

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 148/2016
IN
C.A.NO. 148/621A/CB/2015**

DATED: WEDNESDAY THE 15TH DAY OF MARCH 2017

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

**IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A UNDER SECTION 211 AND UNDER SECTION 217(3)
OF THE COMPANIES ACT, 1956
AND**

**IN THE MATTER OF
FACILITEC SERVICES (INDIA) PRIVATE LIMITED**

T.P.NO. 148/2016 IN C.A.NO. 148/621A/CB/2015

1. Shri Shamsheer Puri - Director,
No. 32, 2nd Floor, K.R.Colony,
Domlur Layout,
Bangalore-560071.
2. Shri Jasmer Kewal Prakash Puri- Director,
1704, D-Wing, Runwal Centre,
Govandi Station Road, Deonar,
Mumbai-400088.

- **APPLICANTS**

PARTIES PRESENT:

Mr. K.Jayarama, No.1108L, 3rd Floor, 9th C Main,
Near RPC Layout, Hampinagar, Bangalore-560104 –
Practicing Company Secretary and Authorised
Representative for the Applicants.

Heard on: 18/10/2016, 18/11/2016, 16/12/2016, 16/01/2017, 14/02/2017 and
28/02/2017

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 Section 211 and 217(3) of the Companies Act, 1956 and it was numbered as 148/621A/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. 148/2016.

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

The Company was incorporated under the Companies Act, 1956 on 26th May 2006 as a Private Limited Company under the name and style of Facilitec Services (India) Private Limited vide Registration No. CIN- **U74140KA2006PTC039570**. The Registered office of the company is situated at # 50, Zatakia House, 4th Floor, 100 feet Road, Indiranagar, Bangalore-560103.

The Authorized share capital of the Company is Rs. 50,00,000/- consisting of 5,00,000 Equity Shares of Rs. 10/- each. The issued, subscribed and paid up capital is 43,69,380/- consisting of 4,36,938 equity shares of Rs 10/-each.

The Main objects of the Company is to carry on and engage in the business of providing comprehensive and abroad spectrum of Management Consultancy services to corporate, commercial and other clients in all its branches including but not limited to managing and maintenance (preventive and comprehensive) of electrical, mechanical and ELV systems; to purchase and other acquire, manufacture, own, import, sell export and deal in all materials, etc., Details of the objects of the Company are mentioned in the Memorandum of Articles and Association of the Company.

It is averred in the Company Application that, during the financial year ending 31/03/2012 and 31/03/2013 the Company has not disclosed the information as required under Sections 211(3C) for not complying AS-15 and Section 217(3) of the Companies Act, 1956 and thereby contravened the provisions of section 211 and 217 of the Companies Act, 1956 and the Statutory Auditors has made the following comments that:-

“In my opinion the Balance Sheet and the Profit and Loss Account comply with the applicable Accounting Standards referred in sub-section 3(c) of Section 211 of the Companies Act, 1956 except AS 15, provision for payment of gratuity.”

It is further averred in the Company Application that, the total gratuity liability as on 31/03/2011 was Rs 7,45,163/- and as on 31/03/2012 was Rs 5,38,109/- which is very minimal keeping in mind the cost of actuarial valuation required and further an affidavit dated 27th January 2017 filed by the 1st Applicant Director of the Company stating that, the Audit reports of the Company for the

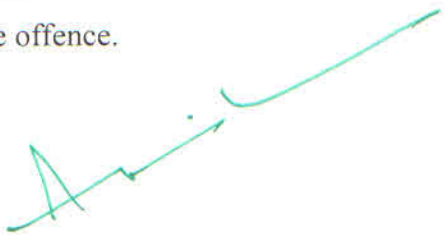
financial years 2011-12 and 2012-13, the auditors have opined that the company violated the provisions of section 211 read with AS-15 regarding provisions for payment of gratuity. As no explanation was given in the report of the Board of Directors for the said financial years, and thus the Balance sheet of the company for the financial years ended 31/03/2011 and 31/03/2012 did not reflect true and fair view of the affairs of the company as required under section 211 read with Accounting Standard – 15 of the Companies Act, 1956.

It is further averred that, the Board of Directors of the Company has passed Resolution in the meeting held on 20th March 2014, authorizing the Board of Directors to apply for amalgamation of the Company with Dusters Total Solutions Services Private Limited the holding Company and further stated that, while reviewing the documents of the company for the purpose of preparing the Affidavit, the office of Ministry of Corporate Affairs has found the above point and feels that there is a violation of the provisions of law and hence the same needs to be compounded,

However, the Applicants voluntarily admitted that, the company has inadvertently not disclosed the Board's report for the financial year ending 31/03/2012 and 31/03/2013 as prescribed under Sections 211(3C) for not complying AS-15 and under section 217(3) for not responding to the qualification remarks of the Auditors report in Board of Directors Report by the Directors of the Company and omission occurred was unintentional and based on the understanding of the Board of Directors while preparing their report and with no malafide intention or attempt to hide any information.

It is further averred that, the offence has made good and the Applicants have acted bona fide in the matter and any alleged offence is purely technical and will not affect any person and sought to rectify the offence.

We have heard the Practicing Company Secretary for Applicants on 18/10/2016, 18/11/2016, 16/12/2016, 16/01/2017, 14/02/2017 and 28/02/2017. The Practicing Company Secretary contended that, the said contravention committed by the Applicants was neither deliberate nor willful and would further contend that, a lenient view may be taken while compounding the offence.



Section 211 of the Companies Act, 1956 reads as follows:-

“Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such other form as may be approved by the Central government either generally or in any particular case; and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance sheet under the heading ‘Notes’ at the end of that Part:”

211(3C):“For the purposes of this section, the expression Accounting Standards means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), as may be prescribed by the Central Government in consultation with the National Advisory committee on Accounting Standards established under sub-section (1) of section 210A.

Section 211(8) of the Companies Act, 1956 is penal provision for violation reads as follows:-

“If any person, not being a person referred to in sub-section (6) of section 209, having been charged by the [managing director or manager,] or Board of Directors, as the case may be, with the duty of seeing that the provisions of this section and the other requirements aforesaid are complied with, makes default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both:

Provided that no person shall be sentenced to imprisonment for any such offence, unless it was committed willfully.”

Section 217 (3) of the Companies Act, 1956 reads as follows:-

“the Board shall also be bound to give the fullest information and explanations in its report aforesaid, or, in cases falling under the provision to section 222, in an addendum to that report on every reservation, qualification or adverse remark contained in the auditors’ report.”

Section 217(5) of the Companies Act, 1956 is penal provision for violation reads as follows:-

“If any person being a director of a company, fails to take all reasonable steps to comply with the provisions of sub-section (1) to (3), or being the chairman, signs the Board’s report otherwise than in conformity with the provisions of sub-section (4), he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to twenty thousand rupees, or with both:

This Application was filed under section 621A of the Companies Act, 1956. 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 section 621A of the Companies Act, 1956.

We have perused the documents filed by the Applicants. We have seen the Auditors Report on the financial statements of the company for the year ending 31st March 2014. We have also seen the Extract of the Minutes of the Board Meeting held on 7th November 2014 and after going through the Company Application under section 621A of the Companies Act, 1956 and further submissions made by the Practicing Company Secretary for Applicants and the observations of the Registrar of Companies, Karnataka, Bangalore in his report bearing No. ROCB/PS/621A/036515/2015 dated 22nd June 2015, we hereby levy compounding fee for violation of provisions of section 211(3C) and section 217(3) of the Companies Act, 1956 on the Applicants No. 1 & 2 as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.211(3C) of the Companies Act, 1956		Violation of Sec.217(3) of the Companies Act, 1956		Grand Total Rs
		2011-12	2012-13	2011-12	2012-13	
1	1 st Applicant - Director	6,000/-	6,000/-	10,000/-	10,000/-	32,000/-
2	2 nd Applicant -Director	6,000/-	6,000/-	10,000/-	10,000/-	32,000/-

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 30th March 2017 for compliance.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 15th DAY OF MARCH 2017