

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 264/2016

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

IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 621A OF THE COMPANIES ACT, 1956 AND
READ WITH SECTION 149 OF THE COMPANIES ACT, 2013.

AND

IN THE MATTER OF M/S TEJAS NETWORKS LIMITED

1. M/S Tejas Networks Limited,
Plot No.25, 5th Floor,
J.P Software Park, Electronic City, Phase-I,
Hosur Road,
Bangalore-560100.
2. Mr. Sanjay Nayak, Managing Director
No. 529, 17th D Main, 6th Block,
Koramangala
Bangalore-560034
3. Mr, Murali. R, Chief Financial Officer,
No. 379, 10th Main F Block
Sahakara Nagar,
Bangalore-560092.
4. Mr. Krishnakanth G.V, - Company Secretary,
No.10, 6th Cross, P.R Layout,
Bangalore-560017.

- PETITIONERS

PARTIES PRESENTED: Mr. Thirupal Gorige, # 87, 2nd Floor, 7th Main, 21st
Cross, N.S Palya, BTM II Stage, Bangalore-560076
Practicing Company Secretary and Authorised
representatives for the Petitioners.

Heard on: 01/08/2016, 08/08/2016, 26/08/2016, 14/09/2016, 26/09/2016,
24/10/2016, 08/11/2016 and 11/11/2016

ORDER

This Application was filed before the Company Law Board, Southern Region, Chennai under Section 621A of the Companies Act, 1956 for compounding of offence for violation under section 149(1) of the Companies Act, 2013 which is punishable under section 172 of the Companies Act, 2013. This Application was filed through the Registrar of Companies, Karnataka at Bangalore. This

Application was received from the Registrar of Companies, Karnataka at Bangalore by the Company Law Board, Southern Region, Chennai and it was transferred to this Tribunal on abolition of Company Law Board, Southern Region, Chennai Bench and numbered as T.P No. 264/2016 on the file of this Tribunal.

The averments in the Company Application are briefly described hereunder:-

The 1st Applicant is the Company, 2nd Applicant is a Managing Director, 3rd Applicant is the Chief Financial Officer and 4th Applicant is the Company Secretary. This suo-moto Application is filed by all the Applicants for compounding of violation under section 149 of the Companies Act, 2013 herein after referred to as an Act which is punishable under section 172 of the Act.

The Applicant Company was incorporated under the Companies Act, 1956 on 24th April 2000, in the name and style of TEJAS NETWORKS INDIA PRIVATE LIMITED, company has changed its name to TEJAS NETWORKS INDIA LIMITED with effect from 23rd October 2002 and again the company has changed its name to TEJAS NETWORKS LIMITED w.e.f. 18th March 2008, vide Registration No. CIN-U72900KA2000PLC026980. The Registered office of the company is situated at Plot No. 25, 5th Floor, J.P Software Park, Electronic City, Phase-I, Hosur Road, Bangalore-560100.

The Main objects of the Applicant Company is to engage in the business of providing, designing, developing, selling, and servicing of networking equipment and software in India and abroad; to develop, manufacture and deal in application tools of all kinds for internet based applications, and to provide internet service, and deal with all kinds of software and hardware related to all fields to internet communication; to develop, manufacture, deal in, export and import all kinds of computer software, application software, computer systems like data management systems, digital systems etc.,

It is averred that, as per second Proviso to sub section 1 of section 149 of the Act read with Rule 3 of the companies (Appointment of Directors) Rules, 2014 that, every other public company having paid up share capital of Rs 100 crore or more or turnover of Rs. 3 crore or more, the company being a public limited company, is required to appoint a woman Director on the board within one year

from the date of commencement of section 149 of the Act which came into force from 1st April 2014. Therefore, the 1st Applicant Company was required to appoint woman Director by 31st March 2015, as its paid up capital was Rs. 100,97,92,400/- and the turnover was Rs. 361,95,07,794/- for the financial year 2014-15.

The Company was unable to identify a suitable person for the post of woman Director due to specialized/technological nature of business of the Company. However, the company was able to identify a suitable person for appointing as woman Director. In the meantime, the Registrar of Companies, Karnataka at Bangalore issued show cause notice dated 6th July 2015 seeking the explanation for non-compliance. However, the 1st Applicant Company gave reply on 15th July 2015 to the show cause notice seeking extension of time for appointment of woman Director to the Board of the Company. On the other hand, the Registrar of Companies, Karnataka at Bangalore instituted the prosecution against the 1st Applicant Company and its officers who are in default before Special Court for Economic Offence at Bangalore. The 1st Applicant Company however, appointed woman Director on 16th February 2016.

It is averred that violation of second proviso to sub section 1 of section 149 of the Act read with Rule 3 of the Companies (Appointment of Directors) Rules, 2014 was neither willful nor an act of negligence. The 1st Applicant Company had sincerely tried to get a suitable candidate to appoint as Woman Director. Based on the recommendations of the Nomination and Remuneration Committee, the Board of Director of the 1st Applicant Company appointed Ms. Leela K. Ponappa as Woman director and also as Independent Director on the Board w.e.f. 16th February 2016. Thus there was compliance of Second Proviso to sub section 1 of section 149 of the Act read with Rule-3 of the Companies (Appointment of Directors) Rules, 2014.

The Practicing Company Secretary has made written submission on 8th August 2016 that:-

- 1) Section 621A of the Companies Act, 1956 under which this compounding application (the application) was moved before the Hon'ble Company Law Board (CLB) in the month of March 2016 allows the filing of compounding application before the CLB either before or after the institution of any prosecution.

- 2) The application was moved before CLB after seeking the permission from the special court.
- 3) Before filing the compounding application, the offence was made good by appointing the woman director Ms. Leela K.Ponnappa. She is an Independent Director appointed for 5 years. Ms. Leela K.Ponappa who joined Indian Foreign Services in the year 1970 held as various positions in government of India, like Ambassador to Netherlands, Thailand and Permanent Representative of India to UNESCAP, Additional Secretary, Joint Secretary to the various Ministries.

It is further averred that, violation can be compounded taking lenient view.

We have heard the Practicing Company Secretary for Applicants, it is contended that the present Application for compounding filed under section 621A of the Companies Act, 1956 is maintainable even though prosecution is launched against the Applicants. It is contended there is no bar under law to compound the offence by the Company Law Board which was abolished after constitution of National Company Law Tribunal. It is contended that, the violation is punishable with fine only under section 172 of the Act. Since violation is not punishable with imprisonment or imprisonment and fine, the Tribunal can compound the violation under section 172 of the Act. It is contended that, even though the prosecution was launched against the Applicants, the violation can be compounded by the Tribunal and no permission is required from the Special Court for Economic Offence at Bangalore. In this connection, the Practicing Company Secretary for Applicants has relied on the decision of the Company Law Board reported in Hoffland Finance Ltd., Vs Unknown dated 12th May, 1997 and contended that, exercise of power by the Company Law Board under section 621A(1) of the Companies Act, 1956 is independent of exercise of powers by the court under sub-section (7), and all offences other than those which are punishable with imprisonment only or with imprisonment and also fine, can, be compounded by the Company Law Board without any reference to sub-section (7), even in cases where the prosecution is pending in a criminal court. It is contended that the offence can be compounded by the Tribunal even if prosecution is pending against the Applicants.

It is further contended that there is no need to obtain any prior permission from the Special Court for Economic Offence at Bangalore before compounding of the offence by the Tribunal. It is also contended that, the offence can be compounded by the Tribunal either before or after institution of prosecution. Thus it is contended that, prior permission from the Special Court for Economic Offence at Bangalore is not necessary for compounding of the offence by the Tribunal. Secondly, offence can be compounded even after institution of prosecution against the Applicants.

This Applicant was filed through the Registrar of Companies, Karnataka at Bangalore. We have received the report from Registrar of Companies, Karnataka at Bangalore vide Letter No. ROCB/MMM/621A/026980/2016 dated 31st May 2016 along with enclosures. In the report it is clearly stated that show cause notice was issued to the company and to its officers on 6th July 2015. It is also confirmed that, the 1st Applicant Company appointed woman Director on 16th February 2016 and filed DIR 12 (Form 32) on 26th February 2016 vide SRN No. C79982385 and that it was also approved. It is also reported that, prosecution was launched before the Special Court for Economic Offence at Bangalore bearing CC No. 336/15. A copy of the complaint in CC No. 336/15 and also a copy of the show cause notice were enclosed.

Thus it is clear for violation of provisions of section 149 of the Act, the Registrar of Companies, Karnataka at Bangalore issued show cause notice on the instructions of Ministry. It is also clear that the Registrar of Companies, Karnataka at Bangalore instituted prosecution against the Applicants before the Special Court for Economic Offence at Bangalore bearing CC No. 336/15 for violation of proviso of section 149 of the Act.

Second Proviso to section 149 of the Act reads as follows:-

“Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.”

Violation of this proviso is punishable under section 172 of the Act, which reads as follows:

“If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees”

The Practicing Company Secretary has filed a certified copy of the docket sheet in CC No. 336/2015. It is clear that, prosecution is pending against the Applicants before the Special Court for Economic Offence at Bangalore in CC No. 336/2015 for violation of proviso of section 149 of the Act.

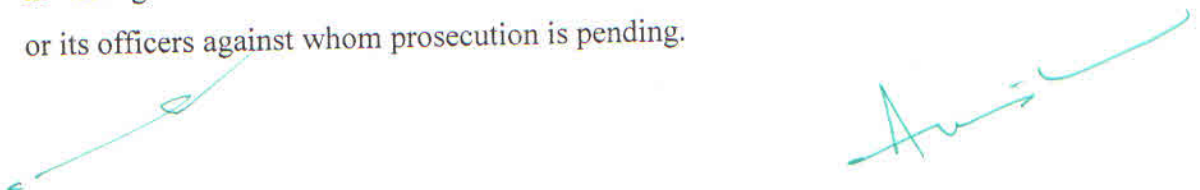
It is also clear that, after prosecution was launched against the Applicants, then they filed this Application before the Registrar of Companies, Karnataka at Bangalore for compounding and the same was sent to the then Company Law Board. From the decision cited by the Practicing Company Secretary, it is clear that, no prior permission is required from the Special Court for Economic Offence at Bangalore where prosecution is instituted for compounding the offence by the Tribunal by virtue of powers conferred under section 621A of the Act.

In the decision report in V.L.S.Finance Ltd., Vs Union of India and Ors. On 10th May, 2013, the Hon'ble Apex Court held that:-

“the power under sub-section (1) and sub-section (7) of Section 621A are parallel powers to be exercised by the Company Law Board or the authorities mentioned therein and prior permission of Court is not necessary for compounding the offence, when power of compounding is exercised by the Company Law Board. In view of what we have observed above, the order impugned does not require any interference by this Court.”

After going through the decision the violation can be compounded even after prosecution is launched against the Applicants which is pending before the Special Court for Economic Offence at Bangalore. Sub clause 4(b) of Section 621A of the Companies Act, 1956 provides, if offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the Company to the Registrar within 7 days from the date on which the offence is so compounded.

Thus, it is clear if offence is compounded after institution of the prosecution, then Registrar has to bring to the notice of the Court where prosecution is pending in writing and on such notice of composition the Court shall discharge the company or its officers against whom prosecution is pending.



From the above decision, it is clear that Tribunal can compound the offence, even though prosecution is pending against the Applicants and prior permission is not necessary to compound the offence.

We have seen the report of Registrar of Companies, Karnataka at Bangalore and also the extract of Resolution of the Board of Directors dated 16th February 2016 of the 1st Applicant Company and after hearing the submissions of the Practicing Company Secretary for the Applicants, the offence can be compounded under section 172 of the Companies Act, 2013 for violation of second proviso to Section 149(1) of the Act, by levying the compounding fee on each of the Applicants as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.149 of the Companies Act, 2013	Total Rs.
1	1 st Applicant Company	Rs. 1,00,000/-	1,00,000/-
2 nd	2 nd Applicant – Managing Director	Rs. 75,000/-	75,000/-
3	3 rd Applicant Chief Financial Officer	Rs. 75,000/-	75,000/-
4	4 th Applicant – Company Secretary	Rs. 75,000/-	75,000/-

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 7th December 2016 for compliance.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 22nd DAY OF NOVEMBER, 2016