

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

C.A. No.37/621A/CB/2016

T.P NO. 247/16

**IN THE MATTER OF COMPANIES ACT, 1956  
UNDER SECTION 297 READ WITH SECTION 621A  
OF THE COMPANIES ACT, 1956**

**AND**

**IN THE MATTER OF  
SCHNEIDER ELECTRIC IT BUSINESS INDIA PRIVATE LIMITED**

Judgement/Order delivered on: 13<sup>th</sup> July 2017

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)

1. **Schneider Electric It Business India Private Limited,**  
Sy. No. 187/3 & 188/3,  
Jigani Industrial Area, Jigani,  
Bangalore-562106.
2. **Mr. Nikhil Priyavadanbhai Pathak - Managing Director,**  
Flat No.15072, Prestige Shanthi Niketan,  
Opposite International Tech Park,  
Whitefield, Bangalore-560048.

**APPLICANTS**

For the Petitioner (s) Ms. Devika Sathyanarayana, M/s V.Sreedharan & Associates, GNR Complex, 1<sup>st</sup> & 2<sup>nd</sup> Floor, 32/33, 8<sup>th</sup> Cross, Wilson Garden, Bengaluru-560027  
Practicing Company Secretary and Authorised representative for the Applicants.

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial) – Author

**O R D E R**

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 297 of the Companies Act, 1956 and it was numbered as C.A 37/2016. Consequent upon the establishment of National Company Law Tribunal Bench at Bengaluru, the said Application was transferred to this Tribunal on abolition of Company Law Board, Southern Region, Chennai Bench and re-numbered as T.P No. 247/2016.

The averments made in the Company Application are briefly described hereunder:-

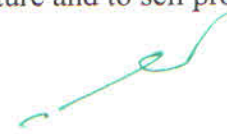
The 1<sup>st</sup> Petitioner is the Company, Mr. Nikhil Fijavadanbhai Pathak is the 2<sup>nd</sup> Petitioner/Managing Director. This suo-moto Application is filed by the Petitioners for compounding for violation of provisions of Section 297 of the Companies Act, 1956.

The 1<sup>st</sup> Petitioner Company was incorporated under the Companies Act, 1956 on 10<sup>TH</sup> March 1997 as a Private Limited Company under the name and style of "American Power Conversion (India) Private Limited" vide Company Registration No. 18-37679 in the State of Tamilnadu. Later on, the Company has shifted its Registered office to the State of Karnataka and subsequently, changed its name to "SCHNEIDER ELECTRIC IT BUSINESS INDIA PRIVATE LIMITED" on 12<sup>th</sup> September 2012 vide CIN No. **U32109KA1997PTC029635**. The Registered office of the company is situated at Sy. No. 187/3 & 188/3, Jigani Industrial Area, Jigani, Bangalore-562106.

The Authorized share capital of the Petitioner Company is Rs. 6,00,00,000/- consisting of 50,00,000 Equity Shares of Rs 10/- each and Rs 10,00,000 Non-Cumulative Compulsory Convertible Preference Shares of Rs 10/- each. The Issued, Subscribed and Paid up Share Capital of the Company as on 31<sup>st</sup> March 2013 is Rs 3,47,02,340/- divided into 34,16,688 Equity Shares of Rs 10/- each fully paid up and 53,546 Non-Cumulative Compulsory Convertible Preference Shares of Rs 10/- each fully paid up.

The Main objects of the 1<sup>st</sup> Petitioner Company is to carry on the business as manufacturers, producers, processors, importers, exporters, designers, converters, dealing in all kinds of electronic and computer components, power conditioning products,; to manufacture, develop improve, maintain in all kinds of power supplies of general or any customized specification and all kinds of computer and Micro Processor based systems; to carry on the business of Research and Development in the field of electronics, computer and allied items and to give franchises, rights to use the technologies etc., Details of the main object of the Company are stated in the Memorandum and Articles of Association of the Petitioner Company.

It is averred in the Company Petition that, 1<sup>st</sup> Petitioner Company had entered into Sales Purchase Agreement with M/s Luminous Power Technologies Private Limited i.e., Contractee Company to manufacture and to sell products such





as Printed Circuit Board Assemblies as mentioned in Schedule 1 of the Sales Purchase Agreement which is marked - III to the Petition for the period from 1<sup>st</sup> April 2012 to 31<sup>st</sup> March 2014. It is further averred that, during the time of entering into the said Sales Purchase Agreement, Mr. Javed Ahmad, Director of the 1<sup>st</sup> Petitioner Company was also the Director in M/s Luminous Power Technologies Private Limited but due to oversight the Central Government approval was not obtained for the agreement.

