

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH  
T.P.NO. 140/2016  
IN  
C.A. NO. 94/2015**

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

**IN THE MATTER OF COMPANIES ACT, 1956  
UNDER SECTION 211 READ WITH SECTION 621A  
OF THE COMPANIES ACT, 1956  
AND**

**IN THE MATTER OF NAVEEN HOTELS LIMITED**

**C.A. NO. 94/2015 IN T.P.NO. 140/2016**

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

**APPLICANTS**

**PARTIES PRESENTED:** Mr. Shiva Rama Shetty, Naveen Complex, 7<sup>th</sup> 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. 140/2016.

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 31<sup>st</sup> 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 1<sup>st</sup> 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 Applicant Company 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.

It is averred in the Company Application that:-

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 211 of the Companies Act, 1956.

Queries raised by the Ministry of Corporate Affairs	Company's explanation
Auditors expenses not shown separately and Interest / Dividend income not shown as Gross or Net Income.	<p>(i) Regarding out of pocket expenses paid to auditors in the financial year 2009-10 of Rs 8,825/- was inadvertently included in Administration expenses.</p> <p>(ii) Company has shown gross income from investments and interest income. Since it has not been mentioned in the financial statements.</p> <p>The Company wishes to go for compounding of offences since it was inadvertently done without professional advice during this period.</p>



<p>Depreciation Accounting shown as written down value method but done in straight line method in violation of section 211 (3A) of the Companies Act, 1956</p>	<p>Company clarify that depreciation has been provided on straight line basis method and at rates as prescribed by schedule XIV of the Companies Act, 1956. But inadvertently it had mentioned as written down value method.</p> <p>However now the Company wishes to go for compounding of offences since it was inadvertently done without professional advice during this period.</p>
<p>Related party transactions not disclosed pursuant to provisions of section 1211 (3A) of the companies Act, 1956</p>	<p>Since the same has not been furnished properly, now the Company wishes to go for compounding of offences since it was inadvertently done without professional advice during this period.</p>

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

1. He is liable for the said noncompliance as provided in the section 211(7) of the Companies Act, 1956. He also confirmed the non-compliance by the Company on the following issues:-
  - The out of pocket expenses paid to the auditors in the financial year 2009-10 of Rs 8,825/- was inadvertently shown as admin expenses whereas it was regularized from the next financial year 2010-11.
  - Interest/Dividend income shown in the financial statements did not contain the word "net" or "gross" amounts. The Company is showing only gross amount in the Interest/Dividend income whereas it had not written the word gross in the financial statements.
  - The Company follows the straight line of Depreciation method for assets of the Company whereas it has been inadvertently mentioned as written down value method.
  - Related party (RPT) disclosure was not mentioned in the financial statements inadvertently.
  - All the above non-compliance were inadvertent and all the non-compliance has been regularized from the financial year 2014-15.
2. He also stated that the compounding to be done for the financial year 31<sup>st</sup> March 2006 to 31<sup>st</sup> March 2014.




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 done all compliances after 31<sup>st</sup> March 2014 under the Companies Act.

Section 211(7) of the Companies Act, 1956. The section produced as follows:

“If any such person as is referred to in sub-section (6) of section 209 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, 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 ten thousand rupees, or with both:

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section and the other requirements aforesaid 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 211 (8) of the Companies Act, 1956. The section produced as follows:

“If any such person as is referred to in sub-section (6) of section 209, having been charged by the managing director ~~for~~ manager, or Board of directors, as the case may be , with the duty of seeing that the provisions of this section and the other requirements aforesaid are complied with, makes default in doing so, 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 ten thousand rupees, or with both:

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 1<sup>st</sup> 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 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. He also stated that two more Directors viz. Dr. K.Sandip Malli and Dr. B.Sudesh Hegde are at fault. But section 211(8) of the Companies Act provides that, the Managing Director if he is authorizes, then he is alone liable.

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 have filed this application under section 621A of the Companies Act, 1956 on suo-moto to compound the violation committed under section 211 of the Companies Act, 1956.

We have seen the extract of Board Resolution dated 12<sup>th</sup> January 2015 and Memorandum of Association 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 7 of section 211 of the Companies Act, 1956 as shown in the table given below:-

Sl. No.	Particulars	Violation of Section 211 (7) of the Companies Act, 1956- for the financial year 2005-06 to 2013-14 (9 years)	Grand Total Rs.
1	Applicant – Managing Director	Rs. 6,000/- x 9 years = Rs 54,000/-	54,000/-

The compounding fee levied shall be paid by the Petitioner within 15 days from the date of this order and call this matter on 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