that the violation can be compounded by levying compounding fee on the Applicant Nos. 1,2 and 3 which is shown in the table:-



Sl. No.	Particulars	Violation of Sec.166 of Companies Act, 1956	Delay of 57 days	Total Rs.	Grand Total Rs.
1	1 st Applicant Company	Rs. 20,000/-	57 x 500/-	28,500/-	48,500/-
2	2 nd Applicant-Director	Rs. 20,000/-	57 x 500/-	28,500/-	48,500/-
3	3 rd Applicant-Director	Rs. 20,000/-	57 x 500/-	28,500/-	48,500/-

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.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 28th DAY OF NOVEMBER, 2016