

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

C.P.No.100/2017

**IN THE MATTER OF COMPANIES ACT, 2013 AND
IN THE MATTER OF COMPANIES ACT, 1956 UNDER SECTION 621A
& UNDER SECTION 441 –**

**FOR COMPOUNDING OF OFFENCE UNDER SECTION
220 OF THE COMPANIES ACT, 1956**

AND

IN THE MATTER OF PUNE-EMBASSY PROJECTS PRIVATE LIMITED

Judgement/Order delivered on: **9TH October 2017**

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)

1. **Pune-Embassy Projects Private Limited,
1st Floor, Embassy Point, 150, Infantry Road,
Bangalore-560001.**
2. **Mr. Jitendra Virwani Mohandas- Director,
341, Embassy Woods, 6/A, Cunningham Road,
Bangalore-560052.**
3. **Mr. P.R, Ramakrishnan - Director,
Flat No.603, Embassy Orchid,
57/38, 8th Main, R.M.V Extension,
1st Stage, Bangalore-560034.**

- **APPLICANTS**

For the Petitioner (s): Mr. C.S Thirupal Gorige, No.87, 2nd Floor, 21st Cross, 7th Main, N.S.Palya, BTM 2nd Stage, Bangalore-560076 - Practicing Company Secretary and Authorised Representative for the Applicants.

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 220 of the Companies Act, 1956.

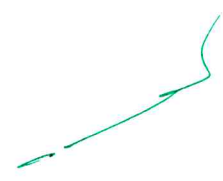
The averments made in the Company Application are briefly described hereunder:-

The 1st Applicant Company was incorporated under the Companies Act, 1956 on 2nd January 2007, under the name and style of “**Pune-Embassy Projects Private Limited**” vide Registration No. **U70102KA2007PTC041347**. The Registered office of the company is situated at 1st Floor, Embassy Point, 150 Infantry Road, Bangalore-560001.

As per the averments made in the application, the Authorized share capital of the 1st Applicant Company is Rs. 65,32,000/- divided into 6,53,200 Equity Shares of face value of Rs.10/- each. The issued, subscribed and paid up share capital of the Company is Rs. 65,32,000/- divided into 6,53,200 Equity Shares of face value of Rs.10/- each.

The Main objects of the 1st 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 etc., Details of the objects of the company are mentioned in the Memorandum and Articles of Association of the 1st Applicant Company.

It is further averred in the Company Application that, due to some circumstances and oversight the 1st Applicant Company could not file its Audited Annual Accounts for the financial year ending 31st March 2013 within the stipulated period as required under Section 220 of the Companies Act, 1956. However, the 1st Applicant Company filed its Annual Accounts for the financial year ending 31st March 2013 on 9th December 2013 vide SRN Q26757989 with an additional fee with the Registrar of Companies, Karnataka, Bangalore with a delay of 42 days and the period of default is from 28th October 2013 to 9th December 2013.



The Practicing Company Secretary for the Applicants contended that, this is a suo-moto application filed by the Applicants for compounding of violation committed under section 220 of the Companies Act, 1956. The Practicing Company Secretary further contended that, the said violation occurred due to oversight and it was neither willful nor intentional and is not with any malafide intention and further contend that, a lenient view may be taken while compounding the offence.

Thus 1st Applicant Company admitted violation of provisions of section 220 of the Companies Act, 1956, in not filing balance sheet for the financial years ending 31st March 2013 within the prescribed time, which reads as follows:-

“After the balance sheet and the profit and loss account have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar within thirty days from the date on which the balance sheet and the profit and loss account were so laid, or where the annual general meeting of a company for any year has not been held, there shall be filed with the Registrar within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act.”

Section 220 (3) reads as follows:-

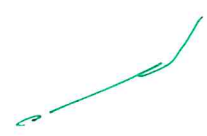
“if default is made in complying with the requirement of sub-sections (1) and (2), the company, and every officer of the company who is in default, shall be liable to the like punishment as is provided by Section 162 for a default in complying with the provisions of Section 159, 160 or 161.

The contravention of Section 220 is punishable under section 162(1) of the Companies Act, 1956 reads as follows:

“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 Rs 500/- for every day during which the default continues”.

Section 162(2) speaks as follows:-

“(2) For the purposes of this section and section 159, 160 and 161, the expressions “officer” and “director” shall include any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act.”



I have heard the Practicing Company Secretary for Applicants on 11/09/2017, 15/09/2017, 19/09/2017 and 25/09/2017. The Practicing Company Secretary contended that, the Applicant Company had complied with the requirement and filed GNL-1 Form vide SRN Q26757989 for the financial year 2012-13 on 9th December 2013 with the Registrar of Companies, Karnataka, Bangalore.

Further, Practicing Company Secretary for Applicants has cited the following citation for considering the offence for compounding:-

- 1) CA 73(441)/CB/2017 – M/s Shriwin Agro Reach India Private Limited of NCLT-Chennai Bench.
- 2) CA No.101 to 105 of 2017 – Shri Subhinder Singh Prem Vs Union of India – NCLAT- New Delhi.
- 3) CA 26/621A/441/NCLT/AHM/2016 – M/s Dishman Pharmaceuticals and Chemicals Limited of NCLT-Ahmedabad Bench

The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/AHN/STA/SEC.621A/41347/2017 dated 4th September 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.

It is further averred that, this Application has been filed on 6th September 2017 in the Tribunal vide Sl. No. 1883, Section 441 of the Companies Act, 2013 has come into force from 1st June 2016, so all compounding cases needs to be governed by the provisions of Section 441 of the Companies Act, 2013.

Section 441 of the Companies Act, 2013 speaks as follows:-

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only, may, either before or after the institution of any prosecution, be compounded by—

(a) the Tribunal; or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any officer authorised by the Central Government, on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorized by the Central Government, as the case may be, may specify:

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

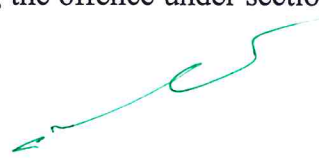
Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account:

Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.

Section 441 (1) of the Companies Act, 2013 permits compounding of offence where only fine for the offence is involved and hence this case has been taken up for compounding by the Tribunal. As the penalty for violation under Section 220 of the Companies Act, 1956 is prescribed under section 162 of the Companies Act, 1956 which involves only for compounding fine and no imprisonment is involved, as the period of default is for the financial year 2012-13 and at that time, the Companies Act, 2013 has not come into force.

Further Ministry of Corporate Affairs, New Delhi has issued a General Circular bearing No. 08/2014 dated 4th April 2014, clarifying that the financial statements (and documents required to be attached thereto) auditors report, Board's report in respect of financial years, that commenced earlier than 1st April 2014, shall be governed by the relevant provisions/schedules/rules of the Companies Act, 1956 and that in respect of financial years after 1st April 2014, the provisions of the new Act shall apply.

In the instant matter, the Applicant Company has committed default in filing the Balance sheet as at 31/03/2013 within the stipulated period and however made good the default by filing the same with Registrar of Companies, Karnataka, Bangalore vide SRN Q26757989 dated 9th December 2013 i.e., with a delay of 42 days and made application under section 441 of the Companies Act, 2013 suo-moto, for compounding the same on 29th August 2017. The Registrar of Companies, Karnataka, Bangalore has also forward the same on 4th September 2017. In the light of Ministry of Corporate Affairs, New Delhi Circular clarification, this compounding application made by the Applicant Company and its Directors have considered for compounding the offence under section 621A of the erstwhile Companies Act, 1956.



I have seen the Certified Copy of the extract of Board Resolution dated 9th August 2017 of the 1st Applicant Company wherein the Board of Directors resolved for filing compounding Application, copy of Form No. GNL-1 along with ROC Challan filed with Registrar of Companies-Karnataka at Bangalore. After considering the materials on record and after taking into account the submissions made by the Practicing Company Secretary that lenient view may be taken, I hereby levy compounding fee for delay in complying section 220 of the Companies Act, 1956 on the Applicants as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.220 of Companies Act, 1956 No. of days delay-42	Total Rs.
1	1 st Applicant Company.	42 x 100 = 4,200/-	4,200/-
2	2 nd Applicant - Director	42 x 100 = 4,200/-	4,200/-
3	3 rd Applicant - Director	42 x 100 = 4,200/-	4,200/-

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on **23rd October 2017** for compliance.


 (RATAKONDA MURALI)
 MEMBER, JUDICIAL