

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH  
T.P.NO. 129/2016**

**IN**

**CA NO. 203/621A/CB/2014**

**(DATED: THURSDAY, THE 20<sup>th</sup> DAY OF APRIL 2017)**

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

**IN THE MATTER OF THE COMPANIES ACT, 2013  
SECTION 621A OF THE COMPANIES ACT, 1956 UNDER SECTION 166  
OF THE COMPANIES ACT, 1956**

**AND**

**IN THE MATTER OF M/s G-CORP LOTUS MALL PRIVATE LIMITED**

**T.P.NO. 129/2016 IN CA NO. 203/621A/CB/2014**

1. M/s G-Corp Lotus Mall Private Limited  
"Doddamane" No.19/3,  
Vittal Mallya Road,  
Bangalore-560001.
2. Mr. Suresh Thimme Gowda Kumar - Director,  
No. 65, Vani Vilas Road,  
Basavanagudi,  
Bangalore-560004.
3. Mr. Ajantha Jayaram Shetty-Director,  
29630, 2<sup>nd</sup> Cross, Chanmundeswari Layout,  
Vidyaranyaपुरa, Near Ganesh Temple,  
Bangalore-560097.
4. Mr. Thomas Patrick Quinn - Director,  
128A Merrion Road,  
Balls Bridge,  
Dublin, 000000, Ireland.
5. Mr. Sharath Gowda - Director,  
No. 65, North Road,  
Basavanagudi,  
Bangalore-560004

**APPLICANTS**

**PARTIES PRESENT:** Mr. Ballambettu Ullas Kiran Pai, Level 6, Basappa Complex,  
Lavelle Road, Bangalore-560001, Practicing Company Secretary  
and Authorised representative for the Applicants.

Heard on: 27/10/2016, 16/11/2016, 05/12/2016, 23/12/2016, 30/01/2017,  
15/02/2017 and 21/03/2017.

### COMMON ORDER

Applications are filed on behalf of the Applicants under Sec. 621A of Companies Act 1956 before the Company Law Board, Southern Region, Chennai and numbered as C.A 203/621A/CB/2014. 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. It was renumbered as T.P No. 129/2016 in this Tribunal. This application is filed by the Applicants with a prayer to record compounding for violation of provisions of section 166 of the Companies Act, 1956.

The 1<sup>st</sup> Applicant is the Company and the Applicants 2 to 5 are the Directors of the Company and the Applicants filed two separate Applications before the Registrar of Companies, Karnataka at Bangalore for compounding of default for each year. The Registrar of Companies, Karnataka, Bangalore, has also given report for default period of 2 years i.e., 2009-10 and 2010-11. Accordingly, these two Applications are decided by a common order. Basing on the report of Registrar of Companies, Karnataka, Bangalore, vide letter No. ROC-STA/Section 621-A/Sec.166/Co.No.46757/ Report / 2014 dated 21<sup>st</sup> April 2014, it disclosed that Applicant No.3 herein was not a Director at the relevant period and therefore, no compounding fee can be levied against him.

The averments in the Company Application are briefly stated hereunder:

The 1<sup>st</sup> Applicant is a company which was incorporated under the Companies Act, 1956 on 11<sup>th</sup> June 2008 under the name and style "G-Corp Lotus Mall Private Limited" vide Corporate Identity No. U45200KA2008PTC046757. The Registered Office of the company is situated at "Doddamane" No.19/3, Vittal Mallya Road, Bangalore-560001.

The Authorised Share Capital of the Applicant Company as per latest Audited Balance Sheet is Rs. 9,72,42,000/- divided into:-

- i) 20,000 Equity Shares of Rs 10/- each amounting to Rs 2,00,000/-
- ii) 3,67,400 Convertible Preference Shares of Rs 100/- each amounting to Rs 3,67,40,000/-
- iii) 1000 Class B equity shares of Rs 10/- each amounting to Rs 1000/-
- iv) 1,50,730 Compulsory Convertible Preference shares of Rs 400/- each amounting to Rs 6,02,92,000/-

And the paid up share capital of the Company is Rs 9,68,58,800/-



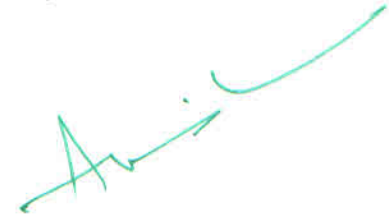

The main object of the 1<sup>st</sup> Applicant Company is to engage in the business of construction, maintenance and running of business complexes, shopping complexes and malls anywhere in India and to engage in the ancillary business of running restaurants, cinema halls, eating places, shops and other business establishments as part of running of malls etc., Details of the main object of the Company are stated in the Memorandum and Articles of Association.

It is averred in the Company Applications that, the 1<sup>st</sup> Applicant Company could not conduct its Annual General Meetings within the prescribed time limit for the financial years 2009-10 and 2010-11. The Annual General Meetings were held after its due date. The reason is that, the Directors of the 1<sup>st</sup> Applicant Company were pre occupied for business programme travelling outside India. Due to the delay in signing and placing before the Board the financials for the year 2009-10 and 2010-11, the Company could not convene the Annual General Meetings for the years 2009-10 and 2010-11 within the specified time. However, the Company held its Annual General Meetings for the financial year ended 31<sup>st</sup> March 2010 and 31<sup>st</sup> March 2011 on 5<sup>th</sup> June 2012 respectively. Thus there was delay of 614 days and 249 days and thereby violation of provisions of section 166 of the Companies Act, 1956. The violation of provisions of section 166 of the Companies Act, 1956 was neither willful nor wanton and it was occurred beyond control of the Applicants.

Thus 1<sup>st</sup> Applicant Company admitted violation of provisions of section 166(1) of the Companies Act, 1956, in not holding Annual General Meetings for the financial years ending 31<sup>st</sup> March 2010 and 31<sup>st</sup> March 2011 within the prescribed time, which reads as follows:-

“Every 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.”<sup>1</sup>

For the violation of section 166 (1) of the Companies Act, 1956, the punishment is provided under section 168 of the Companies Act, 1956 reads as follows:-



“if default is made in holding a meeting of the company in accordance with section 166, or in complying with any directions of the Tribunal or the Central Government, as the case may be under sub-section (1) of section 167, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees and in the case of a continuing default, with a further fine which may extend to two thousand five hundred rupees for every day after the first during which such default continues”.

We have received report from the Registrar of Companies, Karnataka at Bangalore vide letter No. ROC-STA/Section 621-A/Sec.166/Co.No.46757/Report/2014 dated 21<sup>st</sup> April 2014 who stated that offence can be compounded by levying compounding fee on the Applicants. We have seen Memorandum and Articles of Association. After considering the submissions made by the Practicing Company Secretary for the Applicants and after going through the contents of the applications and documents filed, we hereby levy the compounding fee for violation of section 166 of the Companies Act, 1956 on Applicant Nos.1,2,4 and 5 as set out in the table given hereunder:-

Sl. No.	Particulars	Violation of Sec.166 of Companies Act, 1956		No. of days delay		Grand Total Rs.
		2009-10	2010-11	2009-10	2010-11	
1	1 <sup>st</sup> Applicant Company	10,000/-	10,000/-	614 x 250/- = 1,53,500/-	249 x 250/- = 62,250/-	2,35,750/-
2	2 <sup>nd</sup> Applicant-Director	10,000/-	10,000/-	614 x 250/- = 1,53,500/-	249 x 250/- = 62,250/-	2,35,750/-
3	4 <sup>th</sup> Applicant-Director	10,000/-	10,000/-	614 x 250/- = 1,53,500/-	249 x 250/- = 62,250/-	2,35,750/-
4	5 <sup>th</sup> Applicant-Director	10,000/-	10,000/-	614 x 250/- = 1,53,500/-	249 x 250/- = 62,250/-	2,35,750/-

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 4<sup>th</sup> May 2017 for compliance.

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

DATED THIS THE 20<sup>th</sup> DAY OF APRIL, 2017.