

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

C.P.No.179/2017

**IN THE MATTER OF COMPANIES ACT, 2013 AND
IN THE MATTER OF COMPANIES ACT, 1956 UNDER SECTION 621A
& UNDER SECTION 441 –
FOR COMPOUNDING OF OFFENCE UNDER SECTION
211(3)(A) OF THE COMPANIES ACT, 1956
AND
IN THE MATTER OF GMR SPORTS PRIVATE LIMITED**

Judgement/Order delivered on: **19th December 2017**

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

1. **GMR Sports Private Limited,
No. 25/1, Skip House, Museum Road,
Bangalore-560025.**
2. **Mr. Srinivas Bommidala - Director,
No.309, 3rd C cross, 2nd Block, 2nd Stage,
Devasandra Rajmahal Vilas Extension,
Bangalore-560094.**
3. **Mr. Subbarao Gunuputi - Director
D-168, 1ST Floor, Defence Colony,
New Delhi-110024.**
4. **Mr. Narayana Rao Kada – Director,
C-5/23, Sector-C, PKT-5,
(H-N1-61) vasant Kunj,
Delhi-110070**

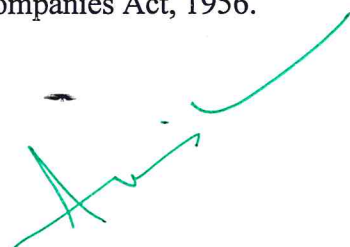

- **APPLICANTS**

For the Petitioner (s): Mr. Hari Babu Thota, No.9, 9th Main, 2nd Block,
Jayanagar, Bengaluru-560011- Practicing Company
Secretary and Authorised Representative for the
Applicants.

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

ORDER

This Application was filed by the Applicants under Section 441 of the Companies Act, 2013, corresponding to Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of Section 211 of the Companies Act, 1956.

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

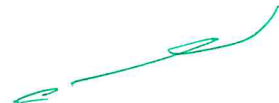
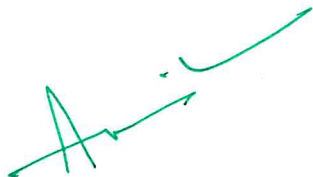
The Company **GMR Sports Private Limited** was incorporated under the Companies Act, 1956 on 19th February 2008 vide Certificate of Incorporation No. **U92410KA2008PTC051176**. The Registered office of the Company is situated at No. 25/1, Skip House, Museum Road, Bangalore-560025.

As per the averments made in the Application, the Authorized Share Capital of the Company is Rs. 65,00,00,000/- divided into 50,00,000 Equity Shares of Rs.10/- each and 6,00,00,000 Preference Shares of Rs 10/- each. The issued, subscribed and paid up share capital of the Company is Rs. 56,21,00,000/- divided into 10,00,000 Equity Shares of Rs.10/- each and 5,52,10,000 Preference Shares of Rs 10/- each as on date.

The Main objects of the Company is to undertake all kinds of commercial activities in the sports and sports related health fields including providing of sports infrastructure, consultancy and without limiting the scope, to engage in the following activities etc.,

- a) To organize sports events, maintaining sports teams, construction, maintenance and taking on or leasing out stadiums (Indoor and Outdoor) or player's ground providing coaching to players, engaging umpires, ground men, and undertaking other related sports and cultural activities.
- b) To manufacture, deal or trade in gaming equipments, apparatus or items related to sports events or activities, provision and maintenance of gaming clubs, arranging of refreshment outlets and other entertainment facilities, engaging sponsors, publishing advertising materials, undertaking promotions, organizing press conferences and other allied activities for facilitating the sports/games events etc.,

It is further averred in the Company Application that, the Applicant Company has received Show Cause Notice bearing No. ROCB/AHN/SCN/SEC 211(3C) 51176/2015 dated 11/12/2015 issued by the Registrar of Companies, Karnataka in which following allegations were raised in the preliminary findings which are as follows:-



- a) During the course of technical scrutiny of Balance Sheet of 2008-09, it is observed that the company had incurred certain expenditure in Foreign currency as follows: Player's fee Rs 8,38,93,640/-, other Professional Fees Rs 1,86,28,655/-, Hire charges Rs 43,01,400/- and other Rs 14,48,195/-. It appears from the profit and loss of the company made upto 31/03/2009 that it has not recorded any profit/loss arising out of the difference in exchange rate as per the AS-11. Hence, there is a prima facie violation of section 211(3C) r/w AS-11 of the Companies Act, 1956.
- b) Whereas, the provision of section 211(3A) provides that every profit and loss account and balance sheet of the company shall comply with the accounting standards.

For the said allegations raised in the preliminary findings, the Company vide its reply dated 23rd December 2015 has made the following explanation:

- a) The company prepared its first financial statements for the period ended 31st March 2009.
- b) During the period, the company has incurred certain expenditure in foreign currency on account of player's fees, support staff fees, hire charges and others./ Amount so spent in foreign currency has been debited to Profit and Loss Account and accordingly disclosed in the note to financial statements;
- c) The company has duly applied all applicable accounting standards including AS-11 "The effects of changes in Foreign Exchange Rates".
- d) As per para 9 of the AS-11, a foreign currency transaction should be recorded, on initial recognition in the reporting currency, by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency at the date of the transaction;
- e) As per para 11 of AS-11, on each Balance Sheet date "Foreign Currency monetary items" should be reported using the closing rate;
- f) It is further stated that, para 13 of the AS mandates that the exchange differences arising on the settlement of monetary items or on reporting the monetary items at rates different from those at which they were initially recorded during the period or reported in previous financial statements, should be recognized as income or as expense in the period in which they arise;
- g) It is further stated, it is pertinent to note the definition of the term "Monetary items" used in para 11 & 13 of the accounting Standards, Monetary item is defined in the Accounting Standards as "money held and assets and liabilities to be received or paid in fixed or determinable amounts of money;

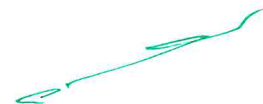
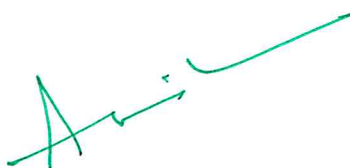
- h) It is further stated that, all the expenses incurred in foreign currency have been paid as and when the obligation to pay arose and such expenses have been accounted at the exchange rate at the transaction date. The company did not have any "monetary items" outstanding as on dated 31st March 2009 as shown in the Balance Sheet.
- i) It is further stated, during the accounting period ending 31st March 2009, the company has incurred net foreign currency loss of Rs 10,940/- on settlement of a Foreign Exchange Monetary Items. As the amount of foreign exchange fluctuation loss was not material, the same has been grouped under other expenses in Schedule 12 of the financial statement; and emphasized that there was no violation in application of Accounting Standards specified under section 211(3A) of the Companies Act, 1956.

It is further averred that, the default occurred is not intentional and is not of such nature as could prejudice to the interests of the members or creditors or others dealing with the Company. The company unequivocally declares that the said default is such as not to affect the public interest in any way and no harm is caused to the public interest and prayed to condone and compound the non-compliance of Section 211(3A) of the Companies Act, 1956.

Copy of financial statements for the financial year ending 31st March 2009 is enclosed to the Company Application.

The disclosures made in the balance sheet for the year 2009-08 did not comply the provisions of Section 211 of the Companies Act 1956, corresponding Section 129 of the Companies Act, 2013. Thereby company has failed to give true and fair view of affairs of the Company. It is further averred that, the said violation was not intentional but occurred due to bonafide reasons as stated above.

The Practicing Company Secretary for the Applicants contended that, this is a suo-moto application filed by the Applicants for compounding of violation committed under section 211 of the Companies Act, 1956 corresponding Section 129 of the Companies Act, 2013. The Practicing Company Secretary further contended that, the said violation occurred due to bonafide reasons and it was neither willful nor intentional and is not with any malafide intention and further contend that, a lenient view may be taken while compounding the offence.



Section 211 (1) 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:”

Section 211(7) of the Companies Act, 1956 is penal provision for violation reads as follows:-

“If any such person as is referred to in sub-section (6) of section 209 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, 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:

The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/AHN/Co.No.51176/2017 dated 20th September 2017 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.

The Registrar of Companies, Karnataka at Bangalore has also informed the Tribunal that, violation is punishable under Section 211 of the Companies Act, 1956. We have also seen the Circular issued by the Ministry of Corporate Affairs relied by the Practicing Company Secretary. The Notification is as follows:

S.O 1936(E):- In exercise of the powers conferred by clause (a) of sub-section (1) of section 434 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 1st June 2016, on which all matters or proceedings or cases pending before the Board of Company Law Administration (Company Law Board shall stand transferred to the National Company Law Tribunal and it shall dispose of such matters or proceedings or cases in accordance with the provisions of the Companies Act, 2013 or the Companies Act, 1956.

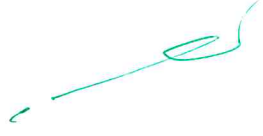
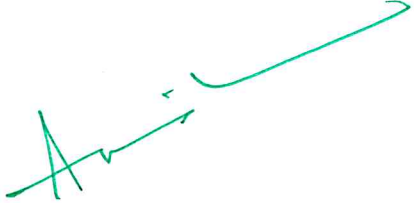



The violation relates to the financial years ending 31/03/2009, so the provisions of the Companies Act, 1956 would apply for this violation. Section 211 of the Companies Act, 1956 would apply to the facts of this case. Though the Petition was filed under section 441 of the Companies Act, 2013, but violation took place for the years ending 31/03/2009. Hence, the Application is to be decided under the relevant provisions of the Companies Act, 1956. This violation is considered under section 621A of the Companies Act, 1956 (corresponding to Section 441 of the Companies Act, 2013).

Further Ministry of Corporate Affairs, New Delhi has issued a General Circular bearing No. 08/2014 dated 4th April 2014, clarifying that the financial statements (and documents required to be attached thereto) auditors report, Board's report in respect of financial years, that commenced earlier than 1st April 2014, shall be governed by the relevant provisions/schedules/rules of the Companies Act, 1956 and that in respect of financial years after 1st April 2014, the provisions of the new Act shall apply.

In the light of Ministry of Corporate Affairs, New Delhi Circular clarification, this compounding application made by the Applicants of the Company have been considered for compounding the offence under section 621A of the erstwhile Companies Act, 1956 (corresponding to Section 129 of the Companies Act, 2013)

We have seen the Certified Copy of the extract of Board Resolution dated 17th August 2017 of the Company wherein the Board of Directors resolved for filing compounding Application, copy of Form No. GNL-1 vide SRN G52253416 dated 6th September 2017 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 non-compliance of the provisions of Section 211 of the Companies Act, 1956 for the financial years 2008-09 on the Applicants 2, 3 and 4 as shown in the table given below. The Company 1st Applicant is not liable and compounding fee is not levied on 1st Applicant.



Sl. No.	Particulars	Violation of Section 211 of the Companies Act, 1956	Grand Total Rs.
		2008-09	
1	2 nd Applicant-Director	10,000/-	10,000/-
2	3 rd Applicant-Director	10,000/-	10,000/-
3	4 th Applicant-Director	10,000/-	10,000/-

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on **3rd January 2018** for compliance.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL