

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

C.P. No.49/2017

**IN THE MATTER OF COMPANIES ACT, 2013 AND
IN THE MATTER OF COMPANIES ACT, 1956 UNDER SECTION 621A
FOR COMPOUNDING OF OFFENCE UNDER SECTION
295 OF THE COMPANIES ACT, 1956**

AND

**IN THE MATTER OF
M/s EMBASSY PROPERTY DEVELOPMENTS PRIVATE LIMITED**

Judgement/Order delivered on: 8th August 2017

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

1. Embassy Property Developments Private Limited,
1st Floor, Embassy Point, 150, Infantry Road,
Bangalore-560001.
2. Mr. Jitendra Virwani Mohandas- Managing Director,
341, Embassy Woods, 6/A, Cunningham Road,
Bangalore-560052.
3. Mr. Narpat Singh Choraria, - Whole Time Director,
Flat No.603, Embassy Orchid,
57/38, 8th Main, R.M.V Extension,
1st Stage, Bangalore-560034.
4. Mr. KunjuKunju Yeshodharan Gopikrishnan- Whole Time Director,
402, Embassy Tranquil, # 22, 8th Main road,
3rd Block, Koramangala, Bangalore-560034,
5. Mr. Kishore Lazxminarayan Biyani – Director,
406, Jeevan Vihar, Manav Mandir Road, Malabar Hill,
Mumbai-400006,
6. Mr. Chandra Das Sitaram - Director,
No.28, Casia Drive, Singapore-289721.
7. Mr. Vaidyanathan Panchapagesan – Director,
7AB, Kences Enclave, Block III No.1,
Ramakrishnan Street, T. Nagar, Chennai-600017- **APPLICANTS**

For the Petitioner (s): Sri A.M.Sridharan, II Floor, 24, Thambaiiah Reddy
Road, West Mambalam, Chennai-600033-
Practicing Company Secretary and Authorised
Representative for the Petitioner.

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)– Author

O R D E R

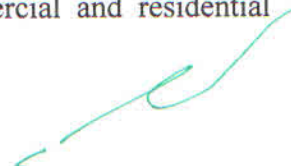
This Application was filed by the Applicants under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of Section 295 of the Companies Act, 1956.

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

The 1st Applicant Company was originally incorporated under the Companies Act, 1956 on 22nd October 2002, under the name and style of **Virwani Builders Private Limited** on 13th July 1996 pursuant to a deed of co-partnership dated 26th July 1996 with the Registrar of companies, Karnataka, Bangalore under the provisions of Part IX of the Companies Act, 1956, limited by shares. During the year 2000, the company has got merged with Dynasty Developers Private Limited, pursuant to a scheme of Amalgamation and consequently the name of the company was changed to Dynasty Developers Private Limited. Further on 1st April 2010 the name of the company was changed to Embassy Property Developers Private Limited. Subsequently, on 25th May 2010 the company was converted into a public company and changed its name to "**Embassy Property Developments Private Limited**" vide Registration No. **U85110KA1996PTC020897**. The Registered office of the company is situated at I Floor, Embassy Point, # 150 Infantry Road, Bangalore-560001.

As per the averments made in the application, the present authorized capital of the 1st Applicant Company is Rs. 1300,00,00,000/- divided into 130,00,00,000 Equity Shares of face value of Rs.10/- each. The issued, subscribed and paid up share capital of the Company is Rs. 974,97,90,000/-divided into 9,74,97,900 Equity Shares of Rs 10/- each.



The Main objects of the Applicant Company is to acquire land, building and other immovable properties or any interest therein by purchase or otherwise and to carry on all or any other business of designing, planning, managing, developing and/or construction of apartments, houses, factory buildings, godowns; to carry on business as civil, mechanical, electrical, water supply and sanitary contractors, builders, real estate agents, real estate developers, suppliers of various services required for residential, commercial, industrial and other units. The company presently carrying the business of development of commercial and residential buildings etc.,



It is averred in the Company Application that, in accordance with the provisions of clause (c) of sub-section (1) of Section 295 of the Companies Act, 1956 – no company shall without obtaining the approval of the Central Government shall directly or indirectly make any loan to any private company in the director of the company is a director or a member.

It is further averred in the Company Application that, the Balance Sheet as at 31/03/2011 filed by the company was scrutinized by the Registrar of Companies, Karnataka, Bangalore under section 234 of the Companies Act, 1956 and he observed that, during the financial year 2010-11, the company has granted advances to M/s D.M Estates Private Limited and M/s JV Holding Private Limited, and during the course of technical scrutiny of the Balance Sheet as at 31/03/2011 it was observed that, the company has granted advances to M/s D.M Estates Private Limited and M/s JV Holding Private Limited and the amount outstanding as at 31/03/2011 were Rs 2,62,24,042/- and Rs 3,29,60,972/- respectively. The directors of the Company, Mr. Jitendra Virwani Mohandas is a director of M/s D.M.Estates Private Limited and M/s JV Holding Private Limited and Mr. Narpat Singh Choraria is also a director of M/s JV Holding Private Limited. In this connection, the company has no evidence to show compliance of section 295 of the Companies Act, 1956 in respect of these transactions, thereby the company has violated the provisions of section 295 of the Companies Act, 1956. Accordingly, the Registrar of Companies, Karnataka, Bangalore has issued show cause notice bearing No. ROCB/MMM/SCN/SEC-295/20897/2015 dated 01/07/2015.

It is further averred that, out of the total amount of loans advanced and outstanding of Rs 2,62,24,042/- as at 31/03/2011 to M/s D.M Estates Private Limited, a sum of Rs 2,53,91,817/- was given as advance when the company was a Private company and the same were included in opening balance as at 01/04/2010 and the provisions of section 295(1) of the Companies Act, 1956 were not applicable to the company. Further, an amount of Rs 8,27,250/- was debited on 30/04/2010 towards reimbursement of professional fees paid to Mr. Sunil Fernandes when the company was a private limited company and an amount of Rs 4,975/- paid on its behalf towards ROC filing fees was transferred to M/s D.M Estates Private Limited. Further, an amount of Rs 16,08,791/- relates to the interest receivable from M/s D.M Estates Private Limited for the loan given earlier and the same amount has been credited as amount of interest accrued on the loans and advances. The said account had been closed on 29/03/2012.



It is further averred that, in respect of JV Holding Private Limited which is the holding company to which the amount advanced and outstanding amount as at 31/03/2011 Rs 3,29,60,972/-. This amount included an amount of Rs 23,03,341/- which was the opening credit balance. An amount of Rs 1,00,00,000/- was debited during March 2011 in respect of the amount paid towards Self-Assessment Tax on behalf of M/s JV Holding Private Limited and an amount of Rs 25,000/- was debited on account of re-imbursement. An amount of Rs 12,36,000/- was credited on 28th March 2011 for payment of service tax paid on behalf of M/s JV Holding Private Limited and the same was paid towards Service tax on the next day i.e., 29th March 2011. Similarly, an amount of Rs 2,52,39,313/- was debited for the amount paid towards Self-assessment tax. It is further averred that, this loan account was also closed on 29th March 2012 and to that effect the applicants enclosed certified copy issued by the Chartered Accountant, stating that both the advance/loan accounts were closed.

It is further averred that, the 1st Applicant Company has not taken approval of the Central Government in respect of the advances/loans made to M/s D.M Estates Private Limited and JV Holding Private Limited and thereby contravened the violation of the provisions of section 295 of the Companies Act, 1956.

The Applicant Company represented by its Directors suo-moto filed this application admitting violation and prayed for compounding. Thus there was violation of provisions of section 295 of the Companies Act, 1956.

We have seen the Show Cause Notice issued by the Registrar of Companies, Karnataka, Bangalore to the Applicants in which, it is clearly stated that, during the financial year 2010-11, the company has granted advances to M/s D.M Estates Private Limited and M/s JV Holding Private Limited, and during the course of technical scrutiny of the Balance Sheet as at 31/03/2011 it was observed that, the company has granted advances to M/s D.M Estates Private Limited and M/s JV Holding Private Limited and the amount outstanding as at 31/03/2011 were Rs 2,62,24,042/- and Rs 3,29,60,972/- respectively. The directors of the Company, Mr. Jitendra Virwani Mohandas is a director of M/s D.M.Estates Private Limited and M/s JV Holding Private Limited and Mr. Narpal Singh Choraria is also a director of M/s JV Holding Private Limited. In this connection, the company has no evidence to show compliance of section 295 of the Companies Act, 1956 and thereby contravened the provisions of Section 295 of the Companies Act, 1956.

Section 295 of the Companies Act, 1956 reads as follows:-

“(1) Save as otherwise provided in sub-section (2) no company (hereinafter in this section referred to as “the lending company” [without obtaining the previous approval of the Central Government in that behalf shall, directly or indirectly,] make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by,

- (a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;
- (b) any firm in which any such director or relative is a partner;
- (c) any private company of which any such director is a director or member;
- (d) any body corporate, at a general meeting of which not less than twenty five percent of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
- (e) any body corporate, the Board of directors, managing director or manager whereof is accustomed to act in accordance with the directions or on instructions of the Board, or of any director or directors, of the lending company”.

For violation of provisions of section 295 is punishable under section 295(4) of the Companies Act, 1956 which reads as follows:-

“Every person who is knowingly a party to any contravention of sub-section (1) or (3), including in particular any person to whom the loan is made or who has taken the loan in respect of which the guarantee is given or the security is provided, shall be punishable either with fine which may extend to fifty thousand rupees or with simple imprisonment for a term which may extend to six months;

Provided that where any such loan, or any loan in connection with which any such guarantee or security has been given or provided by the lending company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section, and where the loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be proportionately reduced”.




We have heard the Practicing Company Secretary for Applicant. He contended that, the said contravention committed by the Applicants was neither intentional nor willful and no one will be prejudiced by compounding the said offence and further contended that, a lenient view may be taken while compounding the offence. The Practicing Company Secretary for Applicants further contend that, this is a suo-moto application filed by the Applicant Company for compounding of violation.

The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/MMM/Sec.621/Sec.295/2017 dated 13th February 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.

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 1st June 2016, this application was filed before erstwhile Company Law Board, Southern Region, Chennai. Therefore, this application is to be decided under the provisions of section 621A of the Companies Act, 1956.

We have perused the documents filed by the Applicants. We have seen the Show Cause Notice and after going through the Company Application under section 621A of the Companies Act, 1956 and after taking into consideration the observations of the Registrar of Companies, Karnataka, Bangalore in his report bearing No. ROCB/MMM/Sec.621/Sec.295/2017 dated 13th February 2017, we hereby levy compounding fee for violation of provision of section 295 of the Companies Act, 1956 on the Applicants as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.295 of Companies Act, 1956		Total Rs.
		D.M Estates Private Ltd.	JV Holding Private Ltd.	
1	1 st Applicant Company	10,000/-	10,000/-	20,000/-
2	2 nd Applicant-Managing Director	10,000/-	10,000/-	20,000/-
3	3 rd Applicant – Whole Time Director	10,000/-	10,000/-	20,000/-
4	4 th Applicant – Whole Time Director	10,000/-	10,000/-	20,000/-
5	5 th Applicant – Director	10,000/-	10,000/-	20,000/-
6	6 th Applicant – Director	10,000/-	10,000/-	20,000/-
7	7 th Applicant – Director	10,000/-	10,000/-	20,000/-

The compounding fee levied as above shall be paid by the Applicants within 15 days from the date of this order and call this matter on 22nd August 2017 for compliance.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL