

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

**C.A.NO. 319/621A/CB/2014**

**IN**

**T.P NO. 138/2016**

**&**

**C.P No. 1/2017**

**IN THE MATTER OF COMPANIES ACT, 2013  
SECTION 314 READ WITH SECTION 621A  
OF THE COMPANIES ACT, 1956**

**AND**

**IN THE MATTER OF  
HIPPOCAMPUS LEARNING CENTRES PRIVATE LIMITED**

Judgement/Order delivered on: **9<sup>TH</sup> October 2017**

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

**T.P NO. 138/2016 IN C.A.NO. 319/621A/CB/2014 & C.P No. 1/2017**

- 1. Hippocampus Learning Centres Private Limited,  
525, 16<sup>th</sup> Main, 3<sup>rd</sup> Block, Koramangala,  
Bangalore-560034.**
- 2. Mr. Umesh Malhotra – Director,  
No. 60/2, Rainbow Drive,  
Sarjapur Road,  
Bangalore-560034 -**

**APPLICANTS**

For the Petitioners:

Ms. J. Bhavana Chakragiri, Practising Company  
Secretary, No. 987, 3<sup>rd</sup> Cross, 6<sup>th</sup> Main, 6<sup>th</sup> Block,  
HMT Layout, Vidyaranyapura, Bangalore-560097  
and authorised Representative for the Applicants.

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

**COMMON ORDER**

These Applications were 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 314(1) (a) of the Companies Act, 1956 and it was numbered as C.A No. 319/2014 and another Application was filed for violation of provisions of Section 314(2) (a) of the Companies Act, 1956 and it was unnumbered. Consequent upon the establishment of National Company Law Tribunal Bench at Bengaluru, the said cases were transferred to this Tribunal on abolition of Company Law Board, Southern Region, Chennai Bench and re-numbered as T.P No. 138/2016 and C.P No. 1/17 on the file of the Tribunal. For the purpose of composition of offences this Tribunal has combined both the Applications for common order.

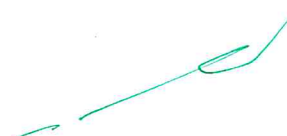
The Applicants have filed two separate Applications covering the period of default at the first instance. Therefore, both the applications in T.P No. 138/2016 and C.P No. 1/17 (connected to Application) are decided by a common order.

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

The 1<sup>st</sup> Applicant Company was incorporated under the Companies Act, 1956 on 28<sup>th</sup> May 2010 under the name and style of Hippocampus Learning Centres Private Limited vide Registration No. CIN-U80221KA2010PTC053824. The Registered office of the company is situated at 525, 16<sup>th</sup> Main, 3<sup>rd</sup> Block, Koramangala, Bangalore-560034.

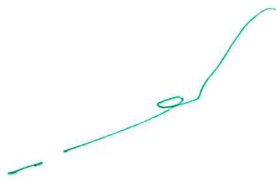
The Authorised share capital of the 1<sup>st</sup> Applicant Company is Rs. 1,66,36,800/- divided into 1,23,680 equity shares of Rs. 10/- each, 30,000 Class A Preference Shares of Rs 100/- each, 4,000 Class B Preference Shares of Rs 100/- each, 30,000 Class C Preference Shares of Rs 100/- each and 90,000 Class D Preference Shares of Rs 100/- each and the paid up capital as on 31/03/2014 is Rs. 64,93,580/- divided into 1,02,678 equity shares of Rs 10/- each, 27,844 Class A Preference Shares of Rs 100/-, 3991 Class B preference Shares of Rs 100/- each and 22,833 Class C Preference Shares of Rs 100/- each.

The Main objects of the 1<sup>st</sup> Applicant Company is to establish and run in any part of India or abroad, on its own or through franchisees, Preschool centers and / or institutions and/or coaching classes and/or colleges and /or schools to impart general scientific education, vocational education, art education, commercial and other type of education; to provide undertake consultancy in the field of education and to provide guidance to the students/children for admission to further studies in all types of institutions etc., Details of the objects of the Company are mentioned in the Memorandum and Articles of Association of the 1<sup>st</sup> Applicant Company.



The averments in the Application that, under the Companies Act, 1956, the 2<sup>nd</sup> Applicant Director herein, who is the founder director of the Company was appointed as an executive director since inception of the Company. It is further averred that, the 1<sup>st</sup> Applicant Company executed an employment agreement on 30<sup>th</sup> June 2010 with the 2<sup>nd</sup> Applicant appointing him as the Consultant – Chief Executive Officer of the Company for the period from 28<sup>th</sup> June 2010 to 31<sup>st</sup> March 2011. Further, the 1<sup>st</sup> Applicant Company in pursuant to the Employment Agreement dated 6<sup>th</sup> April 2011 appointed the 2<sup>nd</sup> Applicant Director as the Chief Executive Officer with effect from 1<sup>st</sup> April 2011. It is further averred that, the 2<sup>nd</sup> Applicant Director did not draw any remuneration as Director of the Company, and he was drawing remuneration for the said period in the capacity of Chief Executive Officer of the Company i.e., from 28<sup>th</sup> June 2010 till 9<sup>th</sup> June 2014 for which the approval of the shareholders was not obtained for the office or place of profit held by him as required under the provisions of Section 314(1) (a) of the Companies Act, 1956 and thereby committed default under the provisions of the Section 314(1) (a) of the Companies Act, 1956. However, the shareholders of the 1<sup>st</sup> Applicant Company ratified the appointment and remuneration paid to Mr. Umesh Malhotra, the 2<sup>nd</sup> Applicant Director as Chief Executive Officer at the General Meeting held on 9<sup>th</sup> June 2014 with a delay of 1442 days.

It is further averred that, the Applicants have applied for non-compliance of the provisions of Section 314(1) (a) of the Companies Act, 1956 with the Registrar of Companies, Karnataka, Bangalore vide SRN C06748438 dated 19<sup>th</sup> June 2014. Upon filing the above said Application, the 1<sup>st</sup> Applicant Company has received a letter bearing No. ROCB/AHN/621A/53824/2014 dated 17<sup>th</sup> September 2014 from the Registrar of Companies, Karnataka, Bangalore with direction to the 2<sup>nd</sup> Applicant to file an application for compounding the offence under section 314(2) (a) of the Companies Act, 1956. According to the provisions of Section 314(2) (a) of the Companies Act, 1956, if any office or place of profit held by a director without obtaining the approval of shareholders, the director shall be deemed to have vacated his office from the date of next general meeting held by the Company after such office or place of profit has been held by the director and such director shall





also refund the remuneration received for such period. Thereby the Applicants committed default under the provisions of the Section 314(2) (a) of the Companies Act, 1956. However, the 2<sup>nd</sup> Applicant herein has complied the default by refunding the remuneration received by him during the said period by making payment of Rs. 32,42,183/- vide Cheque No. 276370 dated 21<sup>st</sup> September 2017 and Cheque No. 276371 dated 26<sup>th</sup> September 2017 of Citi Bank. The same has been confirmed by the Authorised Signatory of the 1<sup>st</sup> Applicant Company dated 3<sup>rd</sup> October 2017 with a delay of 2186 days and the period of default is from 1<sup>st</sup> October 2011 to 26<sup>th</sup> September 2017 (till the period of refunding the remuneration).

It is further averred that the Applicants suo-moto filed this application for compounding and prayed to save his office from vacation. It is also averred that, the said violation is neither intentional nor wilfull and is not of such nature as to prejudice the interests of the members or creditors or others dealing with the Applicants and it will not affect the public interests in any way.

