

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

T.P.NO. 154/2016

IN

CA NO. 203/2015

(DATED: FRIDAY, THE 6TH DAY OF JANUARY 2017)

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

IN THE MATTER OF THE COMPANIES ACT, 2013
SECTION 621A OF THE COMPANIES ACT, 1956 UNDER SECTION 159
OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF OMEGA HOSPITALS PRIVATE LIMITED

T.P.NO. 154/2016 IN CA NO. 203/2015

1. Omega Hospitals Private Limited
Pumpwell Bypass Road,
Kankanady,
Mangalore-575002.
2. Mr. Mukund Kumbla - Director,
Pratheeksha, Vyasa Rao Road,
Kadri, Managalore-575003
3. Mr. Suresh Surathkal – Managing Director,
Bhuvaneshwari Nilaya,
Iddya Surathkal,
Mangalore-575014
4. Mr. A.G.Jayakrishnan- Director,
Villa A, The Pyramid,
Falnir, Mangalore-575002
5. Mr. Mohanchandra Suvarna – Director,
H.No. 3-12-1078,
Kadri, Mangalore-575004.
6. Mr. Bhaskar Bhappal – Director,
J.B.Compound, Jeppu,
Mangalore-575002.

- APPLICANTS

PARTIES PRESENT: Sri Harishankar Mani/Anant Merathia, No.115, First Floor, Luz Church Road, Mylapore, Chennai-600004. Counsel and Authorised representative for the Applicants.

Heard on: 08/11/2016, 28/11/2016 and 19/12/2016.

ORDER

The Application is filed on behalf of the Applicants under Sec. 621A of Companies Act 1956 before the Company Law Board, Southern Region, Chennai and numbered as C.A 203/2015. 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. It was renumbered as T.P No. 154/2016 in this Tribunal. This application is filed by the Applicants with a prayer to record compounding for violation of provisions of section 159 of the Companies Act, 1956.

The averments in the Company Application are briefly stated hereunder:

The 1st Applicant is a company which was incorporated under the Companies Act, 1956 on 23rd March 1998 under the name and style "Omega Hospitals Private Limited" vide Corporate Identity No. U85110KA1998PTC023525. The Registered Office of the company is situated at # Pumpwell Bypass Road, Kankanady, Mangalore-575002

The Authorised Share Capital of the Applicant company as per latest Audited Balance Sheet is Rs. 2,10,00,000/- divided into 2,10,000 Equity Shares of Rs 100/- each and the Paid up Capital is Rs 1,99,03,800/- divided into 1,99,038 Equity Shares of Rs 100/-.

The main object of the 1st Applicant Company is to acquire establish, lease, take on lease and run Hospital(s) with the facilities of medical care and advanced treatment in super specialties and diagnostic centre (s) etc., Details of the main object of the Company are stated in the Memorandum and Articles of Association.

The Applicants in this case are the Company and the Directors as per details given below:-

- 1) Omega Hospitals Private Limited
- 2) Suresh Surathkal, Managing Director
- 3) Mukund Kumbla, Director
- 4) A.G Jayakrishnan, Director
- 5) Mohanchandra Suvarna, Director
- 6) Bhaskar Bappal, Director.

It is averred in the company Application that, the Applicants have filed the Company Application based on the report of inspection carried out by the Inspecting Officer under section 209A of the Companies Act, 1956. The Inspecting Officer observed that, the 1st Applicant Company had not filed its Annual Returns for the years 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11 with the Registrar of Companies, Karnataka, Bangalore and is said to have contravened the provisions of Section 159 of the Companies Act, 1956.

It is further averred that, the 1st Applicant Company which was incorporated on 23rd March 1998 was functioning well till 2005, after which the disputes started in the Management. This has resulted into the non-compliance of certain provisions of the Companies Act, 1956. The reasons stated hereunder for non-compliance of Section 159 of the Companies Act, 1956 are as follows:-

- Since the paid up share capital of the company was less than Rs 2 Crores, appointment of full time Company Secretary was not mandatory. However, non-availability of a fulltime Company Secretary has resulted in non-compliance of certain sections and provisions of the Companies Act, 1956.
- The growing difference between the Directors managing the Company caused formation of two groups of Directors one being headed by Dr. Joe Verghese and other by Dr. Mukunda Kumbla, the founders and promoters of the Company.
- The company was managed by the group of Directors headed by Dr. Mukund Kumbla till 2007. The non-cooperation by Dr. Joe Verghese group has disturbed the normal function of the company and conducting of regular Board Meetings and Annual General Meetings since the year 2007.
- The required Statutory Approval could not be obtained and hence led to non-compliance.
- Since the Annual General Meeting was not held from the financial year 2006-07, the Company has not filed the Annual Returns for the years 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11 with the Registrar of Companies, Karnataka, Bangalore.

- Moreover the Company was having status 'Dormant' as per the MCA Website; hence the Company was unable to file the Annual Returns.

It is also averred that, the Company Law Board, Chennai vide its order dated 15/11/2011 has declared the company as "*Company having Management Dispute*".

However, the 1st Applicant Company has stated that, the offence was made good that, the company has filed the Annual Returns for the financial years 2006-07 to 2012-13 with the Registrar of Companies, Karnataka, Bangalore on 14th October 2014 under CLSS,2014 Scheme in the prescribed e-form 23AC and 23ACA.

The further averments made in the Application are stated as follows:-

- 1) That there was management dispute between two groups of shareholders of the company since 2007 wherein one group was led by the 2nd Applicant herein, who has held 53.36% of the paid-up share capital of the company and had five Directors on the Board. The other group was led by one Dr. Joe Verghese who has held 46.64% of the paid-up share capital with four Directors on the board until 2015. During the year 2015, one of the shareholders sold majority of the shares to Dr. Mukund and thus making his group own about 58.63% of the paid-up share capital of the company with six directors on the board.
- 2) It is further stated that, due to the acts of Dr. Joe Verghese's group and the interse share holder disputes between the two groups the day to day management of the company has severely suffered which led to two company petitions filed before the erstwhile Hon'ble Company Law Board, Chennai and other litigations in local courts at Mangalore.
- 3) That in the background of these litigations several restraints were imposed on the company by way of stay orders from a judicial forum/court or non-cooperation in the holding of board or general body meeting by the group led by Dr. Joe Verghese. Due to this the company led to default in statutory compliances and in the process there were violations of certain sections of the Companies Act, 1956.
- 4) It is further stated that, the said violations have taken place inadvertently and have been due to the helpless situation the Applicants were facing since 2006-07, even if they were trying to adhere to statutory compliances, the said non-cooperation of the other group and the litigations pending in the courts led to a stalemate of management decisions.

- 5) The Applicants from time to time for the last 10 years made efforts to amicably resolve the management disputes and also attempted settlement of the same with the other group but unfortunately have not seen reciprocation of the same from the other group. The Applicants have done their best to keep the operations of the company running which is that of running a hospital in Mangalore.
- 6) The Applicants thereby sincerely plead the indulgence of this Tribunal with respect to the same as the Applicants would be in a position to establish by way of this Memo that they were genuinely constrained and were not able to fulfill certain statutory obligations due to court orders in the background of the management disputes.
- 7) The Applicants provide a chronological synopsis of the orders of the Hon'ble company Law Board, Chennai and the local court at Mangalore due to which board and general body meetings could not be held, certain agenda items could not be implemented from time to time, and the audit of the company could not be done either for a long period of time.
- 8) The Applicants also highlighted the crucial order of the Hon'ble company Law Board, Chennai passed on 13/11/2013 whereby finally the Hon'ble company Law Board, Chennai appointed an Independent Chairman and a Statutory Auditor to complete the audit of the company for the period 01/04/2007 to 31/03/2013 and also hold the general body and board meetings subsequent to the said appointments to streamline the operations of the company and approve the audited accounts, make good of the pending compliance issues etc.,

Since there was management dispute and time and again issue was before the Hon'ble Company Law Board, Chennai and due to unawareness on the part of the Managing Director, the said default was occurred. The period of default is from 2006-07 to 2010-11. The Counsel for Applicants has contended that the hospital is running in loss as on 31/03/2014. The Counsel for Applicants has made submissions orally and through memo filed for the issues related to the violation of provisions of Section 159 of the Companies Act, 1956 which reads as follows:-

“ every company having a share capital shall, within sixty days from the day on which each of the annual general meetings referred to in section 166 is held, prepare and file with the Registrar a Return containing the particulars specified in Part I of Schedule V, as they stood on that day, regarding- its registered office, the register of its members, the register of its debenture holders, its shares and debentures, its indebtedness, its members and debenture holders, past and present, and its directors, managing directors, managers and secretaries, past and present.

Section 162(1):- "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 seen the copy of the Show Cause Notice No. ROCB/MMM/SCN/SEC 159/023525/2015 dated 24/02/2015 issued by the Registrar of Companies, Karnataka, Bangalore which is marked as Annexure-X. We have seen Memorandum of Association marked as Annexure-II and also we have seen the annual accounts filed in e-form 20B along with the Challans filed with the Registrar of Companies, Karnataka, Bangalore for the financial years from 2006-07 to 2012-13 marked as Annexure-VI.


We have received report from the Registrar of Companies, Karnataka at Bangalore vide letter No. ROCB/MMM/Sec.621A/2014 dated 18/08/2015 who stated that offence can be compounded by levying compounding fee on the Applicants. Considering the submissions made by the Counsel for petitioners and after going through the contents of the application and documents filed, we hereby levy the compounding fee for violation of section 159 of the Companies Act, 1956 on Applicant Nos.1 to 6 as set out in the table given hereunder considering the prevalent management dispute and financial status of the Hospital.



Sl. No.	Particulars	Violation of Sec.159 of Companies Act, 1956 With No.of days delays					Total
		2006-07	2007-08	2008-09	2009-10	2010-11	
1	1 st Applicant- Company	2541 x 10= 25410	2176 x 10= 21760	1810 x 10 = 18100	1445 x 10= 14450	1080 x 10 = 10800	90,520/-
2	2 nd Applicant- Director	2541 x 10= 25410	2176 x 10= 21760	1810 x 10 = 18100	1445 x 10= 14450	1080 x 10 = 10800	90,520/-
3	3 rd Applicant- Managing Director	2541 x 10= 25410	2176 x 10= 21760	1810 x 10 = 18100	1445 x 10= 14450	1080 x 10 = 10800	90,520/-
4	4 th Applicant- Director	2541 x 10= 25410	2176 x 10= 21760	1810 x 10 = 18100	1445 x 10= 14450	1080 x 10 = 10800	90,520/-
5	5 th Applicant- Director	2541 x 10= 25410	2176 x 10= 21760	1810 x 10 = 18100	1445 x 10= 14450	1080 x 10 = 10800	90,520/-
6	6 th Applicant- Director	2541 x 10= 25410	2176 x 10= 21760	1810 x 10 = 18100	1445 x 10= 14450	1080 x 10 = 10800	90,520/-

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