

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

T.P.NO. 159/2016

IN

CA NO. 208/2015

(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
303(2) OF THE COMPANIES ACT, 1956
AND
IN THE MATTER OF OMEGA HOSPITALS PRIVATE LIMITED

T.P.NO. 159/2016 IN CA NO. 208/2015

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.208/2015. 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. 159/2016 in this Tribunal. This Application is filed by the Applicants with a prayer to record compounding for violation of provisions of section 303(2) of the Companies Act, 1956.

The averments in the Company Application are briefly stated hereunder:

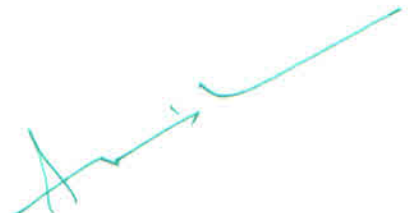
The 1st Applicant is a company which was incorporated under the Companies Act, 1956 on 23rd March 1998 under the name and style "Omega Hospitals Private Limited" vide Corporate Identity No. U85110KA1998PTC023525. The Registered Office of the company is situated at # Pumpwell Bypass Road, Kankanady, Mangalore-575002

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, as there was no agenda for regularization of Mr. Surendra Kumbla and Mr. Ajhilady Chittaranjan Rai in the Annual General Meeting of the Company held on 3rd October 2008, they shall be deemed to have vacated the office on that date. Therefore, Form 32 should have been filed with the Registrar of Companies, Karnataka at Bangalore. Since the same is not filed the Company is said to have violated the provisions of the Section 303(2) 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 285 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 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 since 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.
 - Dr. Joe Verghese group of Directors were in the habit of disrupting the process of conducting the Board Meetings. The copy of the objection is enclosed with the petition. They were arguing that all the Board Meetings held since 15/11/2007 are illegal and all the resolutions are void.
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- The Additional Directors Mr. Surendra Kumbla and Mr. Ajhilady Chittaranjan Rai were appointed by the Board in the Board Meeting held on 15/11/2007. The appointment was to be regularized in the Extra-ordinary General Meeting held on 29/12/2007. The main item of Agenda in the Extra-ordinary General Meeting was regularization of two Additional Directors. Later Annual General Meeting for the financial year 2007-08 was conducted on 03/10/2008. The implementation of Resolutions passed in the Annual General Meeting was withheld by the Hon'ble Company Law Board on the application of Dr. Joe Verghese group of Directors. No further Annual General Meetings were held since this date till 11/10/2014.
- Form No.323 for appointment of Mr. Surendra Kumbla and Mr. Ajhilady Chittaranjan Rai as Additional Directors was filed with the Registrar of Companies, Karnataka at Bangalore considering regularization of appointment in the Extra-ordinary General Meeting held on 29/12/2007.
- The filing status of the company was changed from Active to Dormant for e-filing by the Registrar of Companies, Karnataka at Bangalore and hence, e-form 32 could not be filed for cessation of Mr. Surendra Kumbla and Mr. Ajhilady Chittaranjan Rai.

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 with the cessation of the Additional Directors Mr. Surendra Kumbla and Mr. Ajhilady Chittaranjan Rai which were recorded in the minutes of the Board Meeting dated 29/11/2014, wherein the Board Meeting was conducted by the Independent Chairman appointed by the Company Law Board, Chennai and the respective e-form DIR-12 was filed with Registrar of Companies, Karnataka at Bangalore recording the cessation of the Additional Directors.

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 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 shareholder 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 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 03/11/2008 to 27/01/2015 and the No. of delay is 2277 days. The Counsel for Applicants has contended 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 303(2) of the Companies Act, 1956.

The violation committed under the provisions of section 303(2) of the Companies Act, 1956 which reads as follows:-

“the company shall, within the periods respectively mentioned in this sub-section, send to the Registrar a return in duplicate in the prescribed form containing the particulars specified in the said register and a notification in duplicate in the prescribed form of any change among its directors, managing directors, managers or secretaries specifying the date of the change.

The period within which the said return is to be sent shall be a period of thirty days from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be thirty days from the happening thereof.”

The penalty for the violation committed under the provisions of section 303(2) is punishable under section 303(3) of the Companies Act, 1956 which reads as follows:-

“If default is made in complying with sub- section (1) or (2), the company, and every officer of the company who is in default, shall be punishable with fine which extend to five hundred rupees for every day during which the default continues”;

We have seen the copy of the Show Cause Notice No. ROCB/MMM/SCN/SEC 303/023525/2015 dated 24/02/2015 issued by the Registrar of Companies, Karnataka, Bangalore which is marked as Annexure-IX. We have seen Memorandum of Association marked as Annexure-II and also we have seen copy of the challan of e-form DIR-12 filed for cessation of Mr. Surendra Kumbala and Mr. Ajilady Chittaranjan Rai along with e-form DIR-12.

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 303(2) for violation 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. 303 (2) of the Com. Act, 1956 No. of days delay 2277	Total Rs.
1	1 st Applicant Company	2277 x 20/- =45,540/-	45,540/-
2	2 nd Applicant- Director	2277 x 20/- =45,540/-	45,540/-
3	3 rd Applicant- Managing Director	2277 x 20/- =45,540/-	45,540/-
4	4 th Applicant-Director	2277 x 20/- =45,540/-	45,540/-
5	5 th Applicant-Director	2277 x 20/- =45,540/-	45,540/-
6	6 th Applicant-Director	2277 x 20/- =45,540/-	45,540/-

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