

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 281/2016

DATED: TUESDAY THE 20TH DAY OF JUNE 2017

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

IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 621A FOR COMPOUNDING OF OFFENCE UNDER
SECTIONS 166 AND 210
OF THE COMPANIES ACT, 1956
AND
IN THE MATTER OF
M/s C. KRISHNAIAH CHETTY & SONS PRIVATE LIMITED

T.P.NO. 281/2016

1. **M/s C.Krishnaiah Chetty & Sons Private Limited,**
35, Commercial Street,
Bangalore-560001.
2. **Mr. C.V.Hayagriv- Chairman,**
No.1/34. W.H Hanumanthappa Layout,
Ulsoor Road, Sivanchetty PO,
Bangalore-560042.
3. **Mr. C.Vinod Hayagriv- Managing Director,**
No.1/34. W.H Hanumanthappa Layout,
Ulsoor Road, Sivanchetty PO,
Bangalore-560042.
4. **Mr. C. Ganesh Narayan – Jt. Managing Director**
Krishna Prasad
No.14/A, 1st Main Road,
1st Block, Koramangala,
Bangalore-560034.
5. **Smt. Chaitanya V.Cotha, Director**
No.1/34. W.H Hanumanthappa Layout,
Ulsoor Road, Sivanchetty PO,
Bangalore-560042.
6. **Smt. Shreyas V. Cotha, Director**
No.1/34. W.H Hanumanthappa Layout,
Ulsoor Road, Sivanchetty PO,
Bangalore-560042.

7. **Smt. C. Visala Hayagriv, Director**
No.1/34. W.H Hanumanthappa Layout,
Ulsoor Road, Sivanchetty PO,
Bangalore-560042.
8. **Smt. C.Triveni Vinod, Director**
No.1/34. W.H Hanumanthappa Layout,
Ulsoor Road, Sivanchetty PO,
Bangalore-560042.
9. **Mr. C.Valli Narayan, Director**
Krishna Prasad
No.14/A, 1st Main Road,
1st Block, Koramangala,
Bangalore-560034. -

APPLICANTS**PARTIES PRESENT:**

Ms. Sheela Arvind, # 158-35/3, 3rd Main, Industrial Town, Rajajinagar, Bangalore-560044- Practicing Company Secretary and Authorised Representative for the Applicants.

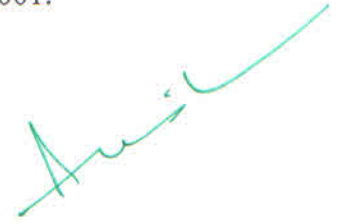
Heard on: 19/09/2016, 05/10/2016, 21/10/2016, 07/11/2016, 08/11/2016,
07/12/2016, 04/01/2017, 31/01/2017, 02/03/2017, 04/04/2017,
27/04/2017 and 06/06/2017

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 Sections 166 and 210 of the Companies Act, 1956 and it was unnumbered. 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 numbered as T.P No. 281/2016.

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

The 1st Applicant Company was incorporated under the Companies Act, 1956 on 24th December 1979 as a Private Limited Company under the name and style of "M/s C. Krishnaiah Chetty & Sons Private Limited" vide Registration No. CIN U27205KA1979PTC003692. The Registered office of the company is situated at No.35, 1 Floor, Commercial Street, Bangalore-560001.

The Authorized share capital of the 1st Applicant Company is Rs. 500 lakhs divided into 50,000 Equity Shares of Rs 1000/- each and the paid up capital of the Company is Rs. 4,86,40,000/- consisting 48,640 Equity Shares of Rs 1000/- each.

The Main objects of the 1st Applicant Company is to carry on the business of jewelers, bullion, merchant, gold-smiths, silver smiths, gem and stone merchants; to manufacture and deal in precious stones, diamonds, pearls, jewellery, silver ware (hallow and table ware), and allied articles and ornaments; to manufacture, repair, let or hire or on hire purchase system; to carry on the business of exports of jewellery etc., Details of the objects of the company are mentioned in the Memorandum and Articles of Association of the Applicant Company.

It is averred in the Company Application that, the 1st Applicant Company could not conduct its Annual General Meeting for the financial year 2012-13 as required under Section 166 of the Companies Act, 1956 and failed to place before the Board of Directors for approval of the Financial Statements for the year ending 31st March 2013 although the financial statements were ready. As the financial statement was not presented before the Members in Annual General Meeting, the Annual Returns were not filed within the prescribed due date, stating the reasons that, the Company has certain internal issues relating to the Board of Directors and they are not in agreement with each other with respect to business and due to which the board has agreed to review all aspects after coming to a consensus. It is further averred that, some of the directors of the Company are intending of demerger of the company and majority of the Directors are not in favour of the Demerger of the Company. It is further averred that, the company has sought extension till 31st December 2013 for holding its Annual General Meeting on 29th September 2013 from the Central Government. However, the request for extension was rejected by the Registrar of Companies, Karnataka Bangalore stating that, "**the reason is not valid one hence rejected**". Thereby contravened the provisions of Section 166 of the Companies Act, 1956 in not holding the Annual General Meeting and also failed to place the books of accounts i.e., financial statement before the Members as per Section 210 of the Companies Act, 1956. However, the 1st Applicant Company held its Annual General Meeting on 23rd December 2013 and place the books of accounts before the Members and made good the violations with a delay of 83 days.

It is also averred in the Company Application that, the above offences were committed by the Applicants due to unavoidable circumstances and that the Annual General Meeting was conducted with delay and there is no mens rea.

The Practicing Company Secretary for Applicants further contend that, this is a suo-moto application filed by the Company and its Directors for compounding of violation committed under sections 166 and 210 of the Companies Act, 1956. The Practicing Company Secretary further contended that, a lenient view may be taken while compounding the offence.

Section 166 (1) of the Companies Act, 1956 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:”

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”.

Section 210(1) of the Companies Act, 1956, provides that:-

At every annual general meeting of a company held in pursuance of section 166, the Board of directors of the company shall lay before the company –

- (a) a balance sheet as at the end of the period specified in sub-section (3); and
- (b) a profit and loss account for that period.

For the violation of section 210(1) of the Companies Act, 1956 the punishment is provided under sub-section (5) of section 210 of the Companies Act, 1956 which reads as follows:-

“If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section, 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 Rs 10,000/- 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. Before erstwhile Company Law Board, Southern Region, Chennai this application was filed. Therefore, this application is to be decided under the provisions of section 621A of the Companies Act, 1956.

We have heard the Practicing Company Secretary for Applicants, who contended that, the default occurred due to certain internal issues relating to the Board of Directors and they are not in agreement with each other with respect to the affairs of the Company. The Practicing Company Secretary for Applicants further contend that, the 1st Applicant Company had complied with the requirement of Sections 166 and 210 of the Companies Act, 1956 and filed Form 61 vide SRN No. COO862839 on 27th March 2014 with the Registrar of Companies, Karnataka, Bangalore.

The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/SVK/3692/621A/2017 dated 1st April 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.

We have seen the Certified Copy of the extract of Board Resolution dated 11th March 2014 of the 1st Applicant Company wherein the Board of Directors resolved for filing compounding Application, We have seen the Memorandum and Articles of Association of the Company. 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 violations of provisions of section 166 and sub-section 5 of section 210 of the Companies Act, 1956 for the delay in conducting Annual General Meeting and non-submission of audited annual accounts before the Annual General Meeting on the Applicants as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.166 of Companies Act, 1956		Violation of Sec.210 of Companies Act, 1956	Total
		For violation	83 days delay		
1	1 st Applicant Company	5,000/-	250/- x 83 = 20,750/-	-	25,750/-
2	2 nd Applicant - Chairman	5,000/-	250/- x 83 = 20,750/-	6,000/-	31,750/-
3	3 rd Applicant - Managing Director	5,000/-	250/- x 83 = 20,750/-	6,000/-	31,750/-
4	4 th Applicant - Jt. Managing Director	5,000/-	250/- x 83 = 20,750/-	6,000/-	31,750/-
5	5 th Applicant - Director	5,000/-	250/- x 83 = 20,750/-	6,000/-	31,750/-
6	6 th Applicant - Director	5,000/-	250/- x 83 = 20,750/-	6,000/-	31,750/-
7	7 th Applicant - Director	5,000/-	250/- x 83 = 20,750/-	6,000/-	31,750/-
8	8 th Applicant - Director	5,000/-	250/- x 83 = 20,750/-	6,000/-	31,750/-
9	9 th Applicant - Director	5,000/-	250/- x 83 = 20,750/-	6,000/-	31,750/-

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


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 20th DAY OF JUNE, 2017.