

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH  
T.P.NO. 252/2016

C.A. 144/621A/CB/2016

*PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL  
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL*

IN THE MATTER OF COMPANIES ACT, 1956  
UNDER SECTION 621A AND SECTION 139(6) READ WITH SECTION  
147 OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF M/S DIABSOLUT TECHNOLOGY PRIVATE LIMITED

C.A. 144/621A/CB/2016 & T.P.NO. 252/2016

1. M/S DIABSOLUT TECHNOLOGY PRIVATE LIMITED,  
7<sup>th</sup> Floor, HM Vibha Tower,  
Hosur Road,  
Near Forum Mall,  
Bengaluru-560029.
2. Ms. Pauliene Selvanandan - Director  
# 1322, 2G CRS Behind Prem Nivas Convent,  
K.K.Halli, Ramaiah Layout,  
Bangalore-560084.
3. Mr. Chetan Chandrashekar- Director  
# U24, 1<sup>st</sup> Cross, Nagappa Street,  
Palace Guttahalli,  
Bangalore-560003.

- APPLICANTS

PARTIES PRESENTED:

Mr. C. Dwarakanath, # 31, Vidya Bhavan, 3<sup>rd</sup> Floor,  
Rear Block, Opp. Karanji Anjaneya Temple, West  
Anjaneya Temple Street, Basavanagudi,  
Bangalore-560004 Practicing Company Secretary  
and Authorised representative for the Applicants.

Heard on: 26/07/2016, 09/08/2016, 12/08/2016, 23/08/2016, 06/09/2016,  
30/09/2016 and 21/10/2016



**ORDER**

The Petition is filed on behalf of Petitioners under Sec.621A of the Companies Act 1956 and under Section 139(6) read with Section 147(1) of the Companies Act 2013. Originally the Compounding petition was filed before Company Law Board, Southern Region, Chennai. 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 numbered as T.P.No. 252/2016. This petition is filed by the Petitioners with a prayer to record compounding of the offence. Contents of the Company Petition are briefly stated hereunder:

The 1<sup>st</sup> applicant is a company which was incorporated under the Companies Act, 2013 on 18<sup>th</sup> June 2014 under the name and style of "Diabsolut Technology Private Limited vide Corporate Identity No. U72400KA2014PTC074913, with registered office at No.91, First Floor, 7<sup>th</sup> Cross, Paramount Gardens, Thalaghattapura, Kanakapura Road, Bangalore-560062. The 1<sup>st</sup> Applicant Company has shifted its Registered Office to Regus Gem Business Centre, 1<sup>st</sup> & 2<sup>nd</sup> Floor, IBIS Hotel Block, 26/1, Hosur Road, Bommanahalli, Bangalore-560068, with effect from 4<sup>th</sup> November 2014, and again the 1<sup>st</sup> Applicant Company has shifted its Registered Office to 7<sup>th</sup> Floor, HM Vibha Tower, Hosur Road, Near Forum Mall, Bengaluru-560029 with effect from 1<sup>st</sup> June 2016 (vide supplementary Affidavit filed by the Applicants on 3<sup>rd</sup> August 2016)

The Authorised Share Capital of the applicant company as per the latest Audited Balance Sheet is Rs. 1,00,000/- (Rupees One Lakhs only) consisting of 10,000 (Ten thousand) Equity Shares of Rs 10/-each.

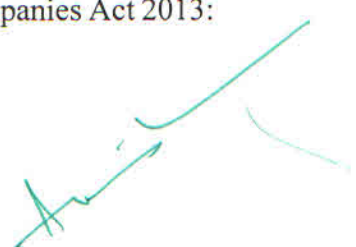

The main object of the company is to carry out the business in India and abroad of design, development, manufacture and research etc., to set up the business of maintenance of software systems and electronic data processing and outsourcing centers etc., and to carry on the business as consultants in the field of computer software and other allied fields etc., Details of the main object of the Company are stated in the Memorandum and Articles of Association.





The 1<sup>st</sup> Applicant Company was incorporated on 18<sup>th</sup> June 2014 and accordingly, as per provisions of section 139(6) of the Companies Act, 2013, the 1<sup>st</sup> Applicant Company was required to appoint the Statutory Auditors within the stipulated period failing which such appointment should have been made by conducting extra ordinary general meeting within 90 days and to file e-form ADT-1 with the Registrar of Companies, Karnataka at Bengaluru. The 1<sup>st</sup> Applicant Company could not appoint the statutory auditor within the stipulated period i.e., on or before 17<sup>th</sup> July 2014 and not conducted the extra-ordinary general meeting for such appointment within the due date. Thereby the 1<sup>st</sup> Applicant Company inadvertently failed to comply the aforesaid requirement within the stipulated time. However, the 1<sup>st</sup> Applicant Company has appointed Mr. Srinath Rao (Proprietor of M/s Srinath Rao & Associates), Chartered Accountant, # 2998, "Sridhar" 17<sup>th</sup> Cross, 2<sup>nd</sup> Main, Banashankari, 2<sup>nd</sup> Stage, Near Uma Maheshwara Temple (K.R.Road) Bangalore-560070 as Statutory Auditor at the extra-ordinary general meeting held on 16<sup>th</sup> March 2015 and thereby filed the ADT-1 alongwith annexures with the Registrar of Companies, Karnataka at Bengaluru on 31<sup>st</sup> March 2015. Thus there was delay of 181 days in appointing Statutory Auditor and in conducting extra-ordinary general meeting of the 1<sup>st</sup> Applicant Company. It is further stated that there was no deliberate intention on the part of the 1<sup>st</sup> Applicant Company and there was no mens rea in regard to the contravention and did not cause any detriment to the public at large. So it is prayed to compound the violation.

We have heard the Practicing Company Secretary of the 1<sup>st</sup> Applicant Company 26/07/2016, 09/08/2016, 12/08/2016, 23/08/2016, 06/09/2016, 30/09/2016 and 21/10/2016 who contended that there was delay in appointing the Statutory Auditor and in conducting extra-ordinary general meeting within the stipulated time. The Practicing Company Secretary has further stated that the violation is unintentional and is not deliberate and no loss has caused to the public at large. He prayed to take lenient view while compounding the violation, as the 1<sup>st</sup> Applicant Company and its Officers violated the provisions of Section 139(6) of the Companies Act, 2013. According to section 139(6) of the Companies Act 2013:



“Notwithstanding anything contained in sub-section(1), the first auditor of a company, other than a Government Company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

The contravention of Section 139 is punishable under section 147(1) of the Companies Act, 2013 which reads as follows:

“the company shall be punishable with fine which shall not be less than Rs 25,000/- but which may extend to Rs 5,00,000/- and every officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to 1 (one) year or with fine which shall not be less than Rs 10,000/- but which may extend to Rs 1,00,000/- or with both,”

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 1<sup>st</sup> June 2016. Before erstwhile Company Law Board, Southern Region, Chennai this Application was filed. Therefore, this Application is to be disposed of under the provisions of section 621A of the Companies Act, 1956.

The Registrar of Companies, Karnataka, Bengaluru vide letter bearing No. ROCB/AHN/621A/074913/2016 dated 9<sup>th</sup> March 2016 has informed in the report that the 1<sup>st</sup> Applicant Company has 4 Directors, two of them were appointed three months after incorporation, but petition is filed only by the First Directors. There is a delay of 181 days for conducting EGM. The Practicing Company Secretary submitted that, the other two Directors viz., Mr. Sally Abd Elsayed and Mr. Joseph Diab were appointed as Additional Directors after 17<sup>th</sup> July 2014, hence they are not officers at default.

We have seen the documents along with petition viz., Memorandum of Association and Articles of Association of the 1<sup>st</sup> Applicant Company. We have seen the Board Resolution dated 4<sup>th</sup> May 2015, wherein the Board has passed a resolution to file necessary Compounding Application. We have seen certified copy of the Notice for convening the extra-ordinary general meeting along with



Minutes of the extra-ordinary general meeting held on 16<sup>th</sup> March 2015 and certified copy of Form GNL-1 filed with the Registrar of Companies, Karnataka at Bengaluru and also certified copy of Form ADT-1 (along with annexures thereto) with payment challan.

We have received report from the Registrar of Companies, Bengaluru who stated that violation can be compounded by levying compounding fee on the Applicants. 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, we levy compounding fee under section 147(1) of the Companies Act, 2013 for the delay in appointing Statutory auditor and in conducting extraordinary general meeting on the 1<sup>st</sup> Applicant Company and its 2 Directors, the Applicant Nos.2 and 3 as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.139 read with section 147(1) of Companies Act, 2013	Total Rs.
1	1 <sup>st</sup> Applicant Company	Rs. 60,000/-	60,000/-
2	2 <sup>nd</sup> Applicant Director	Rs. 25,000/-	25,000/-
3	3 <sup>rd</sup> Applicant Director	Rs. 25,000/-	25,000/-

The compounding fee levied shall be paid by the Petitioners within 15 days from the date of this order and call this matter on 21<sup>st</sup> November 2016 for compliance.

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

DATED THIS THE 4<sup>th</sup> DAY OF NOVEMBER, 2016