

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. No. 30/2017

Judgement/Order delivered on: **2nd February 2018**

Coram: Hon'ble Shri RatakondaMurali, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

**IN THE MATTER OF COMPANIES ACT, 1956 UNDER SECTION 383A
READ WITH 621A OF
THE COMPANIES ACT, 1956**

**AND
IN THE MATTER OF
TMI ROLLON ENGINEERING PRIVATE LIMTIED**

1. M/s TMI ROLLON ENGINEERING PRIVATE LIMITED
CIN No. U29119KA2007PTC044611
Regd. Off: # 27, 32nd Cross
7th Block, Jayanagar, Bengaluru -- 560 070

2. Mr.Venkatesh Koteswar Nagesh
Director
Hongirana, # 207, 7th Cross
27th Main, 1st Sector, HSR Layout
Bengaluru -- 560 034

3. Mr.Sanjeev Shah
Director
196, 38th Cross, 5th Block
Jayanagar, Bengaluru -- 560 041

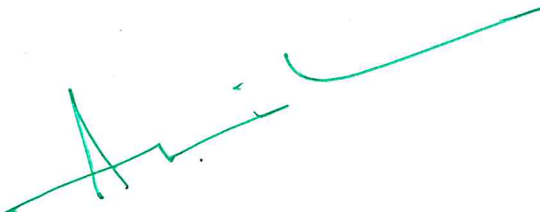
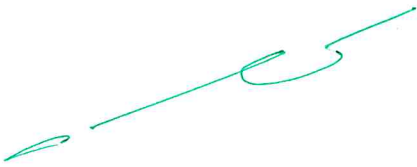
4. Mrs.Seema Shah
Director
196, 38th Cross, 5th block
Jayanagar, Bengaluru -- 560 041

PETITIONERS

For the Petitioner (s) : Mr. H.N.Krishnamurthy, PCS
#53/1, West Anjaneya Temple Road
Gandhi Bazar, Basavanagudi
Bengaluru -- 560 004

Per: **Hon'ble Shri Ashok Kumar Mishra, Member (Technical) – Author**

Heard on: 22/01/2018.

ORDER

This Petition was filed by the Petitioners under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of Section 383A of the Companies Act, 1956.

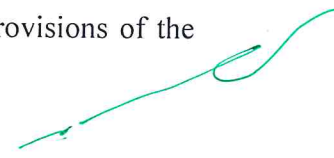
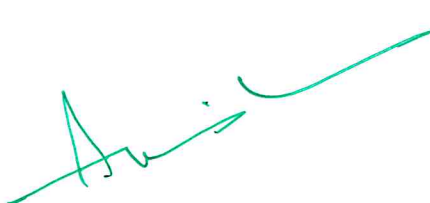
The averments in the Company Application filed under section 621A of the Companies Act, 1956 are briefly stated hereunder:-

The 1st Petitioner Company was incorporated under the Companies Act, 1956 on 10th December 2007 as a Public Limited Company in the name and style of "M/s TMI Rollon Engineering Private Limited" vide CIN No. U29119KA2007PTC044611. The Registered office of the company is situated at No. 27, 32nd Cross, 7th Block Jayanagar, Bengaluru – 560 070.

The Authorised share capital of the 1st Petitioner Company is Rs. 6,00,00,000/- (Rupees One hundred Forty Crores only) consisting of 60,00,000 equity shares of Rs.10/- each. The subscribed and paid up capital is Rs.5,97,00,000/- divided into 59,70,000 equity shares of Rs.10/- each.

The Main objects of the 1st Petitioner Company is to design, engineer, make assemble, manufacture, research, develop, improve, maintain, repair, erect, commission, alter, set up, buy, sell, import, export, or otherwise deal in all types, sizes, varieties and description of castings for hydraulics and other critical engineering applications and manufacturing hydraulic spools, hydraulic, pneumatic, steel, rubber and plastic products, equipments, instruments, tools, dies, machinery and its parts thereto, systems, accessories, components, appliances, materials, including all metal parts and components.



The PCS appearing for the Petitioner submitted that, in accordance with Section 383A of the Companies Act, 1956, if a company is not required to employ a whole time Secretary and having a paid up share capital of ten lakh rupees or more shall file with the Registrar a certificate from Secretary in whole time practice as to whether the company has complied with all the provisions of the



Companies Act, 1956 within 30 days from the date of the Annual General Meeting or within 30 days from the due date of the said Annual General Meeting, whichever is earlier.

He further submitted that the Company is making this application under Section 383A of the Companies Act read with Section 621A of the Companies Act, 1956 for compounding the offence due to non appointment of Whole Time Company Secretary. He further states that the Company was not able to find a suitable candidate for the position of Company Secretary during the period from 04.01.2012 to 31.03.2105 and upto the effective date of amalgamation i.e., 01.04.2015. However to ensure the compliance of applicable laws, the company had hired the services of a Practicing Company Secretary on retainership basis. It is further submitted that the Company could not afford to pay and employ a full time Company Secretary as the Company had accumulated losses of Rs.287 lakhs against the paid up capital of Rs.597 lakhs eroding capital of about 50%.

It is observed during the course of hearing that the Petitioner Company filed Scheme of Amalgamation u/s 391-394 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959 before the Honb'le High Court of Karnataka which were numbered as CoP Nos. 150/2016, 151/2016 and 152/2016. Subsequently as per Notification No. GSR.1119(e) dated 7th December 2016 issued by the Ministry of Corporate Affairs, New Delhi, the said cases were transferred to this Tribunal and renumbered as T.P.Nos.182/2017, 183/2017 and 184/2017 in which the Petitioner Company is one of the Transferor Company with M/s Rollon Hydraulics Private Limited (Transferee Company) whose share capital is less than the threshold limit of Rs.5 crores for appointment of Company Secretary. It is submitted that even after the amalgamation, the Transferee Company's share capital will be less than the threshold limit of Rs.5 crores for appointment of Whole Time Company Secretary. The Petitioner Company further submits that the Tribunal on 11.09.2017 directed the Company to file the Compounding application under Section 383A of the Companies Act, 1956 before acting upon the scheme of Amalgamation which is produced as Annexure-A7 to this petition.



It is further submitted that the default was not intentional and is not of such a nature as would prejudice the interest of the members or creditors or others dealing with the Company and that the Petitioner Company is ready and willing to pay the fine as may be determined by this Tribunal.

Section 383A of the Companies Act, 1956 reads as follows:

“Every company having such paid-up share capital as may be prescribed shall have a whole-time secretary and where the Board of Directors of any such company comprises only two directors, neither of them shall be the secretary of the company.”

For the violation of Section 383A of the Companies Act, 1956, the punishment is provided under Section 383A(1A) which reads as follows:

“If a Company fails to comply with the provisions of sub-section (1), the company and every officer of the company who is in default, shall be punishable with fine which may extend to (five hundred rupees) for every day during which the default continues:

Provided that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole-time Secretary.”

The Registrar of Companies vide his letter No.ROCB/AHN/STA/SEC.441/44611/2017 dated 04.01.2018 has filed his report. The Registrar of Companies states that the application was received on 30.07.2017 u/s 621A of the Companies Act, 2013 for compounding the offence u/s 383A of the Companies Act, 1956 due to non-appointment of Whole Time Company Secretary. The Registrar has submitted that the maximum penalty may be levied on the Petitioner Company.

Since the default is for a period of more than three years from 04.01.2012 to 31.03.2015, the number of days of default as calculated by the Registrar of



Companies as 1182 days is correct and accordingly the penalty is levied under the Companies Act, 1956 as the petition relates to a period up to 2014-2015.

Sl. No.	Particulars	Violation of Sec.383A of the Companies Act, 1956 No of days Delay-1182	Total Rs.
1	1 st Petitioner Company	1182 x 50	59,100
2	2 nd Petitioner Director	1182 x 50	59,100
3	3 rd Petitioner Director	1182 x 50	59,100
4	4 th Petitioner Director	1182 x 50	59,100
	Total		2,36,400

The Compounding fee levied shall be paid by the Petitioners within 15 days from the date of this order and call this matter on 15th February 2018 for compliance.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL

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