

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENGALURU BENCH

T.P. 262/2016

DATED FRIDAY, THE 3rd DAY OF FEBRUARY, 2017

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



IN THE MATTER OF MAITRI SUVARNASIDHI PRIVATE LIMITED



1. Maitri Savarnsidhi Private Limited,
7th Floor, Manipal Centre,
No.47, Dickenson Road,
81, Municipal Division,
Bangalore – 560 042.
2. Mr. Lakshmikant Shrikrishna Narvekar, Director,
7th Floor, Manipal Centre,
No.47, Dickenson Road,
81, Municipal Division,
Bangalore – 560 042.
3. Mr. Vijay Shankar Tavare – Director,
7th Floor, Manipal Centre,
No.47, Dickenson Road,
81, Municipal Division,
Bangalore – 560 042.

PARTIES PRESENTED : Mr. R. Kannan, Sri Sankara Gurukrupa Illam,
No.6A, 10th Street, New Colony, Adambakkam,
Chennai -600 088 – Practicing Company Secretary
And Authorised representatives for the Applicants.

ORDER

Heard on 28.10.2016, 16.11.2016, 06.12.2016, 13.12.2016 and 21.12.2016.

2. The Application was originally filed before the Company Law Board, Southern Region, Chennai, under Section 621A of the Companies Act, 1956 (hereinafter referred to as the Act in short), for the purpose of compounding for violation of provisions of Sections 159 and 162 of the Act. Consequent upon the establishment of National Company Law Tribunal 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.262/2016 in this Tribunal.
3. The averments in the Application are briefly stated hereunder:
4. The 1st Applicant Company was incorporated under the Companies Act, 1956 on 3rd October, 2013 as a Private Limited Company in the name and style of Maitri Suvarnasidhi Private Limited vide Registration No.CIN-U36911KA2013PTCO71272. The Registered Office of the Company is situated at 7th Floor, Manipal Centre, No.47, Dickenson Road, 81, Municipal Division, Bangalore – 560 042.
5. The present authorized share capital of the 1st Applicant Company is Rs.1,00,000/- (upees one lakh only) consisting of 10,000 (ten thousand) 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 equity shares of rs.10/- each.
6. The main objects of the 1st Applicant Company is to carry on the business of trading, manufacturing, making, buying, selling, assembling, importing, exporting and dealing in ornaments, imitation jewelleryes and jewelleryes of all kinds, whether of gold, silver, platinum, rolled gold and other metals and alloys, precious stones like diamonds, rubies, emeralds, pearls and any other substances and to establish and maintain franchises, factories and workshops for manufacturing and making such ornaments, jewelleryes and other articles, etc. Details of the objects of the company are mentioned in the Memorandum and Articles of Association of the 1st Applicant Company.
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7. The averments in the Company Application that the Registrar of Companies, Karnataka at Bangalore, filed complaints in the Special Court for Economic Offences, Bangalore, bearing CC No.407/2015, CC No.410/2015, CC No.411/2015 and CC No.412/2015 basing on the provisional balance sheet submitted by the Company for the period ended 31.03.2015. It is further averred that as per provisions of Section 166 of the Act, 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 15 months shall elapse between the date of one Annual General Meeting of the Company and that of the next provided that the Company may hold its first Annual General Meeting within a period of not more than eighteen months from the date of incorporation.
8. It is further averred as per provisions of Section 210 of the Act, at every Annual general Meeting, the Board of Directors shall lay before the Company (a) balance sheet and (b) a profit and loss account for the period. It is averred the Applicant Company had time to conduct the Annual general Meeting till 31.12.2014. It is further averred that the Board of Directors have approved the financials of the Company ended 31.03.2014 in the Annual General Meeting held on 27.11.2014 and the Applicant Company could not file the return with respect to the same with the Registrar of Companies within the stipulated time due to administrative issues. It is stated, the Company, however, filed the necessary return vide SR NO.Q 76737402 with the Registrar of Companies, Karnataka at Bangalore. It is therefore prayed the Tribunal to compound the offences committed under Sections 159 and 166 of the Act, for the financial year 2013-14.
9. We have heard the PCS for the Applicants on 28.10.2016, 16.11.2016, 06.12.2016, 13.12.2016 and 21.12.2016
10. In the course of hearing, the PCS has filed an affidavit of 3rd Applicant and contended that the present application is filed to condone the delay in filing the annual return for the Annual General Meeting held on 27.11.2014. It is further clarified in the affidavit that the compound application is
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made under the provisions of Sections 159 and 162 of the Act, for the Annual General Meeting held on 27.11.2014. It is further stated in the affidavit that there was unavoidable difficulty which caused the delay in getting digital signatures from the Director of the Company. It is also stated in the affidavit that the procedures in the MCA website have changed their interface which has become more harder for the officials to understand and use and hence, the delay. It is further stated in the affidavit that due to administrative issues, the return could not be filed with the Registrar of Companies within the stipulated time.

11. The 3rd applicant also filed one more affidavit dated 06.12.2016 confirming that this application is filed under the provisions of Sections 159 and 162 of the Act, in respect of Annual General Meeting held on 27.11.2014 and there was delay in filing the Annual Return.

12. In the course of hearing, the PCS for the applicants has stated that the annual return was not filed with the Registrar of Companies within the time stipulated under Section 159 of the Act. It was contended the annual return was subsequently filed vide SR No. Q 76737402 dated 30.01.2016 in Form 20-B. A copy of the annual return was filed.

13. The contents of the application are to the effect that the provisions of Section 210 of the Act were not complied. But, the applicants have clarified by filing affidavit of 3rd applicant that the present application is filed for compounding for violation of provisions of Section 159 of the Act. We have received report from the Registrar of Companies, Karnataka at Bangalore. The Registrar of Companies report dated 31.05.2016 bearing No.ROCB/AHN/621-A/CO71272/15, disclosed that it was with reference to violation of provisions of Section 210 of the Act, with regard to non-filing of financial reports within due date from the date of Annual General Meeting. However, the applicants have clarified by filing the affidavit of 3rd applicant that the present application is moved for compounding violation of provisions of Section 159 of the Act.

14. In view of the above submission, this order is confined only to compounding of violation of provisions of Section 159 of the said Act.



15. We have seen the Board Resolution dated 03.03.2016 permitting the Company to file an application for compounding for violation of provisions of Sections 159 and 166 of the Act. We have seen the Memorandum of Association and Articles of Association. Section 159 (1) reads as under:

"Annual Return to be made by company having a share capital:

159. (1) Every company having a share capital shall, within (sixty) days from the day on which each of the annual general meetings referred to in section 166 is held, prepare and file with the Registrar a return containing the particulars specified in Part I of Schedule V, as they stood on that day."

Any violation of provisions of section 159 of the Act is punishable under Section 162(1) of the Act, which reads as under:

"Penalty and interpretation.

162. (1) If a company fails to comply with any of the provisions contained in section 159, 160 or 161, 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."

16. This is a suo-motu application filed by the applicants. From the report of the Registrar of Companies and also from the contents of the application, it is clear prosecution was launched by the Registrar of Companies in the Special Court for Economic Offences, Bangalore, against the applicants. The applicants thereafter, filed this compounding application. The offence can be compounded either before or after the prosecution is launched. Sub-clause 4 (B) of Section 621 A of the Act 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 of Companies within seven days from the date on which the offence is so compounded. Thus, it is clear, if an offence is compounded after the institution of prosecution, the Registrar of Companies has to bring to the notice of the Court where the prosecution is pending in writing and on such notice of composition, the Court shall discharge the Company or its officers against whom the prosecution is pending. It is also clear that no previous permission is required from the Special Court for compounding of the offence by the Tribunal

by virtue of powers conferred under Section 621 A of the Act. The order is confined to compounding of violation of provisions of Section 159 of Companies Act, 1956 only.

17. According to the applicants, the Annual General Meeting was said to have been held on 27.11.2014. The Annual return should have been filed within sixty days before the Registrar of Companies, i.e., on or before 26.01.2015. However, according to the applicants, the annual return was filed before the Registrar of Companies in Form 20-B on 30.01.2016. There was a delay of 370 days. Considering the submissions of PCS and also the documents filed, we propose to levy compounding fee on the Applicants 1 to 3 for violation of Section 159 of the Companies Act, 1956, punishable under Section 162 (1) of the said Act, as follows.

<i>Sl. No.</i>	<i>Particulars</i>	<i>Violation of Sec.159 of the Companies Act, 1956</i>	<i>Grand Total Rs.</i>
1.	1 Applicant Company	370 X 50	18,500
2.	2 nd Applicant Director	370X50	18,500
3.	3 rd Applicant Director	370X50	18,500

18. The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 17th February, 2017.


(RATAKONDA MURALI)
MEMBER JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER TECHNICAL

psp.