

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

C.P.NO. 19/2017

DATED: WEDNESDAY THE 21ST 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 210 READ WITH SECTION 210(5)
OF THE COMPANIES ACT, 1956**

AND

**IN THE MATTER OF
ARCTERN CONSULTING PRIVATE LIMITED**

C.P.NO. 19/2017

1. Mr. Michael George Pienaar- Director,
Arctern Consulting Private Limited,
19 Briarwood Way, North Haledon,
New Jersey, 07508, USA.
2. Mr. Bijal Mehta, Managing Director,
Arctern Consulting Private Limited,
3793 La Donna Avenue,
Palo Alto, California, 94306, USA.
3. Mr. Kamallesh Ambalal Mehta - Director
Arctern Consulting Private Limited,
901, Olympus 1, Acropolis Apartments,
20, Hosur Road,
Koramangala,
Bangalore-560029

APPLICANTS

PARTIES PRESENT:

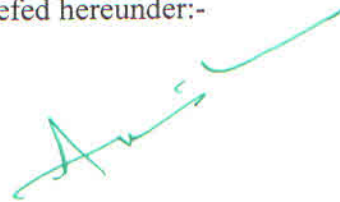
Mr. I.B Harikrishna, No.44/38, Veerabhadran
Street, Valluvarkottam, Nungambakkam,
Chennai-600034 – Practicing Company Secretary
and Authorised representatives for the Applicants.

Heard on: 05/06/2017.

ORDER

This Application was filed by the Applicants under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of Section 210 read with section 210(5) of the Companies Act, 1956.

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

The Company by name ARCTERN CONSULTING PRIVATE LIMITED was incorporated under the Companies Act, 1956 on 19th August 2004, as a Private Limited Company under the name and style of "Arctern Consulting Private Limited" vide CIN No. U74201KA2004PTC034530. The Registered office of the company is situated at No. 49/8, 2nd Floor, Near Jyothi Nivas College, 60 Feet Road, Koramangala Industrial Layout, Bangalore-560095.

As per the latest Balance Sheet the Authorized share capital of the Applicant Company is Rs. 7,70,00,000/- divided into 50,000 Equity Shares of Rs 10/- each and 76,50,000 of preference shares of Rs 10/- each. The Issued, Subscribed and Paid up Capital of the Company is Rs. 7,66, 44,650/- divided into 40,000 Equity Shares of Rs 10/- each and 76,24,465 of preference shares of Rs 10/- each.

The Main objects of the Company is to carry on in India or elsewhere the business of acting as consultants and advisers, relating to technical operational and industrial knowhow, project or design engineering, marketing and other research and feasibility studies, human resources development, industrial and labour relations, information systems and processes and all other matters in any way connected or concerned with or relating thereto including the business of panning, designing, developing, writing, creating, testing And supplying computer software and systems, programming, hardware evaluation software and hardware documentation and data processing and analysis etc., Details of the objects of the company are mentioned in the Memorandum and Articles of Association of the Company.

It is further averred in the Company Application that, the Applicants could not place the Annual Accounts of the Company for the financial year ending 31st March 2013 at the Annual General Meeting within the stipulated period as required under Section 210 of the Companies Act, 1956 due to the reasons that, the Applicant Company is part of a group of companies owned by Volt Information Sciences, Inc., a US Corporation and during the period from 17th July 2009 to 9th April 2013, the parent company of the Arctern Consulting Private Limited undertook an extensive and comprehensive review of accounting practices which resulted in a restatement of financials, during and after the extensive restatement effort, the parent company also experienced extensive changes in its management and business activities. As a result of the restatement and transition period of the

parent company, its executive management was faced with delays in preparation and coordination to prepare the audited Annual Accounts of the Company, However, the Company made diligent efforts to prepare and filed the audited Annual Accounts of the Company upon installation of the new management team in an expedient manner and hold its Annual General Meeting for the financial year ending 31st March 2013 on 6th November 2014 in which, inter alia, the annual audited accounts for the year ending 31st March 2013 were placed before the members of the Company.

It is also averred in the Company Application that, the above offence committed by the Applicants due to unavoidable circumstances and unintentional and further is not of such nature as to prejudice the interests of the members or creditors or others dealing with the Company and the Applicants unequivocally declares that the offence committed by them does not affect the public interest in any way and no harm has caused to the public interest.

The Practicing Company Secretary for Applicants contended that, this is a suo-moto application filed by the Applicants for compounding of violation committed under section 210 of the Companies Act, 1956. The Practicing Company Secretary further contended that, the new management of the Company has taken actions and implemented policies designed to prevent any future defaults and further contend that, a lenient view may be taken while compounding the offence.

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 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. This Application was filed before Registrar of Companies, Karnataka, Bangalore on 26th April 2016. 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 on 05/06/2017. The Practicing Company Secretary contended that, the parent company was undergoing transition stage due to changes in its management and business activities; as a result of the transition period of the parent company the management was faced with delays in preparation and coordination to prepare the audited Annual Accounts of the Company and hence the Annual General Meeting could not be held within the stipulated time. The Practicing Company Secretary for Applicants further contend that, the Company had complied with the requirement and held the Annual General Meeting for the financial year ending 31st March 2013 on 6th November 2014 in which, inter alia, the annual audited accounts for the year ending 31st March 2013 were placed before the members of the Company.

The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/MMM/621A/034530/2017 dated 5th April 2017 has stated in his report that, the Applicants admitted the default and 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 10th March 2016 of the Company wherein the Board of Directors resolved for filing compounding Application, copy of Form No. 23AC-XBRL 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 delay in complying section 210 of the Companies Act, 1956 on the Applicants as shown in the table given below:-



Sl. No.	Particulars	Violation of Sec.210 of the Companies Act, 1956	Grand Total Rs.
1	1 st Applicant – Director	6,000/-	6,000/-
2	2 nd Applicant- Director	6,000/-	6,000/-
3	3 rd Applicant- Director	6,000/-	6,000/-

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 5TH July 2017 for compliance.

21.6.17
(RATAKONDA MURALI)
MEMBER, JUDICIAL

21.6.17
(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE *21st* DAY OF JUNE, 2017.