

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P. No. 176/2017

IN THE MATTER OF COMPANIES ACT, 2013
UNDER SECTION 441 FOR COMPOUNDING OF OFFENCE
UNDER SECTION 96 OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF
M/s BHUMIKA ALLOY CASTINGS PRIVATE LIMITED

Judgement/Order delivered on: 17th November 2017

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

- 1) M/s Bhumika Alloy Castings Private Limited,
Sri Rampura Village,
Sagar Road,
Shivamogga-577201.
- 2) Mr. H.D Deepak – Director,
Bindu Nilaya, 1st Cross,
Rajendranagar,
Shivamogga – 577201.

- APPLICANTS

For the Petitioner (s) Mr. Shashidhara G.S, No. 993A, Secretariat, 22nd
Main, 37th Cross, 4th T Block, Jayanagar,
Bangalore-560041. Practicing Company Secretary
and Authorised representative for the Applicants.

Per: Hon'ble Shri Ashok Kumar Mishra, Member (Technical) – Author

ORDER

The Application was filed by the 1st Applicant Company under Section 441 of the Companies Act, 2013 for the purpose of compounding for violation of provisions of Section 96 of the Companies Act, 2013 and it was numbered as C.P No. 176/2017 in this Tribunal.

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

The 1st Applicant Company was incorporated under the Companies Act, 1956 on 11th April 1996 as a Private Limited Company under the name and style of "M/s Shimoga Vidyuth Alloy Castings Private Limited" vide Registration No. U27320KA1996PTC020264. Subsequently the Company has changed its name to "M/s Bhumika Alloy Castings Private Limited" on 10th April 2003.


The Registered office of the 1st Applicant Company is situated at Sri Rampura Village, Sagar Road, Shivamogga-577201.

It is further averred in the Company Application that, this Application is filed by the 1st Applicant Company which is represented by its present Director, Mr. H.D Deepak, for the purpose of compounding for violation of provisions of Section 96 of the Companies Act, 2013.

As per the averments made in the Company Petition dated 28th July 2017, the authorized capital of the 1st Applicant Company is Rs. 2,25,00,000/- divided into 22,550 Equity Shares of Rs 1,000/- each and the issued, subscribed and paid up share capital of the Company is Rs. 2,25,00,000/- divided into 22,550 Equity Shares of Rs 1,000/- each.

The Main objects of the 1st Applicant Company is to take over the Business, Assets and Liabilities of an existing firm, M/s Sri Sharada Industries, as a going concern and to carry on all or any of the business of Manufacturing, Sale and distribution of alloy castings, ferrous and non ferrous castings, founders, moulders, welders, fitters, wire-drawers, tool makers, galvanisers, electro-platers, extruders (of ferrous, non-ferrous strips, sheets, and extrusions), repairers, mechanics, machine-shop jeepers, spinners, drawers, rollers, job works, sub-contracting, servicing, contract works, pattern-makers, wood workers, boiler makers, machinists, iron and steel converters, work shop keepers, vulcanisers, builders and / or generators and distributors of gas and other forms or power etc., Details of the objects of the Company are mentioned in the Memorandum and Articles of Association of the 1st Applicant Company.

It is further averred in the Company Application that, the 1st Applicant Company could not hold its Annual General Meeting for the financial year 2015-16 within the stipulated period as required under Section 96 read with Section 99 of the Companies Act, 2013 to place before the Board of Directors for approval of the Financial Statements for the year ending 31st March 2016 within the time allowed due to the death of the main promoter and Director of the 1st Applicant Company who passed away on 26th August 2016 and therefore, the



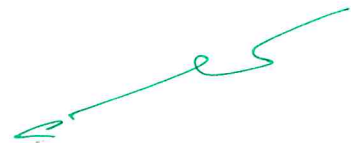

Company could not concentrate on completing the audit process by the Statutory Auditors of the Company. It is further averred that, the family had to appoint a new Director in place of the deceased Director after obtaining the Director identification Number (DIN), which has caused further delay. The Audited financial statements of the 1st Applicant Company for the financial year ending 31st March 2016 were not ready to be presented to the shareholders on the due date of holding the Annual General Meeting and therefore the 1st Applicant Company was not able to convene the Annual General Meeting within the due date for adopting the audited financial statements of the Company. However, the 1st Applicant Company has held the Annual General Meeting on 30th December 2016 with a delay of 91 days and the period of default is from 30/09/2016 to 30/12/2016.

It is also averred in the Company Application that, the above offence committed by the Applicants due to the unforeseen circumstances and beyond the control of the Company 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 Applicants unequivocally declares that the offences committed, do not affect the public interest, in any way and no harm is caused to the public interest.

The 1st Applicant Company represented by its Director suo-moto filed this application admitting violation and prayed for compounding. Thus there was violation of provisions of section 96 of the Companies Act, 2013.

The provisions of section 96 of the Companies Act, 2013 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 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:



Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year:

Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:

Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.”

For violation of provisions of section 96 is punishable under section 99 of the Companies Act, 2013 which 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 the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

We have heard the Practicing Company Secretary for Applicants on 08/11/2017. The Practicing Company Secretary contended that, the default occurred due to unavoidable circumstances and beyond the control of the Applicant Company. The Practicing Company Secretary for Applicants further contend that, the 1st Applicant Company had complied with the requirement of Section 96 of the Companies Act, 2013 and filed true copy of the Notice for convening the Annual General Meeting on 30th December 2016. The Practicing Company Secretary for Applicant further contend that, this is a suo-moto application filed by the Applicants for compounding of violation.


The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/MMM/441/2017 dated 27th September 2017 has stated in his report that, the Applicants 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 20th July 2017 of the 1st Applicant Company wherein the Board of Directors resolved for filing compounding Application and copy of Notice for holding the Annual General Meeting. 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 section 96 of the Companies Act, 2013 on the Applicants as shown in the table given below:-

| Sl. No. | Particulars | Violation of Sec.96 of Companies Act, 2013 | | Total Rs. |
|---------|------------------------------------|--|---|-----------|
| | | For violation | 91 days delay (As per ROC-Karnataka, Bangalore report) | |
| 1 | 1 st Applicant Company | 20,000/- | 500/- x 91 =45,500/- | 65,500/- |
| 2 | 2 nd Applicant-Director | 20,000/- | 500/- x 91 =45,500/- | 65,500/- |

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 1st December 2017 for compliance.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL