

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 131/2016

IN
CA NO. 205/621A/CB/2014
(DATED: THURSDAY, THE 20TH 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 220
OF THE COMPANIES ACT, 1956

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

T.P.NO. 131/2016 IN CA NO. 205/621A/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, 2nd Cross, Chanmundeshwari Layout,
Vidyaranyapura, 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 205/621A/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. 131/2016 in this Tribunal. This application is filed by the Applicants with a prayer to record compounding for violation of provisions of section 220 of the Companies Act, 1956.

The 1st 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.220/Co.No.46757/ Report / 2014 dated 21st 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.

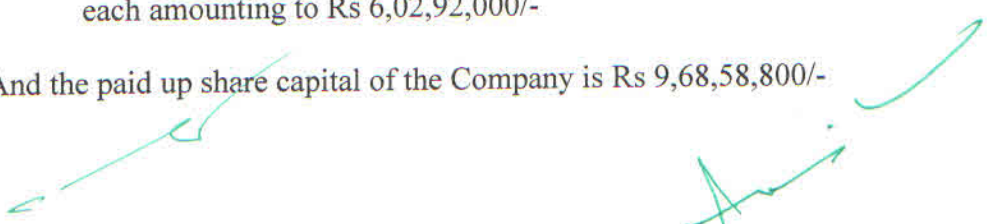
The averments in the Company Application are briefly stated hereunder:

The 1st Applicant is a company which was incorporated under the Companies Act, 1956 on 11th 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/-



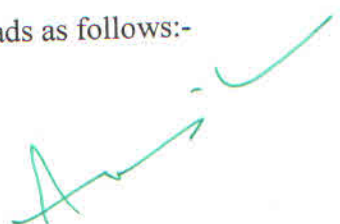

The main object of the 1st Applicant Company is to engage in the business of construction, maintenance and running of business complexes, shopping complexes and malls anywhere in India and to engage in the ancillary business of running restaurants, cinema halls, eating places, shops and other business 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 1st Applicant Company had not filed its Balance sheet and Profit and Loss Account for the years 2009-10 and 2010-11 with the Registrar of Companies, Karnataka, Bangalore and is said to have contravened the provisions of Section 220 of the Companies Act, 1956.

It is also averred in the Company Applications that, the 1st Applicant Company could not conduct the Annual General Meetings for the financial years 2009-10 and 2010-11 within the prescribed time and that Annual General Meetings were held after due date. It is further averred that, the main reason for the delay was that, the Applicant No.4 herein is the Director of the 1st Applicant Company is a Foreign National, who represents M/s Lotus One Development, the majority shareholders of the Company and he could not approve the Balance Sheet and Profit and Loss Account before the due date for convening the Annual General Meeting and 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 Meeting for the years 2009-10 and 2010-11 and therefore failed to file the Balance sheet and Profit and Loss Account for the said years.

However, the 1st Applicant Company has stated that, the offence was made good that, the company has filed the Balance sheet and Profit and Loss Account for the financial years 2009-10 and 2010-11 with the Registrar of Companies, Karnataka, Bangalore on 5th July 2012 with a delay of 615 days and 250 days respectively in the prescribed Form 23AC and Form 23ACA. The violation of provisions of section 220 of the Companies Act, 1956 was neither willful nor wanton and it was occurred beyond control of the Applicants.

This suo-moto applications are filed by the Applicant Company and its directors for compounding the violation under section 220 read with the provisions of section 162 of the Companies Act, 1956 for compounding reads as follows:-



“After the balance sheet and the profit and loss account have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar within thirty days from the date on which the balance sheet and the profit and loss account were so laid, or where the annual general meeting of a company for any year has not been held, there shall be filed with the Registrar within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act.”

The contravention of Section 220 is punishable under section 162(1) of the Companies Act, 1956 reads as follows:

“If a company fails to comply with any of the provisions contained in section 159, 160 or 161, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to Rs 500/- for every day during which the default continues”.

We have seen Memorandum and Articles of Association and also we have seen the Balance sheet and Profit and Loss Account filed in Form 23AC and Form 23ACA along with the Challans with the Registrar of Companies, Karnataka, Bangalore for the financial years 2009-10 and 2010-11.

We have received report from the Registrar of Companies, Karnataka at Bangalore vide letter No. ROC-STA/Section 621-A/Sec.220/Co.No.46757/ Report / 2014 dated 21st April 2014 who stated that offence can be compounded by levying compounding fee on the Applicants. 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 220 of the Companies Act, 1956 on Applicants No. 1, 2, 4 and 5 as set out in the table given hereunder:-

Sl. No.	Particulars	Violation of Sec.220 of Companies Act, 1956 With No. of days delays		Total
		2009-10	2010-11	
1	1 st Applicant Company	615 x 50/- = 30,750/-	250 x 50/- = 12,500/-	43,250/-
2	2 nd Applicant- Director	615 x 50/- = 30,750/-	250 x 50/- = 12,500/-	43,250/-
3	4 th Applicant-Director	615 x 50/- = 30,750/-	250 x 50/- = 12,500/-	43,250/-
4	5 th Applicant-Director	615 x 50/- = 30,750/-	250 x 50/- = 12,500/-	43,250/-

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


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 20th DAY OF APRIL, 2017.