

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

T.P.NO. 147/2016

IN

C.A.NO. 147/621A/CB/2015

DATED: MONDAY THE 13th DAY OF MARCH 2017

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

**IN THE MATTER OF COMPANIES ACT, 1956 AND
IN THE MATTER OF COMPANIES ACT, 2013 UNDER SECTION 441
FOR COMPOUNDING OF OFFENCE UNDER SECTIONS 92 AND 96
OF THE COMPANIES ACT, 2013**

AND

IN THE MATTER OF M/s TARGUS INDIA PRIVATE LIMITED

T.P.NO. 147/2016 IN C.A. No. 147//621A/CB/2015

1. M/s Targus India Private Limited,
"Sapthagiri", No.30, 10th Cross Road,
15th Main, RMV Extension,
Bangalore-560080.
2. Mr. Sumesh Dewan - Director,
19, Uday Park,
New Delhi-110049.
3. Mr. Steven Terence Norman-Director,
Flat A, 12F Tower, 1, One Silversea,
18, Hoi Fai Road,
Tai Kok Tsui,
Hong Kong.

APPLICANTS

PARTIES PRESENT:

Mr. Vighneshwar M.Bhat, # 24, Comfort Towers, 3rd
Floor, 10th Cross, Wilson Garden, Bangalore-
560027- Practicing Company Secretary and
Authorised Representative for the Applicants.

Heard on: 18/10/2016, 18/11/2016, 16/12/2016, 20/01/2016, 14/02/2017 and
01/03/2017.

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 Sections 92 and 96 of the Companies Act, 2013 and it was numbered as C.A 147/621A/CB/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 re-numbered as T.P No. 147/2016.

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

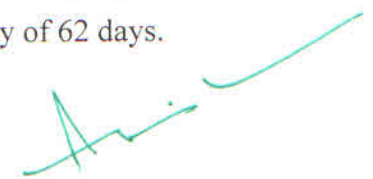

The 1st Applicant Company was incorporated under the Companies Act, 1956 on 5th May, 2005 as a Private Limited Company in the name and style of "Targus India Private Limited" vide Registration No. CIN **U05190KA2005PTC036241**. The Registered office of the company is situated at "Sapthagiri", No.30, 10th Cross Road, 15th Main, RMV Extension, Bangalore-560080.

As per the latest Balance Sheet the Authorized share capital of the 1st Applicant Company is Rs. 1,00,00,000/- divided into 1,00,000 Equity Shares of Rs 100/ each and the issued, subscribed and paid up share capital of the Company is Rs. 1,00,000/- consisting 1,000 Equity Shares of Rs 100/- each.

The Main objects of the 1st Applicant Company is to act as a regional marketing and sales support hub, for all products of Targus Group Worldwide, by monitoring sales and marketing activities both within and outside India and to Corporate, market, advertise, promote and support Targus Group Product sales in India and in various countries in the region; to carry on the business of marketing, servicing and assembling all present and future Targus products and to provide consultancy and advisory services in relation to any of the aforesaid activities etc.,

It is averred in the Company Application that, the 1st Applicant Company could not file its Annual Return for the financial year ending 31st March 2014 as required under Section 92 of the Companies Act, 2013 with the Registrar of Companies, Bangalore within the time allowed and thereby contravened the provisions of Section 92 of the Companies Act, 2013. However, the 1st Applicant Company has filed the Annual Return on 09/01/2015 with the Registrar of Companies, Bangalore with a delay of 39 days.

It is further averred in the Company Application that, the 1st Applicant Company could not hold the Annual General Meeting for the financial year 2013-14 within the stipulated period as required under Section 96 read with Section 129 of the Companies Act, 2013 to place before the Board of Directors for approval of the Financial Statements for the year ending 31st March 2014 within the time allowed and thereby contravened the provisions of Section 96 read with Section 129 of the Companies Act, 2013. However, the 1st Applicant Company has held the Annual General Meeting on 2nd December 2014 with a delay of 62 days.



It is also averred in the Company Application that, the above offences were committed by the Applicants due to the unavoidable circumstances as a result of the delays faced by the Company in taking forward the affairs of the Company activities and it was not intentional and is not of such nature as to prejudice the interest of the Members or Creditors or others dealing with the Applicant Company. The Applicant Company unequivocally declares that the offences committed, do not affect the public interest, in any way and no harm is caused to the public interest.

This Application was filed under sections 92 and 96 of the Companies Act, 2013. The provisions of section 441 of the Companies Act, 2013 came into effect from 1st June 2016, this application was filed before erstwhile Company Law Board, Southern Region, Chennai. Therefore, this application is to be decided under the provisions of sections 159 and 166 read with section 621A of the Companies Act, 1956.

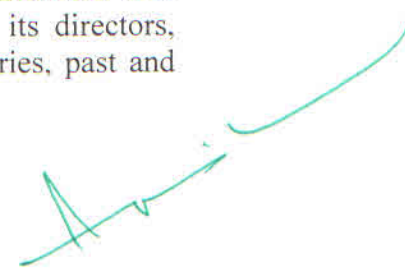
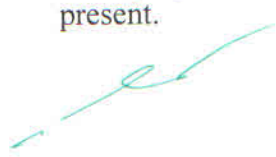
The Practicing Company Secretary for Applicants further filed an Affidavit of the Director of the 1st Applicant Company stating that:-

- a) The Applicants had filed application for compounding of offence committed under sections 92 and 96 of the Companies Act, 2013 on 27th April 2015.
- b) As per the General Circular 08/2014 issued on 4th April 2014, the default in compliance pertains to financial year ended 31/03/2014 for compounding of offences under section 159, 166, 210 and 220 of the Companies Act, 1956.

The Practicing Company Secretary for Applicants further contend that, this is a suo-moto application filed by the Company and its Directors for compounding of violation committed under sections 159 and 166 of the Companies Act, 1956. The Practicing Company Secretary further contended that, a lenient view may be taken while compounding the offence.

Under section 159 read with the provisions of section 162 of the Companies Act, 1956 for compounding 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".



Under section 166 read with the provisions of section 168 of the Companies Act, 1956 for compounding 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:"

For the violation of section 166 (1) of the Companies Act, 1956, the punishment is provided under section 168 of the Companies Act, 1956 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 for Applicants on 18/10/2016, 18/11/2016, 16/12/2016, 20/01/2016, 14/02/2017 and 01/03/2017. The Practicing Company Secretary contended that, the default occurred due to unavoidable circumstances as a result of the delays faced by the Company in taking forward the affairs of the Company. The Practicing Company Secretary for Applicants further contend that, the 1st Applicant Company had complied with the requirement of Section 92 of the Companies Act, 2013 and filed Form 20B, Form 23AC and Form 23ACA on 9th January 2015 with the Registrar of Companies, Karnataka, Bangalore.

The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/PS/621A/036515/2015 dated 23rd July 2015 has stated in his report that, the Company has admitted the default and has offered to compound the offence and the Compounding Application may be decided on merits.

We have seen the Certified Copy of the extract of Board Resolution dated 27th January 2015 of the 1st Applicant Company wherein the Board of Directors resolved for filing compounding Application, Copy of Form GNL-1 along with ROC Challan filed with Registrar of Companies-Karnataka at Bangalore. After considering the materials on record and after taking into account the submissions made by the Practicing Company Secretary that lenient view may be taken, we hereby levy compounding fee for delay in complying sections 159 and 166 of the Companies Act, 1956 on the Applicants as shown in the table given below:-

Sl. No.	Particulars	For Violation of Sec.159 of Companies Act, 1956 – 39 days delay	Violation of Sec.166 of Companies Act, 2013 ¹⁹⁵⁶		Total
			For violation	62 days delay	
1	1 st Applicant Company	39 x 100/- = 3,900/-	5,000/-	250/- x 62 = 15,500/-	24,400/-
2	2 nd Applicant-Director	39 x 100/- = 3,900/-	5,000/-	250/- x 62 = 15,500/-	24,400/-
3	3 rd Applicant – Director	39 x 100/- = 3,900/-	5,000/-	250/- x 62 = 15,500/-	24,400/-

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 27TH March 2017 for compliance.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 13TH DAY OF MARCH, 2017th