The Practicing Company Secretary for Petitioners on 4<sup>th</sup> July 2017 has given information about the Related Party Transactions. The Applicants admitted that, there was no prior approval obtained from the Central Government for the period from 1<sup>st</sup> April 2012 to 22<sup>nd</sup> April 2012. The details of transactions are shown in the Annexure-I to this information and the total No. of transactions held in this period are 12. According to the Applicants the company obtained prior approval from the Central Government for the period 2012-13 and 2013-14, but the Company exceeded the limits prescribed. Now the Practicing Company Secretary has provided information with regards to the transactions which are over and above the sanctioned limit of the Central Government. Annexure-II to this information contained details of transactions along with their value for the period from 5<sup>th</sup> December 2012 to 31/03/2013. In other words, it is the case of Applicants that, related party transactions were entered into over and above the sanctioned limit and the No. of transactions for the above period are 128.

Practicing Company Secretary further provided information for the related party transactions which are over and above the sanctioned limit of the Central Government for the period from 20<sup>th</sup> July 2013 to 31<sup>st</sup> March 2014 shown in Annexure-III to this information and the total No. of transactions which exceeded the limit sanctioned by the Central Government are 187. It is further averred that, the transactions were made at the arms' length and based on market value.

Thus there was violation of provisions of section 297 of the Companies Act, 1956. This suo-motto application is filed by the Petitioners under section 621A of the Companies Act, 1956 for compounding the violation of section 297 of the Companies Act, 1956 which is punishable under section 629A of the Act.

Section 297 (1) of the Companies Act, 1956 reads as follows:-



“Except with the consent of the Board of Directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company –


- (a) for the sale, purchase or supply of any goods, materials or services, or
- (b) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the Company”.

Provided that in the case of a company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government.

Violation of section 297 of the Companies Act, 1956 which is punishable under section 629A 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”.

I have heard Practicing Company Secretary for Petitioners and during the course of enquiry, she has filed written submissions along with statement showing details of transactions of the Petitioner Company during the default period which are over and above the limits approved by the Central Government. The Practicing Company Secretary contended that, 1<sup>st</sup> Petitioner Company failed to obtain prior approval from the Central Government and it was due to inadvertence and further contended that, violation can be compounded under section 621A of the Companies Act, 1956 and would further contend that Petitioners suo-moto filed this Application for compounding admitting default and further prayed to take lenient view while compounding the violation.





I have perused the documents filed along with the petition, I have seen extract of the Minutes of the meeting of the Board of Directors held on 14<sup>th</sup> March 2014. Report from the Registrar of Companies, Karnataka at Bangalore was received vide letter No. ROCB/MMM/621A/029635/2014 dated 27/08/2015. He recommended that, the application may be decided on merits and after going through the Company Application under section 621A of the Companies Act, 1956 and further information made by the Practicing Company Secretary for the 1<sup>st</sup> Petitioner Company, basing on the information provided, since related party transactions are beyond the limit prescribed for which there is no sanction. Therefore, Applicants to pay compounding fee for these related party transactions which exceeds the limit and after considering the observations of the Registrar of Companies, I hereby propose to levy the compounding fee on the Petitioners as set out in the table given hereunder:-

Sl. No.	Particulars	Violation of Sec.297(1) of the Companies Act, 1956			Total Rs.
		No. of transactions held in the respective financial year			
		No.of Transactions held where no sanction obtained	Exceeding the sanctioned limits		
		1 <sup>st</sup> April 2012 to 22 <sup>nd</sup> April 2012 (12)	5 <sup>th</sup> Dec.2012 to 31/3/2013 (128)	20 <sup>th</sup> July 2013 to 31 <sup>st</sup> March 2014 (187)	
1	1 <sup>st</sup> Petitioner Company	12 x 500 = 6,000/-	128 x 500 = 64,000/-	187 x 500 = 93,500/-	1,63,500/-
2	2 <sup>nd</sup> Petitioner/ Managing Director	12 x 500 = 6,000/-	128 x 500 = 64,000/-	187 x 500 = 93,500/-	1,63,500/-

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 27<sup>th</sup> July 2017 for compliance.

13.7.17  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL