

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

T.P No. 152/2016
IN
C.A. No.201/2015

**IN THE MATTER OF COMPANIES ACT, 2013 AND
IN THE MATTER OF COMPANIES ACT, 1956 UNDER SECTION 621A
FOR COMPOUNDING OF OFFENCE UNDER SECTION
224(1A) OF THE COMPANIES ACT, 1956
AND
IN THE MATTER OF
OMEGA HOSPITALS PRIVATE LIMITED**

Judgement/Order delivered on: 8th September 2017

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

T.P.NO. 152/2016 IN CA No. 201/2015

**Mr. A.K. Ranganath Shenoy- Chartered Accountant
M/s A.K. Gopinath Shenoy & Co.,
28, Milagres Mansion, Hampanakatta,
Mangalore-575001.**

- PETITIONER

For the Petitioner(s): Sri Soy Joseph & Sri Chandrashekar, SAS Partners, # 12,
RMS Apartments, Gopala Krishna Street, Pondy Bazar,
T.Nagar, Chennai-600017 Counsel and Authorised
representative for the Petitioner.

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

ORDER

The Application was originally filed before the Company Law Board, Southern Region, Chennai, under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of Section 224 (1A) of the Companies Act, 1956 and it was numbered as C.A 201/2015. Consequent upon the establishment of National Company Law Tribunal Bench at Bengaluru, the said case was transferred to this Tribunal on abolition of Company Law Board, Southern Region, Chennai Bench and re-numbered as T.P No. 152/2016.

The averments made in the Petition are briefly stated hereunder:



It is averred that, the Company M/s Omega Hospitals Private Limited was incorporated under the Companies Act, 1956 on 23rd March 1998 and has been facing Management disputes since 2005, which has caused hurdles in its functioning.

It is further averred in the Petition that, the Petitioner as mentioned herein in the petition is a Chartered Accountant by profession and a partner of M/s A.K. Gopinath Shenoy & Co., 28, Milagres Mansion, Hampankatta, Mangalore-575001

It is further averred in the Petition that, the Registrar of Companies, Karnataka, Bangalore has issued Show Cause Notice bearing No. ROCB/MMM/SCN/ SEC224(1A)/023525/2015 dated 24th February 2015 to the Petitioner stating that, during the course of inspection carried out by the Inspecting Officer under Section 209A of the Companies Act, 1956, it was observed by the Inspecting Officer that, after removal of the earlier Auditor Shri C.P Verghese vide Regional Director's order dated 14th May 2009 and then the Petitioner had accepted the appointment as the Statutory Auditors of the Company M/s Omega Hospitals Private Limited w.e.f. 1st October 2009 and that the intimation of the appointment was not made to the Registrar of Companies, Karnataka, Bangalore with in a period of 30 days from the date of receipt of intimation of appointment as required under section 224(1A) of the Companies Act, 1956. Thus Petitioner contravened the provisions of section 224(1A) of the Companies Act, 1956.

It is further averred in the Petition that, the Company M/s Omega Hospitals Private Limited was incorporated under the Companies Act, 1956 on 23rd March 1998 and has been facing Management disputes since 2005, which has caused hurdles in its functioning. The Management disputes have resulted in several defaults in the matter of filing of the Annual Accounts and Annual Returns by the Company from the financial year 2006. This has also resulted in DORMANT status for the Company in the MCA website, and as a result, no e-forms could have been uploaded until the company upgraded itself to ACTIVE status by filing all the necessary forms.

It is further averred in the Petition that, in response to the letter No. ROCB/AROC(R)/Co.No.23525/2011 dated 20/11/2012 of the Assistant Registrar of Companies, Karnataka, Bangalore the above facts were brought to the notice on 28th November 2012 and the same is marked as **Annexure A-1**.



It is further averred in the Petition that, due to the facts as mentioned supra, the Petitioner could not intimate acceptance of appointment in the requisite Form 23B. Subsequently, the Petitioner filed e-form 23B alongwith challan with the Registrar of Companies, Karnataka, Bangalore on 22nd June 2015 and the same is marked as **Annexure-A-2** and contended that, the said contravention committed by the Petitioner was neither intentional nor willful and further contended that, a lenient view may be taken while compounding the offence.

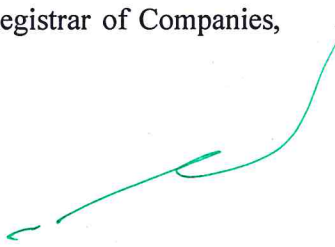
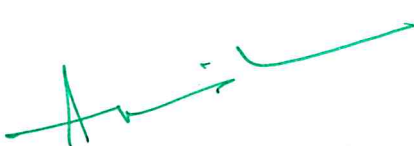
Since there was management dispute and time and again issue was before the Company Law Board, Chennai the said default was occurred. The period of default is from 01/10/2009 to 22/06/2015 and the No. of delay is 2090 days. The Counsel for Petitioner has also mentioned that the hospital is running in losses as on 31/03/2014. The violation of provisions of Section 224(1A) of the Companies Act, 1956 which reads as follows:-

“every auditor appointed shall within thirty days of the receipt of the Intimation of his appointment, inform Registrar in writing that he has accepted or refused to accept the appointment.”

The penalty for the violation committed under the provisions of section 224(1A) of the Companies Act, 1956 which is punishable under section 629A of the Companies Act, 1956 which reads as follows:-

“If a company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to Rs 5,000/-, and where the contravention is a continuing one, with a further fine which may extend to Rs 500/- for every day after the first during which the contravention continues”.

We have seen the certified copy of the Show Cause Notice No. ROCB/MMM/SCN/SEC. 224(1A)/023525/2015 dated 24/02/2015 issued by the Registrar of Companies, Karnataka, Bangalore which is marked as **Annexure-IV**. We have also seen copy of Form-23B filed before the Registrar of Companies, Karnataka, Bangalore.



We have received report from the Registrar of Companies, Karnataka at Bangalore vide letter No. ROCB/MMM/Sec.621A/2014 dated 18/08/2015 who stated that offence can be compounded by levying compounding fee on the Petitioner. Considering the submissions made by the Counsel for petitioner and after going through the contents of the application and documents filed, we hereby levy the compounding fee under section 224(1A) for violation of the Companies Act, 1956 on Petitioner as set out in the table given hereunder considering the prevalent management dispute and financial status of the Hospital.

Sl. No	Particulars	Violation of Sec.224(1A) of Companies Act, 1956	No. of 2090 days delay	Total Rs.
1	Petitioner- Mr. A.K. Ranganath Shenoy, Chartered Accountant	1,000/-	2090 x 25/- =52,250/-	53,250/-

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


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL