

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

C.P. No. 46/2017

**IN THE MATTER OF COMPANIES ACT, 2013
UNDER SECTION 441 FOR COMPOUNDING OF OFFENCE
UNDER SECTION 96 READ WITH SECTION 99
OF THE COMPANIES ACT, 2013
AND**

**IN THE MATTER OF
M/s HAJEE A.P.BAVA & COMPANY CONSTRUCTIONS
PRIVATE LIMITED**

Judgement/Order delivered on: 13th July 2017

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

- 1) M/s Hajee A.P Bava & Company Constructions Private Limited,
HAPBCO Tower, # 32 (Old No.1355/B),
9th Main Road, Near Muneshwara Temple,
RPC Layout, Vijayanagar, Bangalore-560104.
- 2) Mr. Arakkal Pandika Salakkal Abdul Karcem, Managing Director
A.P.B House, Chaliyam Post, Kozhikode,
Kerala-673301.
- 3) Mr. Muhammed Azharuddeen, Director
34A, A.P Villa, 3 Kadalundy Grama Panchayath,
Kadalundy, Kerala-673301.
- 4) Mr. Mohammed Arshad Arakkal Pandikashala, Director.
Arshak Baab, Chaliyam,
Chaliyam P.O., Kozhikode-673301. - Petitioners

For the Petitioner (s) Mr. Vivek Hegde, No.86, 1st Floor, 2nd Main,
Samvrudhhi Enclave, Kumaraswamy Layout,
2nd Stage, Bengaluru-560061 Practicing Company
Secretary and Authorised representative for the
Applicants.

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

O R D E R

This Petition is filed under Section 96 read with section 99 of the Companies Act, 2013 with a prayer for compounding of the violation committed under provisions of 441 of the Companies Act, 2013.

The averments made in the company petition are briefed hereunder:-



The 1st Petitioner i.e., M/s Hajee A.P Bava & Company Constructions Private Limited is the Company; Mr. Arakkal Pandika Salakkal Abdul Kareem is the 2nd Petitioner/Managing Director; Mr. Muhammed Azharuddeen is the 3rd Petitioner/Director and Mr. Mohammed Arshad Arakkal Pandikashala is the 4th Petitioner/Director. This suo-moto Application is filed by the Petitioners for compounding for violation of provisions of Section 96 of the Companies Act, 2013.

The Petitioner Company was incorporated under the Companies Act, 1956 on 12th March 2008 as a Private Limited Company under the name and style of "Hajee A.P Bava & Company Constructions Private Limited" vide Registration No. CIN **U45209KA2008PTC045571**. The Registered office of the company is situated at HAPBCO Tower, # 32 (Old No.1355/B), 9th Main Road, Near Muneshwara Temple, RPC Layout, Vijayanagar, Bangalore-560104.

The Authorized share capital of the 1st Petitioner Company is Rs. 7,00,00,000/- divided into 4,00,000 of Equity Shares of Rs 100/ each and 3,00,000 Convertible Preference Shares of 100/- each. The paid up share capital of the Company is Rs.7,00,000/- divided into 4,00,000 of Equity Shares of Rs 100/ each and 3,00,000 Convertible Preference Shares of 100/- each.


The Main objects of the 1st Petitioner Company is to carry on all or any business of construction of industrial sheds or structures for the purpose of erection, commissioning of plant, machinery for various types of heavy and medium sized industries, both inland and foreign land projects; to provide professional services as consultants and/or contractors for designing, engineering, and maintaining various plants and machineries; to carry on all or any of the business of manufacture, design, fabricators, processors and deal in any type of machineries and equipment's etc., Details of the objects of the Petitioner Company are mentioned in the Memorandum and Articles of Association of the Petitioner Company.

It is further averred that, the 1st Petitioner Company could not conduct its 8th Annual General Meeting for the financial year 2015-16 within the period stipulated under the Companies Act, 2013 due to the following reasons that:

- The company's operations are growing at a compound annual growth rate of 10% and required a fully-fledged ERP system from the existing standalone accounting and inventory module to get a unified, real time, robust financial data and other data.
- HPABCO Group of Companies moved away from its legacy accounting software and implemented new ERP from May 2016.
- It was a new ERP for all, though there was some initial resistance, it was slowly acquainted and accepted by all.
- As in other ERP, the Company had a lot of initial bugs, customization and implementation issues and software bugs that stalled the company's day to day entries.
- The documentation entry part could not be completed due to size of its operations and turn over.
- It involved herculean task to complete data entry which could not be done in time to start the audit in time.
- There was a change in senior management personnel – who head finance department, who was the only source of information on finance and accounts finalization.
- A successor was appointed to the above senior person quickly and he joined the company during end of October and he needed time to settle down.

Due to this the documents and information required for convening the 8th Annual General Meeting could not be complied within the time. However, the 1st Petitioner Company hold its 8th Annual General Meeting for the financial year 2015-16 on 21st March 2017 wherein the audited accounts were adopted by the shareholders with a delay of 171 days.

It is further averred that, the violation occurred under Section 96 of the Companies Act, 2013 was neither willful nor wanton and it was due to reasons which were beyond the control of the petitioners. The 1st Petitioner Company and its Directors suo-moto filed this application admitting violation and prayed for compounding. Thus there was violation of provisions of section 96 which reads as follows:-



“every company other than a one person 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 notice 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.”

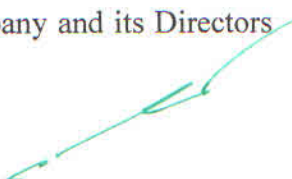
For violation of provisions of section 96 is punishable under section 99 of the Companies Act, 2013 reads as follows:-

“If any default is made in holding a meeting of the Company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.”

I have heard the Practicing Company Secretary for Petitioners on 07/07/2017. The Practicing Company Secretary contended that, the default occurred due to unavoidable circumstances and totally inadvertent for not holding 8th Annual General Meeting within the stipulated time and there was neither willful nor wanton on the part of Company or its Directors. The Practicing Company Secretary for Petitioners further contend that, this is a suo-moto application filed by the Company and its Directors for compounding of violation.

The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/PS/441/45571/2017 dated 18th May 2017 has stated in his report that, the Company has admitted the violation suo-moto and made good the offence and has offered to compound the offence and the Compounding Application may be decided on merits.

I have seen the Memorandum and Articles of Association of the Petitioner Company, Certified copy of the Board Resolution dated 10th April 2017 of the Petitioner Company wherein the Board of Directors resolved for filing compounding Application which is marked as Annexure- G, 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, I hereby levy compounding fee under section 99 of the Companies Act, 2013 for the delay in holding 8th Annual General Meeting on the Petitioner Company and its Directors as shown in the table given below:-



Sl. No.	Particulars	Violation of Sec.96 of Companies Act, 2013	Delay of 171 days	Total Rs.
1	1 st Petitioner Company	Rs. 20,000/-	171 x 500/- =85,500/-	1,05,500/-
2	2 nd Petitioner- Managing Director	Rs. 20,000/-	171 x 500/- =85,500/-	1,05,500/-
3	3 rd Petitioner Director	Rs. 20,000/-	171 x 500/- =85,500/-	1,05,500/-
4	4 th Petitioner Director	Rs. 20,000/-	171 x 500/- =85,500/-	1,05,500/-

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

13.7.17
(RATAKONDA MURALI)
MEMBER, JUDICIAL

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