

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 241/2016**

IN

C.A. NO. 14/621A/CB/2016

DATED: FRIDAY THE 6TH DAY OF JANUARY 2017

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

**IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 166 READ WITH SECTION 621A
OF THE COMPANIES ACT, 1956**

AND

IN THE MATTER OF MBNA INDIAN SERVICES PRIVATE LIMITED

T.P.NO. 241/2016 IN C.A. NO. 14/621A/CB/2016

**MBNA Indian Services Private Limited,
The Residency, 7th Floor,
133/1 Residency Road,
Bangalore-560025.**

APPLICANTS

PARTIES PRESENT:

Mr. S.Eshwar # 4, Aishwarya, 128/177, 6th Street,
Kumaran Colony, Vadapalani, Chennai-600026,
Practicing Company Secretary and Authorised
Representative for the Applicants.

Heard on: 28/10/2016, 25/11/2016 and 22/12/2016

ORDER

The Petition 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 166 of the Companies Act, 1956 and it was numbered as C.A 14/2016. 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. 241/2016.

The averments made in the Company Application are briefed hereunder:-

The Applicant Company was incorporated under the Companies Act, 1956 on 1st October 2003 as a Private Limited Company in the name and style of MBNA INDIAN SERVICES PRIVATE LIMITED vide Registration No. **U74140KA2003PTC032663**. The Registered office of the company is situated at The Residency 7th Floor, 133/1 Residency Road, Bangalore-560025.

The Authorized share capital of the Applicant company is Rs. 1,84,00,000/- divided into 18,40,000 equity shares of Rs 10/- each. The Issued, Subscribed and Paid up Share Capital of the Company is Rs 8,50,000/- divided into 85,000 equity shares of Rs 10/-each.

The company was engaged in supervising and supporting information technology enabled services and products on behalf of MBNA group companies worldwide.

It is averred in the Company Application that, the Company could not conduct the Annual General Meetings for the financial years 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12 within the prescribed time and that Annual General Meetings were held after due date.

It is further averred in the Application the reason for delay in conducting the Annual General Meetings that, the financial books and records of the Company were monitored from the United Kingdom. There was delay in auditing the accounts, holding Annual General Meetings and filing Balance sheet and Profit and loss Account, lack of employees in India made it difficult for the company to communicate with the auditors and resulted in long delays. Despite these odds, the Applicant Company with available manpower was able to get prepared the financial statements, completion of Audits, holding of annual general meeting, preparation and filing of Balance sheet and Profit and loss Account. The details of the delay are given in the table as mentioned hereunder:-

Financial year ended	Date by which AGM ought to have been held	Actual Date of AGM held	No. of days delayed
31/12/2004	31/03/2005	08/03/2006	341
31/12/2005	30/06/2006	24/07/2008	755
31/03/2007	29/09/2007	21/10/2009	752
31/03/2008	29/12/2008	01/03/2010	427
31/03/2009	31/12/2009	20/09/2010	262
31/03/2010	31/12/2010	15/09/2011	257
31/03/2011	31/12/2011	31/08/2012	243
31/03/2012	31/12/2012	07/03/2013	65

Further, the company has ceased all operations since 2007 and no transaction was carried out since then. The violation of provisions of section 166 of the Companies Act, 1956 was not done willfully and was without any mala fide intention on the part of the Applicant Company.

It is also further averred that, the shareholders of the company proposed to windup the company in accordance with the law. Therefore, this application is filed.



This suo-moto application is filed by the Applicants under section 166(1) of the Companies Act, 1956 for compounding which reads as follows:-

“Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:”

Thus there was violation of provisions of section 166 punishable under the provisions of section 168 of the Companies Act, 1956 for the financial years 2003-04, 2004-05, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12. Section 168 of the Companies Act, 1956 which reads as follows:-

“if default is made in holding a meeting of the company in accordance with section 166, or in complying with any directions of the Tribunal or the Central Government, as the case may be under sub-section (1) of section 167, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees and in the case of a continuing default, with a further fine which may extend to two thousand five hundred rupees for every day after the first during which such default continues”.

We have heard the Practicing Company Secretary on 28/10/2016, 25/11/2016 and 22/12/2016. He represented that there was delay in holding Annual General Meetings for the above financial years due to reasons stated in the Application and further contended that the Applicant Company since complied the requirements in holding the Annual General Meeting for the financial years 2003-04, 2004-05, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12. The Practicing Company Secretary would contend that, the Applicant Company in fact discontinued operations from 2007 and hence requesting the Tribunal to take lenient view. He further urged that, delay in holding Annual General Meetings is not willful and intentional.



We have seen the report of the Registrar of Companies, Karnataka, Bangalore vide letter No. ROCB/MMM/621A/0323663/2015 dated 18th November 2015. In his report, it is stated that the Applicant Company since complied the provisions of section 166 of the Companies Act, 1956 by filing balance sheet and profit & loss account for the above default years by paying additional fees. Thus there was compliance by the Applicant Company. The Registrar of Companies, Karnataka, Bangalore further stated that, the Company Application may be decided on merits.

We have seen the contents of the Application and also the documents filed along with it. Thus material is placed by the Applicant Company to the effect that the Applicant Company has complied the provisions of section 166 of the Companies Act, 1956. Since it is stated that, the Applicant Company has stopped doing transactions w.e.f. 2007. We proposed to levy compounding fee for the violation on the Applicant Company for the financial years 2003-04, 2004-05, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12 as follows:-

Sl. No.	Name of the Applicant	Financial year	Violation of Sec.166 of the Companies Act, 1956	No. of days delay	Amount Rs.
1	MBNA Indian Services Private Limited-The Applicant Company	2003-04	20,000/-	341 x 100/- = 34,100/-	54,100/-
		2004-05	20,000/-	755 x 100/- = 75,500/-	95,500/-
		2005-07	20,000/-	752 x 100/- = 75,200/-	95,200/-
		2007-08	20,000/-	427 x 100/- = 42,700/-	62,700/-
		2008-09	20,000/-	262 x 100/- = 26,200/-	46,200/-
		2009-10	20,000/-	257 x 100/- = 25,700/-	45,700/-
		2010-11	20,000/-	243 x 100/- = 24,300/-	44,300/-
		2011-12	20,000/-	65 x 100/- = 6,500/-	26,500/-
Total					4,70,200/-

(Rupees Four lakh seventy thousand two hundred only)

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 20th January 2017 for compliance.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 6th DAY OF JANUARY, 2017