

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

**T.P.NO. 292/2016**

**DATED: FRIDAY THE 6<sup>TH</sup> DAY OF JANUARY 2017**

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

**IN THE MATTER OF COMPANIES ACT, 2013  
SECTION 621A UNDER SECTION 220 OF THE COMPANIES ACT, 1956  
AND UNDER SECTION 137 OF THE COMPANIES ACT, 2013  
AND**

**IN THE MATTER OF  
IDS SOFTWARE SOLUTIONS (INDIA) PRIVATE LIMITED**

1. IDS Software Solutions (India) Private Limited,  
6<sup>th</sup> Floor, D-Tower,  
Diamond District,  
Airport Road,  
Bangalore-560008.
2. Mr. Nicholas Emmanuel Somers, Director  
42 Old Church Road,  
Greenwich,  
Connecticut,  
06830 USA.
3. Mr. Philip Neal Cole- Director  
15, St. Marys Grove,  
London, W43LL,  
United Kingdom

- APPLICANTS

**PARTIES PRESENT:**

Mr. I.B Harikrishna, No.44/38, Veerabhadran  
Street, Valluvarkottam, Nungambakkam,  
Chennai-600034 – Practicing Company Secretary  
and Authorised representatives for the Applicants.

Heard on: 17/10/2016, 02/11/2016, 21/11/2016, 28/11/2016 and 22/12/2016

**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 137 of the Companies Act, 2013. 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. 292/16.

The averments in the Petition are briefed hereunder:-



The 1<sup>st</sup> Applicant Company was incorporated under the Companies Act, 1956 on 7<sup>th</sup> June 2004 as a Private Limited Company under the name and style of IDS Software Solutions (India) Private Limited vide Registration No. CIN-**U72200KA2004PTC034086**. The Registered office of the company is situated at 6<sup>th</sup> Floor, D-Tower, Diamond District, Airport Road, Bangalore-560008.

The 1<sup>st</sup> Applicant Company's financial year was previously starting on January 1<sup>st</sup> and ending on December 31<sup>st</sup> and is currently starting on April 1<sup>st</sup> and ending of March 31<sup>st</sup>.

The present Authorized share capital of the 1<sup>st</sup> Applicant company is Rs. 1,00,00,000/- (Rupees One Crore only) consisting of 10,00,000 (Ten lakhs) Equity Shares of Rs 10/- each. The issued, subscribed and paid up capital is Rs. 1,00,000/- (Rupees one lakh only) consisting of 10,000 equity shares of Rs 10/- each.

The Main objects of the 1<sup>st</sup> Applicant Company is to carry on the business of Design and development of computer software, including systems packages and applications packages; to engage in the design and development on a Java based system and to provide ongoing support services to the leasing industry 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.

It is averred in the Company Application that, Directors of the company were required to lay the Balance sheet and profit and loss Account of the 1<sup>st</sup> Applicant Company for the financial year ending 31<sup>st</sup> December 2013 at the Annual General Meeting to be conducted for that year on or before 30<sup>th</sup> June 2014. The 1<sup>st</sup> Applicant Company could not finalize the accounts and audit in a timely manner and conduct the Annual General Meeting by 30/06/2014. However, the 1<sup>st</sup> Applicant Company had filed its financial statements on 27<sup>th</sup> August 2014 by paying additional fee with a delay of 27 days i.e., 23AC & 23ACA forms with the Registrar of Companies, Karnataka at Bangalore. Thus there was violation of provisions of section 220 of the Companies Act, 1956 for the financial year ending 31/12/2013.



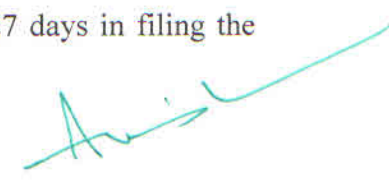



It is averred that the 1<sup>st</sup> Applicant Company committed default due to unavoidable circumstances and it was not intentional and is not of such nature as to prejudice the interests of the members or creditors or others dealing with the company. The 1<sup>st</sup> Applicant Company unequivocally declares that the offence committed does not affect the public interest in any way, and no harm is caused to the public. Further, the 1<sup>st</sup> Applicant Company has shown its commitment to comply with the requirements of the Act by suo-moto filing this application for compounding the offence under section 621A of the companies Act 1956 and has taken action designed to prevent any future defaults.

The 1<sup>st</sup> Applicant Company and its Directors suo-moto have filed this application to compound the offence, praying the Tribunal to compound the offence.

The Registrar of Companies, Karnataka, Bangalore vide his letter bearing No. ROCB/MMM/621A/034086/2016 dated 29/03/2016 has stated that, the company has not complied with provisions of section 220 of the Companies Act, 1956 and further submitted that the Company has filed its balance sheet and profit and loss account for the financial year ending 31/12/2013 belatedly and the period of default is from 31<sup>st</sup> July 2014 to 27<sup>th</sup> August 2014 and has made an observations that the compounding application may be decided on merits. It is further stated in the report that, Mr. Kristopher Thomas Schmidt was also Director during the period when default was committed. The Authorised Representative of the Directors filed Affidavit stating that, Mr. Kristopher Thomas Schmidt is not currently employed with the 1<sup>st</sup> Applicant Company and he is not available.

We have heard the Practicing Company Secretary for the Applicants on 17/10/2016, 02/11/2016, 21/11/2016, 28/11/2016 and 22/12/2016. It is contended that the Audited Accounts financial statements could not filed before Annual General Meeting on due date. There was delay in holding the Annual General Meeting and as a result the audited financial statements could not be filed before Annual General Meeting on due date. However, the 1<sup>st</sup> Applicant Company filed its financial statements with the Registrar of Companies, Karnataka, Bangalore with a delay of 27 days and thus violating the provisions of Section 220 of the Companies Act, 1956. Thus the Applicants have committed delay of 27 days in filing the



Annual Returns and financial statements for the financial year ending 31/12/2013. Further it is stated in the petition that, the default committed under section 220 of the Companies Act, 1956 has occurred due to unavoidable circumstances and it was not intentional and is not of such nature as to prejudice the interests of the members or creditors or others dealing with the company.

Originally the Application was filed for violation of provisions of section 137 of the Companies Act, 2013. However, the said provision is not applicable in view of Circular of Ministry of Corporate Affairs vide Circular No. 1/19/2013-CL-V dated 04/04/2014, that provision of Companies Act, 1956 would apply in respect of financial year ending 31/03/2014, Section 220 of the Companies Act, 1956 would apply. Even Registrar of Companies, Karnataka, Bangalore also reported the same in his report.

As per the provisions of section 220 (3) read with the provisions of section 162 of the Companies Act, 1956 is given below:-

Section 220(1) of the Companies Act, 1956 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) which 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 which 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”.




We have perused the documents filed by the Applicants. We have seen the Power of Attorney of the Directors marked as Annexure 5 & 6. We have seen the Memorandum and Articles of Association marked as Annexure-2 and Certified copy of the latest annual return of the Company filed as on 11<sup>th</sup> September 2013 marked as Annexure-1 and after going through the Company Application under section 621A of the Companies Act, 1956 and further submissions made by the Practicing Company Secretary for the Applicants and the observations of the Registrar of Companies, we hereby levy compounding fee for violation of provision of section 220 of the Companies Act, 1956 for the delay in not filing financial statements i.e., balance sheet and profit & loss account 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.220 of Companies Act, 1956 Delay of 27 days	Total Rs.
1	1 <sup>st</sup> Applicant Company	27 x 200/- = 5,400/-	5,400/-
2	2 <sup>nd</sup> Applicant-Director	27 x 200/- = 5,400/-	5,400/-
3	3 <sup>rd</sup> Applicant-Director	27 x 200/- = 5,400/-	5,400/-

The compounding fee levied as above shall be paid by the Petitioners within 15 days from the date of this order and call this matter on 20<sup>th</sup> January 2017 for compliance.

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

DATED THIS THE 6<sup>th</sup> DAY OF JANUARY, 2017