

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

C.P.NO. 68/2017

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

AND

**IN THE MATTER OF
M/s L-1 IDENTITY SOLUTIONS OPERATING COMPANY
PRIVATE LIMITED**

Judgement/Order delivered on: **5th September 2017**

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Sri Ashok Kumar Mishra, Member (Technical)

1. **M/s L-1 Identity Solutions Operating Company Private Limited,
No.9, Vatika Business Centre, 2nd Floor,
A Wing Divyashree Chambers,
11 O'Shaugnessy Road, Bangalore-560025**
2. **Mr. Jean Marc Pincemaille - Director,
26, Rue Des Dentellieres, Meru, 60110, France.**
3. **Mr. Yves Charles Marie Charvin – Director,
73, Rue de la Bievre,
Bourg La Reine, 92340, France. -**

APPLICANTS

For the Applicant (s): Mr. Biswajit Ghosh, No.926, 20th Main, Near BDA
Complex, Banashankari 2nd Stage, Bangalore-
560070 -Practicing Company Secretary &
Authorised Representative for the Applicants.

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

ORDER

This Application was filed by the Applicants under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of Section 383A read with section 383 (1A) of the Companies Act, 1956.

The averments made in the Company Application are briefed hereunder:-

The 1st Applicant Company was incorporated under the Companies Act, 1956 on 4th June 2010, as a Private Limited Company under the name and style of "L-1 Identity Solutions Operating Company Private Limited" vide CIN No. **U4900KA2010PTC053951**. The Registered office of the company is situated at No.9, Vatika Business Centre, 2nd Floor, A Wing Divyashree Chambers, 11 O'Shaugnessy Road, Bangalore-560025.

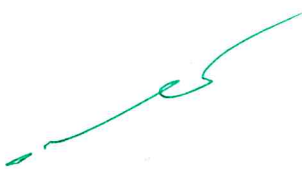



The Authorized share capital of the 1st Applicant Company is Rs. 1,00,00,000/- divided into 10,00,000 Equity Shares of Rs 10/- each and the paid up capital of the 1st Applicant Company is Rs. 82,98,000/- divided into 8,29,800 Equity Shares of Rs 10/- each.

The Main objects of the 1st Applicant Company is to carry on the business as of developing, designing, licensing, testing, selling and marketing and otherwise dealing in information technology products and services including those used for the purposes of securing, identifying and protecting personal identities and assets by providing state-of-the-art technologies that capture, store, manage and distribute biometric data using biometric technology etc., Details of the objects of the company are mentioned in the Memorandum and Articles of Association of the 1st Applicant Company (shown as **Annexure-A1** of the Petition).

The Counsel for 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.

It is further averred that, the 1st Applicant Company could not hold its Annual General Meeting for the financial year 2011-12. However, the Annual General Meeting for the financial year 2011-12 has been convened belatedly on 12th July 2013. The company failed to file the compliance certificate as required under section 383A of the Companies Act, 1956 for the financial year 2011-12, for the reasons that, the company since its incorporation, has been closely held private limited company with its number of shareholders not crossing beyond three and there being no involvement of public in any form. The company had a few employees on its rolls and most of them have been dedicated towards developing the business of the company with requisite technical background with negligible and due to lack of knowledge of the requirements of compliances under Companies Act, 1956 the company fails to comply with the provisions of section 383A of the Companies Act, 1956.



However, 1st Applicant Company has filed the compliance certificate for the year ending 31st March 2012 on 26th September 2013 with the Registrar of Companies, Karnataka, Bangalore with a delay of 331 days and the period of default is from 30/10/2012 to 26/09/2013.

The Practicing Company Secretary for Applicants contended that, this is a suo-moto application filed by the Applicants for compounding of violation committed under section 383A of the Companies Act, 1956. The Counsel would contend that, the default occurred due to acquisition of the company, by virtue of which there was a change in the management and ownership of the company during the middle of July 2011. Since there was a change in the entire management team the finalization of the accounts was delayed. He further contended that, there was no willful nor wanton and it was occurred beyond the control of the applicants and would further contend that, a lenient view may be taken while compounding the offence.

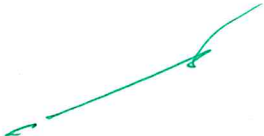

Section 383A of the Companies Act, 1956 reads as follows:

“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) of the Companies Act, 1956 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, Karnataka, Bangalore vide its letter bearing No. ROCB/AHN/STA/53951/383A/2017 dated 24/04/2017 has stated in his report that, the Company has admitted the default and has offered to compound the offence and the Compounding Application may be decided on merits.

We have seen the Certified Copy of the extract of Board Resolution dated 16th December 2015 of the 1st Applicant Company wherein the Board of Directors resolved for filing compounding Application:-

“RESOLVED THAT the approval of the Directors of the Company be and is hereby accorded for making an application to the Company Law Board/Regional Director through the Registrar of companies, Karnataka, under section 621A of the Companies Act, 1956 to compound the offences committed by the Company under Sections 159, 166, 210, 220 and 383A of the Companies Act, 1956 in relation to delay / default in holding Annual General Meeting, adoption of the accounts and filing of the Annual Accounts and Annual return in relation to the Company's financial year 2010-11 and 2011-12.”

We have also seen copy of e-Form No. GNL-1 along with the challans filed with the Registrar of Companies, Karnataka, Bangalore on 26/09/2013. After considering the materials on record and after taking into account the submissions made by the Practicing Company Secretary for the Applicants, that a lenient view may be taken, we hereby levy compounding fee for delay in complying section 383A of the Companies Act, 1956 on the Applicants as shown in the table given below:-

Sl. No	Particulars	Violation of Sec.383A of Companies Act, 1956 No. of days delay-331	Total Rs.
1	1 st Applicant Company	331 x 50 = 16,550/-	16,550/-
2	2 nd Applicant- Director	331 x 50 = 16,550/-	16,550/-
3	3 rd Applicant- Director	331 x 50 = 16,550/-	16,550/-

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 19th September 2017 for compliance.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL