

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 139/2016

IN

C.A. NO. 91/621A/CB/2015

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

IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 209 READ WITH SECTION 621A
OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF NAVEEN HOTELS LIMITED

C.A. NO. 91/621A/CB/2015 IN T.P.NO. 139/2016

1. Dr. Rama Nagappa Shetty – Managing Director
Aslesha No.122,
Cunningham Road,
Bangalore-560052.

APPLICANTS

PARTIES PRESENTED: Mr. Shiva Rama Shetty, Naveen Complex, 7th Floor,
14, M.G.Road, Bangalore-560001 –Counsel &
Authorised Representative for the Applicant.

Heard on:27/10/2016 and 23/11/2016.

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. 139/2016.

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

The Company was incorporated under the Companies Act, 1956 on 31st March 1975 in the name and style of “Naveen Hotels Private Limited”, and again the Company has changed its name as NAVEEN HOTELS LIMITED, with effect from 1st September 1975 vide Registration No. U55101KA1975PLC002762. The Applicant Company is unlisted Company. The Registered office of the company is situated at Murudeshwar Bhavan, Gokul Road, Hubli-580030.

The Authorized share capital of the Applicant company is Rs.47,50,000/- consisting of 4,75,000 Equity Shares of Rs 10/- each and Redeemable Preference Shares of Rs 25,00,000/- consisting of 25,000 of Rs 100/- each. The paid up share capital of the Company is Rs. 4,00,00,000/- consisting of 40,00,000 Equity Shares of Rs. 10/- each.

The Main objects of the Company is to establish, manage and carry on business as proprietors of hotels, refreshment rooms and lodging houses, restaurants, taverns, beer house; to carry on the business of purveyors, caterers for public amusement generally and for private or public functions; to carry on business as bakers and manufacturers of and dealers in bread, flour, biscuits etc., Details of the objects of the company are mentioned in the Memorandum of Association of the Applicant Company.

The Managing Director of the Company has filed application for violation of ~~section under~~ section 209 read with section 621A of the Companies Act, 1956 for compounding of offence. It is averred in the Company Application that:-

- 1) The Ministry of Corporate Affairs has served a letter to the Company stating that, the company has not complied with the following provisions of section 209 of the Companies Act, 1956.
- 2) The Company clarifies that with regard to provisions for gratuity liability, the company had not provided for gratuity as none of the employees qualify for payment of gratuity during the period 2005-06 to 2010-11. However, cumulative effect has been given and has been regularized post 2010-11 financials years.

The company wishes to go for compounding of offences since it was inadvertent/done without professional advice during this period.

The Managing Director of the Company Dr. Rama Nagappa Shetty has made the following declaration and solemnly affirm the followings that:-

- The Managing Director shall be liable for the non-compliance as provided in the section 209 of the Companies Act, 1956.
- He also confirmed that, he has regularized the same after the financial year 2010-11 as per para-6 of the Affidavit dated 15th November 2016.
- He also stated that the compounding to be done for the financial year from 2005-06 to 2010-11.

The Counsel for the petitioner stated that, there is no deliberate intention and no mens-rea in regard to the offences and therefore the applicant deserve to be excused. The Counsel for the petitioner also confirmed that, they have not previously filed any petition or application regarding the matter in respect of this application has been made. The Counsel for the petitioner also confirmed that the company has complied with all relief after 31st March 2011.

Section 209 (5) of the Companies Act, 1956. The section produced as follows:

“If any of the persons referred to in sub-section (6) fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own willful act been the cause of any default by the company thereunder, 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.

Provided that in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty:

Provided further that no person shall be sentenced to imprisonment for any such offence, unless it was committed willfully.”

Section 209 (6) (d) of the Companies Act, 1956 reads as follows:-

“where the company has a managing director or manager, such Managing Director or manager and all officers and other employees of the company;
and where the company has neither a managing director nor manager, every director of the company.”

Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed willfully.

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 and relates to years upto 2010-11. Therefore, this application is to be decided under the provisions of section 621A of the Companies Act, 1956.




We have heard the Counsel for Applicant and further we have considered the documents filed by the Applicant viz., the certified copy of the transactions with Group Companies and Associates of the Company. We have received report from the Registrar of Companies, Karnataka at Bengaluru vide letter bearing No. ROCB/SVK/2762/621A/2015 dated 01/04/2015, wherein he has stated that the Application may be considered on merits.

Considering the above facts and as per the submissions made by the Counsel for the Petitioner, the Managing Director does not seem to have committed willfully for such non-compliance. Thus the Petitioner has filed this application under section 621A of the Companies Act, 1956 on suo-moto to compound the violation committed under section 209 of the Companies Act, 1956.

We have seen the Memorandum of Association of the Company. We have seen the extract of Board Resolution dated 12th January 2015 of the Company. After considering the materials on record and after taking into account the submissions made by the Counsel for Petitioner that, lenient view may be taken, we levy compounding fee for the offence committed under sub-section 5 of section 209 of the Companies Act, 1956 as shown in the table given below:-

Sl. No.	Particulars	Violation of Section 209 of the Companies Act, 1956- for the financial year 2005-06 to 2010-11 (6 years)	Grand Total Rs.
1	Applicant – Managing Director	Rs. 6,000/- x 5 years = Rs 30,000/-	30,000/-

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


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 29th DAY OF NOVEMBER 2016