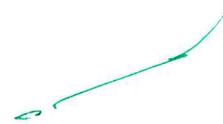
**Sec. 314 of Companies Act, 1956 reads as follows:**

“(1) except with the consent of the company accorded by a special resolution,

- (a) No director of a company shall hold any office or place of profit and
- (b) No partner or relative of such director, no firm in which such director, or a relative of such director is a partner, no private company of which such director is a director or member, and no director or manager of such a private company, shall hold any office or place of profit carrying a total monthly remuneration of [such sum as may be prescribed], except that of managing director or manger, banker or trustee for the holders of debentures of the company.

Provided that it shall be sufficient if the special resolution according the consent of the company is passed at the general meeting of the company held for the first time after the holding of such office or place of profit.

Provided further that where a relative of a director or a firm in which such relative is a partner is appointed to an office or place of profit under the company or a subsidiary thereof without the knowledge of the director, the consent of the company may be obtained either in the general meeting aforesaid or within three months from the date of the appointment, whichever is later.”



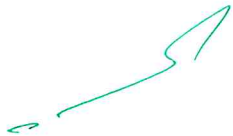
**Sec. 314 (2) (a) of Companies Act, 1956 reads as follows:**

“if any office or place of profit is held in contravention of the provisions of sub-section (1), the director, partner, relative, firm, private company, or the manager concerned, shall be deemed to have vacated his office or its office as such on and from the date next following the date of the general meeting of the company referred to in the first proviso, or, as the case may be, the date of the expiry of the period of three months referred to in the second proviso to that sub-section, and shall also be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit.”

Since there is no penalty has been prescribed under section 314 of the Companies Act, 1956, penalty under Section 629A of the Companies Act, 1956 is being considered for the violation committed under the provisions of sections 314(1) (a) and 314(2) (a) of the Companies Act, 1956 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”.

I have heard the Practicing Company Secretary for applicants and during the course of hearing, the Practicing Company Secretary filed written submissions contending that, 1<sup>st</sup> Applicant Company paid remuneration since 30<sup>th</sup> June 2010 to Mr. Umesh Malhotra, the 2<sup>nd</sup> Applicant herein in his capacity as Chief Executive Officer of the Company, apart from being a Director thereby attracting the provisions of Section 314 of the Companies Act, 1956. She contend that prior approval of the shareholders by way of special resolution was not obtained prior to the payment of remuneration to Mr. Umesh Malhotra. It is contended that, approval of shareholders was however obtained on 9<sup>th</sup> June 2014 whereunder the shareholders approved payment of remuneration to the 2<sup>nd</sup> Applicant prospectively and ratified the remuneration of Rs 32,42,183/- paid upto 9<sup>th</sup> June 2014. It is further urged that, when office or place of profit is held by the director, the approval of

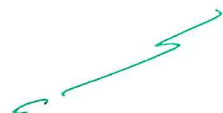




shareholders by way of special resolution is sufficient. She contended that the shareholders vide special resolution dated 9<sup>th</sup> June 2014 have ratified the remuneration paid to the 2<sup>nd</sup> Applicant till such date and also approved the prospective payment of remuneration to him. The Practicing Company Secretary for Applicants further submitted that, in pursuant to the directions of this Tribunal the 2<sup>nd</sup> Applicant herein have complied the default by refunding the remuneration received by him during the said period by making payment of Rs. 32,42,183/- vide Cheque No. 276370 dated 21<sup>st</sup> September 2017 and Cheque No. 276371 dated 26<sup>th</sup> September 2017 of Citi Bank, and also filed Affidavit to that effect and prayed for taking a lenient view in the matter while compounding the offence.

