

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

C.P.NO. 68/2017 

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

AND

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

Judgement/Order delivered on: 24th 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, 2nd Floor, Park Road, Tasker Town,
Shivajinagar, Bangalore-560051.
2. Mr. Shantesh Gureddi - Director,
Sri Kumaraswamy Mineral Exports Private Limited,
No. 516/4, 10th 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"
3rd Floor, West Link Road, Malleswaram,
Bangalore-560003 Advocate and authorized
representative for the Applicants

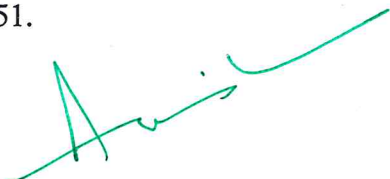
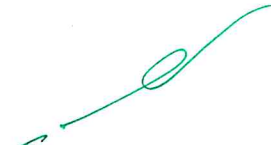
Per: Hon'ble Sri Ashok Kumar Mishra, Member (Technical) – Author

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 166 read with section 168 of the Companies Act, 1956.

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

The 1st Applicant Company was incorporated under the Companies Act, 1956 on 2nd 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, 2nd Floor, Park Road, Tasker Town, Shivajinagar, Bangalore-560051.


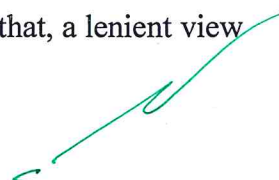



The Authorized share capital of the 1st Applicant Company is Rs. 14,00,00,000/- divided into 14,00,000 Equity Shares of Rs 100/- each. The Issued and Subscribed share capital of the 1st Applicant Company is Rs. 13,76,60,800/- divided into 13,76,608 Equity Shares of Rs 100/- each. The Paid-up share capital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

The Main objects of the 1st 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 1st Applicant Company (shown as **Annexure-1** of the Petition).

It is further averred in the Company Application that, the 1st Applicant Company could not hold its Annual General Meeting for the financial year 2011-12 within the specified period as required under Section 166 of the companies Act, 1956 for the reasons that, 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. For the said reasons as stated above, 1st Applicant Company could not hold its Annual General Meeting of the Company for the financial year 2011-12 within the specified period and thereby contravened the provisions of Section 166 of the Companies Act, 1956. However, 1st Applicant Company hold its Annual General Meeting for the financial year 2011-12 on 4th February 2013 with a delay of 127 days and the period of default is from 30/09/2012 to 04/02/2013.

The Counsel for Applicants 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 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 further contend that, a lenient view may be taken while compounding the offence.

Section 166 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.”

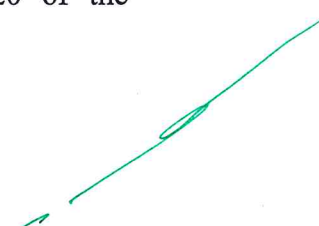
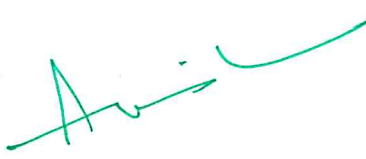
For the violation of section 166 (1) of the Companies Act, 1956, the punishment is provided under section 168 of the Companies Act, 1956 which reads as follows:-

“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 letter bearing No. ROCB/AHN/STA/53902/166/2016 dated 9th / 29th 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 28th August 2015 of the 1st 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 13/08/2015. 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 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		Total
		For violation	127 days delay	
1	1 st Applicant Company	5,000/-	250/- x 127 = 31,750/-	36,750/-
2	2 nd Applicant-Director	5,000/-	250/- x 127 = 31,750/-	36,750/-
3	3 rd Applicant-Director	5,000/-	250/- x 127 = 31,750/-	36,750/-
4	4 th Applicant-Director	5,000/-	250/- x 127 = 31,750/-	36,750/-

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


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL