

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

T.P.NO. 156/2016

IN

CA NO. 205/2015

(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 314(1)
OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF OMEGA HOSPITALS PRIVATE LIMITED

T.P.NO. 156/2016 IN CA NO. 205/2015

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 No.205/2015. 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 and renumbered as T.P No. 156/2016 in this Tribunal. This Application is filed by the Applicants with a prayer to record compounding for violation of provisions of section 314(1) 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, Mr. Leeladhar who was working as Internal Auditor of the Company is a relative of Dr. Mukund Kumbha, the Director of the Company and hence he has been holding office of place of profit for which approval of the Company in terms of Special Resolution was required. Therefore, a Show cause Notice has been issued for the contravention of section 314(1) 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 314(1) of the Companies Act, 1956 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 full time Company Secretary has resulted in non-compliance of certain sections and provisions of the Companies Act, 1956.
- Since inception M/s Leeladhar and Co., Chartered Accountants, in which Mr. Leeladhar is a partner and a relative of Company's Director Dr. Mukund Kumbha was appointed as the Internal Auditor of the Company by the two Promoter Directors and Subscribers to the Memorandum of Association of the Company.
- Being medical professionals, the Applicants were ignorant of the requirement as per the Companies Act, 1956.
- As the company was in the commissioning stage, the Company could not appoint a Company Secretary to look into the affairs relating to the Companies Act, 1956.
- Further as there were only two promoter Directors who were the shareholders of the company, the appointment of Mr. Leeladhar was approved by them

having 100% shareholding then, which is more than the shareholding required for passing a Special Resolutions.

- Being medical professionals, the Applicants were not aware of holding and conducting a general meeting and to pass a Special Resolutions for the said purpose.

The Applicant No.2 – Dr. Mukund Kumbha has made the following averments on behalf of the Company, Omega Hospitals Private Limited and on behalf of other 4 Directors of the Company by filing Affidavit that:-

- 1) He was aware of the offence committed by the Company for violation of Section 314(1) of the Companies Act, 1956 for Directors etc., not to hold office or place of profit..
- 2) He has also informed 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 has made good that, Mr. Leeladhar has ceased to be the Internal Auditor of the Company. The Internal Audit of the Company at present is conducted by an Independent professional appointed by the Board of Directors. To this effect the Applicants enclosed the copy of resolution of the meeting of Board of Directors for appointment of Internal Auditor dated 22/02/2014 for the Financial Year 2007-08 to 2012-13 and copy of resolution of the meeting of Board of Directors for appointment of Internal Auditor dated 07/03/2015 for the Financial Year 2014-15

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 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 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 shareholder disputes between the two groups the day to day management of the company has severely suffered which led filing of two company petitions 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 Vergehese. 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 23/03/1998 to 22/02/2014 and the No. of delay is 5816 days. The Counsel for Applicants has also mentioned that the hospital is running in losses as on 31/03/2014. The Counsel for Applicants has repeatedly made submissions through orally and through memo filed for the issues related to the violation of provisions of Section 314(1) of the Companies Act, 1956 which reads as follows:-

“Director, etc., not to hold office or place of profit (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.”




The penalty for the violation committed under the provisions of section 314(1) of the Companies Act, 1956 which is punishable under section 629A of the Companies Act, 1956 which 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”.

We have seen the certified copy of the Minutes of the Board Resolution dated 22/02/2014 and 07/03/2015 which are marked as Annexure III and IV. Copy of the Show Cause Notice No. ROCB/MMM/SCN/SEC 314/023525/2015 dated 24/02/2015 issued by the Registrar of Companies, Karnataka, Bangalore which is marked as Annexure-VII. We have seen Memorandum and Articles of Association marked as Annexure-II and also we have seen annual accounts for the financial year 2013-14 marked as Annexure-I.

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 under section 314(1) for violation of the Companies Act, 1956 on Applicant Nos.1 to 6 as set out in the table given hereunder considering the considering the prevalent management dispute and financial status of the Hospital.

| Sl. No. | Particulars | Violation of Sec.314(1) of Companies Act, 1956 | No. of 5816 days delay | Total Rs. |
|---------|--|--|------------------------|-----------|
| 1 | 1 st Applicant Company | 1,000/- | 5816 x 10/- =58,160/- | 59,160/- |
| 2 | 2 nd Applicant- Director | 1,000/- | 5816 x 10/- =58,160/- | 59,160/- |
| 3 | 3 rd Applicant- Managing Director | 1,000/- | 5816 x 10/- =58,160/- | 59,160/- |
| 4 | 4 th Applicant-Director | 1,000/- | 5816 x 10/- =58,160/- | 59,160/- |
| 5 | 5 th Applicant-Director | 1,000/- | 5816 x 10/- =58,160/- | 59,160/- |
| 6 | 6 th Applicant-Director | 1,000/- | 5816 x 10/- =58,160/- | 59,160/- |

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