In the instant case the 2<sup>nd</sup> Applicant Director was functioned as Chief Executive Officer of the Company for the period from 28<sup>th</sup> June 2010 to 31<sup>st</sup> March 2011 and pursuant to the employment agreement dated 06<sup>th</sup> April 2011, he functioned as Chief Executive Officer with effect from 01.04.2011 and drawn remuneration from the Company which attracted the compliance requirement u/s.314(1)(a) of the Companies Act, 1956 and the Applicant Company did not obtain shareholders approval by passing Special Resolution at the General Meeting of the Company held for the first time after holding of such office or place of profit held by the 2<sup>nd</sup> Applicant Director which attracted the contravention of the requirement of the Companies Act, 1956 as stipulated u/s 314(2)(a) of the Companies Act, 1956. The 1<sup>st</sup> Applicant Company, however in the Extra ordinary General Meeting held on 9<sup>th</sup> June 2014 has obtained approval of the shareholders by passing Special Resolution i.e. after a delay of 1442 days. The Applicant Company however recovered the remuneration drawn by the 2<sup>nd</sup> Applicant Director by ratifying the appointment made during 2011. Since the Applicant Company and the 2<sup>nd</sup> Applicant Director have contravened the requirement of Sec. 314(1)(a) of the Companies Act, 1956 thereby they are liable for the said contravention.

Further the Applicant Company though ratified the said appointment by passing Special Resolution on 09<sup>th</sup> June 2014 i.e. after a delay of 1442 days but recovered the remuneration drawn by the 2<sup>nd</sup> Applicant Director only partly (Rs.17 lacs) on 21<sup>st</sup> September 2017 and the balance on 26<sup>th</sup> September 2017



(Rs.15,42,183/-) and thereby contravened Section 314(2)(a) of the Companies Act, 1956 committing delay of 2186 days for recovering the said amount from the 2<sup>nd</sup> Applicant Director which attracts Sec.629(A) of the Companies Act, 1956 as far as the Applicant Company. The 2<sup>nd</sup> Applicant Director has since refunded the entire remuneration drawn during the period 28th June 2010 to 9<sup>th</sup> April 2014 to the Company in terms of Section 314(2)(a) for the offence u/s 314(1)(a) of the Companies Act, 1956 he is not liable for any further action and hence no compounding fee is to be levied against him.

I have seen the reports of the Registrar of Companies Karnataka, Bangalore vide letter No. ROCB/AHN/SEC621A/53824/2014 dated 17<sup>th</sup> September 2014 and ROCB/AHN/STA/538244/314(2a)/2016 dated 9<sup>th</sup> December 2016. I have seen the certified true copy of the Resolutions of the Board of Directors meeting held on 9<sup>th</sup> June 2014 and Minutes of the meeting of Members of the Company held on 9<sup>th</sup> June 2014 and also seen the Affidavit dated 3<sup>rd</sup> October 2017 filed by the 2<sup>nd</sup> Applicant herein towards refund of remuneration of Rs. 32,42,183/- remitted to the 1<sup>st</sup> Applicant Company. I have also seen the letter dated 3<sup>rd</sup> October 2017 of the Authorised Signatory of the 1<sup>st</sup> Applicant Company confirming receipt of remuneration amount and after considering the submissions made by the Practicing Company Secretary for Applicants and also the documents and the report of Registrar of Companies Karnataka, Bangalore, I hereby levy compounding fee on the Applicants as shown hereunder:-

Compounding fee is levied in T.P No. 138/2016 for Violation of Sec. 314(1) (a) of the Companies Act, 1956:-

Sl. No	Particulars	Violation of Sec. 314(1) (a) of the Companies Act, 1956	No. of Days Delay 1442	Total
1.	1 <sup>st</sup> Applicant Company	1,000/-	1442 x 20/- =28,840/-	29,840/-
2.	2 <sup>nd</sup> Applicant - Director	1,000/-	1442 x 20/- =28,840/-	29,840/-

Compounding fee is levied in C.P No. 1/2017 for Violation of Sec. 314(2) (a) of the Companies Act, 1956:-

Sl. No	Particulars	Violation of Sec. 314(2) (a) of the Companies Act, 1956	No. of Days Delay - 2186	Total
1.	1 <sup>st</sup> Applicant Company	1,000/-	2186 x 20/- = 43,720/-	44,720/-

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

  
**(RATAKONDA MURALI)**  
**MEMBER, JUDICIAL**