

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

C.P.NO. 71/2017

C/W

C.P.NO. 84/2017

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

AND

**IN THE MATTER OF
M/s L-1 IDENTITY SOLUTIONS OPERATING COMPANY
PRIVATE LIMITED**

Judgement/Order delivered on: **21st September 2017**

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

1. **M/s L-1 Identity Solutions Operating Company Private Limited,
No.9, Vatika Business Centre, 2nd Floor,
A Wing Divyashree Chambers,
11 O'Shaugnessy Road, Bangalore-560025**
2. **Mr. Jean Marc Pincemaille - Director,
26, Rue Des Dentellieres, Meru, 60110, France.**
3. **Mr. Yves Charles Marie Charvin – Director,
73, Rue de la Bievre,
Bourg La Reine, 92340, France. -**

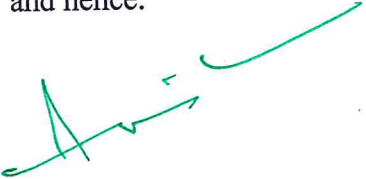
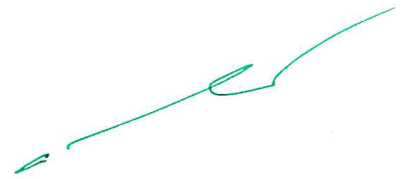
APPLICANTS

For the Applicant (s):

Mr. Biswajit Ghosh, No.926, 20th Main, Near BDA
Complex, Banashankari 2nd Stage, Bangalore-
560070 -Practicing Company Secretary &
Authorised Representative for the Applicants.

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

On verification of the records, it is ascertained that, the Applicants filed two applications for compounding of violation of Section 166 of the Companies Act, 1956 separately for each year. The Registrar of Companies, Karnataka, Bangalore, has also given separate reports for default period of 2 years i.e., 2010-11 and 2011-12 which are numbered as C.P No. 71/2017 and 84/2017 on the file of this Tribunal. In order to compound the violation, it is decided to combined these Applications and hence.

COMMON ORDER

These Applications were filed by the Applicants under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of Section 166 read with section 168 of the Companies Act, 1956.

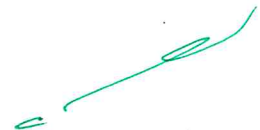
The averments made in the Company Applications are briefed as hereunder:-

The 1st Applicant Company was incorporated under the Companies Act, 1956 on 4th June 2010, as a Private Limited Company under the name and style of **"L-1 Identity Solutions Operating Company Private Limited"** vide CIN No. **U4900KA2010PTC053951**. The Registered office of the company is situated at No.9, Vatika Business Centre, 2nd Floor, A Wing Divyashree Chambers, 11 O'Shaugnessy Road, Bangalore-560025.

The Authorized share capital of the 1st Applicant Company is Rs. 1,00,00,000/- divided into 10,00,000 Equity Shares of Rs 10/- each and the paid up capital of the 1st Applicant Company is Rs. 82,98,000/- divided into 8,29,800 Equity Shares of Rs 10/- each.

The Main objects of the 1st Applicant Company is to carry on the business as of developing, designing, licensing, testing, selling and marketing and otherwise dealing in information technology products and services including those used for the purposes of securing, identifying and protecting personal identities and assets by providing state-of-the-art technologies that capture, store, manage and distribute biometric data using biometric technology etc., Details of the objects of the company are mentioned in the Memorandum and Articles of Association of the 1st Applicant Company (shown as **Annexure-A1** of the Petition).

It is averred in the Company Applications that, the 1st Applicant Company could not conduct its Annual General Meeting within the prescribed time limit for the financial years 2010-11 and 2011-12. The Annual General Meetings were held after its due date. The reason is that, the Directors of the Company could not sign the Balance Sheet and Profit and Loss Account before the due date for convening the Annual General Meeting and also there was a change in the management and

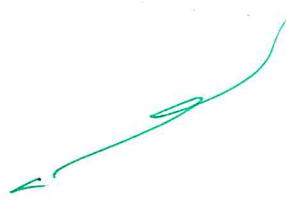



ownership of the company during mid of July 2011 and hence the finalization of accounts was delayed and the company could not conduct the Annual General Meetings as required under the provisions of section 166 of the Companies Act, 1956. It is further averred that, the company since its incorporation, has been closely held private limited company with its number of shareholders not crossing beyond three and there being no involvement of public in any form. The company had a few employees on its rolls and most of them have been dedicated towards developing the business of the company with requisite technical background and due to lack of knowledge of the requirements of compliances under Companies Act, 1956 the company fails to comply with the provisions of section 166 of the Companies Act, 1956. However, the Annual General Meetings for the financial years 2010-11 and 2011-12 has been convened belatedly on 29th September 2012 and 12th July 2013 with a delay of 301 days and 285 days respectively

We have heard the Practicing Company Secretary for Applicants, who contended that, this is a suo-moto application filed by the Applicants for compounding of violation committed under section 166 of the Companies Act, 1956. The Practicing Company Secretary would contend that, the default occurred due to acquisition of the company, by virtue of which there was a change in the management and ownership of the company during the middle of July 2011. Since there was a change in the entire management team, the finalization of the accounts was delayed. He further contended that, there was no willful default and it was occurred beyond the control of the applicants and would further contend that, a lenient view may be taken while compounding the offence.

Thus 1st 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 31st March 2011 and 31st March 2012 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.”



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”.

The Registrar of Companies, Karnataka, Bangalore vide its letters bearing No. ROCB/AHN/STA/53951/166(2011)/2016 dated 09/05/2017 and dated 12.06/2017 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 16th December 2015 and 16th June 2017 of the 1st Applicant Company wherein the Board of Directors resolved for filing compounding Application:-

“RESOLVED THAT the approval of the Directors of the Company be and is hereby accorded for making an application to the Company Law Board/Regional Director through the Registrar of companies, Karnataka, under section 621A of the Companies Act, 1956 to compound the offences committed by the Company under Sections 159, 166, 210, 220 and 383A of the Companies Act, 1956 in relation to delay / default in holding Annual General Meeting, adoption of the accounts and filing of the Annual Accounts and Annual return in relation to the Company's financial year 2010-11 and 2011-12.”

We have also seen copy of e-Form No. GNL-1 along with the challans filed with the Registrar of Companies, Karnataka, Bangalore on 15/03/2016. After considering the materials on record and after taking into account the submissions made by the Practicing Company Secretary for the Applicants, that a lenient view may be taken, we hereby levy the compounding fee for violation of section 166 of the Companies Act, 1956 on the Applicants as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.166 of Companies Act, 1956		No. of days delay		Grand Total Rs.
		2010-11	2011-12	2010-11	2011-12	
1	1 st Applicant Company	10,000/-	10,000/-	301 x 200/- = 60,200/-	285 x 200/- = 57,200/-	1,37,200/-
2	2 nd Applicant-Director	10,000/-	10,000/-	301 x 200/- = 60,200/-	285 x 200/- = 57,200/-	1,37,200/-
3	3 rd Applicant-Director	10,000/-	10,000/-	301 x 200/- = 60,200/-	285 x 200/- = 57,200/-	1,37,200/-

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 October 2017 for compliance.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL