

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

**C.P.NO. 65/2017**

**IN THE MATTER OF COMPANIES ACT, 1956  
UNDER SECTION 159 READ WITH SECTION 162  
OF THE COMPANIES ACT, 1956**

**AND**

**IN THE MATTER OF  
SRI KUMARASWAMY MINERAL EXPORTS PRIVATE LIMITED**

Judgement/Order delivered on: **24<sup>th</sup> August 2017**

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

1. **Sri Kumaraswamy Mineral Exports Private Limited,  
No. 35, Park Enclave, 2<sup>nd</sup> Floor, Park Road, Tasker Town,  
Shivajinagar, Bangalore-560051.**
2. **Mr. Shantesh Gureddi - Director,  
Sri Kumaraswamy Mineral Exports Private Limited,  
No. 516/4, 10<sup>th</sup> Cross, Rajamahal Vilas Extension,  
Sadashivanagar, Bangalore-560080.**
3. **Mr. Ravindranath Alva – Director,  
Sri Kumaraswamy Mineral Exports Private Limited,  
Anugraha Mayreddy Layout, Infantry Road,  
Cantonment, Bellary-583104.**
4. **Mr. Tapal Bhavaniprasad – Director,  
Sri Kumaraswamy Mineral Exports Private Limited,  
Sai Bhavan, Flat # 16, Renukacharya Nagar,  
Sangankal Road, Bellary-583103** -

**APPLICANTS**

For the Applicant (s) : Mr. S. Manjunath, # 9, "Manjushree"  
3<sup>rd</sup> Floor, West Link Road, Malleswaram,  
Bangalore-560003 Advocate and authorized  
representative for the Applicants

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

**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 159 read with section 162 of the Companies Act, 1956.

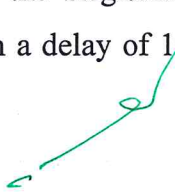
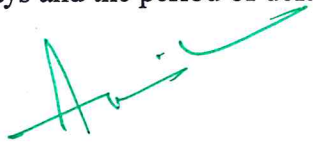
The averments made in the Company Application are briefed hereunder:-

The 1<sup>st</sup> Applicant Company was incorporated under the Companies Act, 1956 on 2<sup>nd</sup> June 2010, as a Private Limited Company under the name and style of "Sri Kumaraswamy Mineral Exports Private Limited" vide CIN No. **U13100KA2010PTC053902**. The Registered office of the company is situated at No. 35, Park Enclave, 2<sup>nd</sup> Floor, Park Road, Tasker Town, Shivajinagar, Bangalore-560051.

The Authorized share capital of the 1<sup>st</sup> Applicant Company is Rs. 14,00,00,000/- divided into 14,00,000 Equity Shares of Rs 100/- each. The Issued and Subscribed share capital of the 1<sup>st</sup> Applicant Company is Rs. 13,76,60,800/- divided into 13,76,608 Equity Shares of Rs 100/- each. The Paid-up share capital is Rs. 13,76,60,800/- divided into 13,76,608 Equity Shares of Rs 100/- each.

The Main objects of the 1<sup>st</sup> Applicant Company is to carry on the business as mine owners, manufacturers, processors, dealers, distributors, merchants, exporters, importers, consultants, experts, examiners and agents of iron ore or any other minor and major minerals, carrying out surface mining, processing, grading and converting the ore for its application from mines, beds, veins and seams of iron ore from sites for which mining industry a partnership in the name and style of Shri Kumaraswamy Minerals Exports has been granted a mining lease by the State of Karnataka or other States of the Union of India etc., Details of the objects of the company are mentioned in the Memorandum and Articles of Association of the 1<sup>st</sup> Applicant Company (shown as **Annexure-1** of the Petition).

It is further averred in the Company Application that, the 1<sup>st</sup> Applicant Company could not file its Annual Return for the financial year ending 31<sup>st</sup> March 2012 within the stipulated period as required under Section 159 of the Companies Act, 1956 due to the reasons that, the Annual General Meeting of the Company was convened on 4<sup>th</sup> February 2013 inter alia to consider the Annual Accounts of the Company for the financial year ending 31/03/2012 and also due to lack of clarity on accounting treatment of unsold stocks of the company which was taken over by the government of India for e-auction and the Management of the Company was unable to finalize the accounts for the financial year ending 31/03/2012 and filing of returns was delayed due to misunderstanding that the Annual Return should be filed only after Annual General Meeting of the Company in which the Annual Accounts are adopted by the members. Due to the reasons as stated above, the 1<sup>st</sup> Applicant Company fails to file the Annual Return in prescribed format within the stipulated period as required under the provisions of section 159 of the Companies Act, 1956. However, the 1<sup>st</sup> Applicant Company filed its Annual Returns for the financial year ending 31<sup>st</sup> March 2012 with the Registrar of Companies, Karnataka, Bangalore on 26<sup>th</sup> November 2015 with a delay of 1092 days and the period of default is from 29/11/2012 to 26/11/2015.





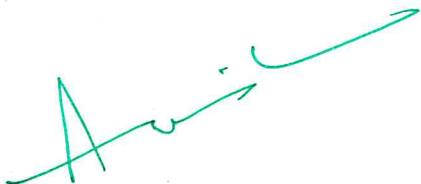
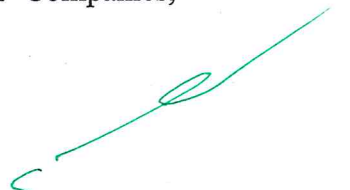
The Counsel for Applicants contended that, this is a suo-moto application filed by the Applicants for compounding of violation committed under section 159 of the Companies Act, 1956. The Counsel would contend that, the default occurred due to lack of clarity in the treatment of unsold stock which resulted due to the orders of Hon'ble Supreme Court of India. He further contended that, there was no willful default and default occurred due to external factor on which neither the company nor its Directors had any control and also due to the misunderstanding that the Annual Return should be filed only after Annual General Meeting of the Company in which the Annual Accounts are adopted by the Members and further contend that, a lenient view may be taken while compounding the offence.

This suo-moto application is filed by the Applicants under section 159 read with the provisions of section 162 of the Companies Act, 1956 for compounding which reads as follows:-

“ every company having a share capital shall, within sixty days from the day on which each of the annual general meetings referred to in section 166 is held, prepare and file with the Registrar a Return containing the particulars specified in Part I of Schedule V, as they stood on that day, regarding- its registered office, the register of its members, the register of its debenture holders, its shares and debentures, its indebtedness, its members and debenture holders, past and present, and its directors, managing directors, managers and secretaries, past and present.

**Section 162(1):-** “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”.  
“(2) For the purposes of this section and section 159, 160 and 161, the expressions “officer” and “director” shall include any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act.”

We have heard the Counsel for Applicants, who contended that, the Applicants had complied with the requirement and filed e-Form 23AC, 23ACA (XBRL) and 20B alongwith the challans with the Registrar of Companies, Karnataka, Bangalore on 26<sup>th</sup> November 2015.

The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/AHN/STA/53902/159/2016 dated 9<sup>th</sup> / 29<sup>th</sup> November 2016 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.

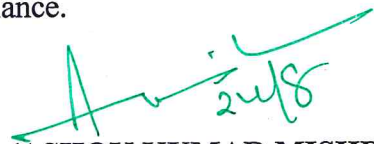
We have seen the Certified Copy of the extract of Board Resolution dated 28<sup>th</sup> August 2015 of the 1<sup>st</sup> Applicant Company wherein the Board of Directors resolved for filing compounding Application.

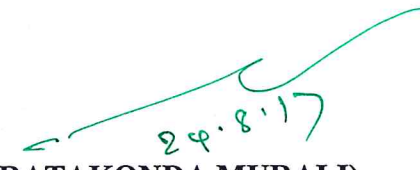
“RESOLVED THAT the consent of the Board of Directors of the Company be and is hereby accorded to make compounding application to the Company Law Board, Chennai, for violating the provisions of Section 159, 166, 210 and 220 of the Companies Act, 1956.”

We have also seen copy of e-Form 23AC, 23ACA (XBRL) and 20B along with the challans filed with the Registrar of Companies, Karnataka, Bangalore on 26<sup>th</sup> November 2015. After considering the materials on record and after taking into account the submissions made by the Counsel for the Applicants, that a lenient view may be taken, we hereby levy compounding fee for delay in complying section 159 of the Companies Act, 1956 on the Applicants as shown in the table given below:-

Sl. No	Particulars	Violation of Sec.159 of Companies Act, 1956 No. of days delay-1092	Total Rs.
1	1 <sup>st</sup> Applicant Company	1092 x 50 = 54,600/-	54,600/-
2	2 <sup>nd</sup> Applicant- Director	1092 x 50 = 54,600/-	54,600/-
3	3 <sup>rd</sup> Applicant- Director	1092 x 50 = 54,600/-	54,600/-
4	4 <sup>th</sup> Applicant-Director	1092 x 50 = 54,600/-	54,600/-

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 7<sup>th</sup> September 2017 for compliance.

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL