

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

C.P.No.113/2017

**IN THE MATTER OF COMPANIES ACT, 2013 AND
IN THE MATTER OF COMPANIES ACT, 1956 UNDER SECTION 621A
& UNDER SECTION 441 –
FOR COMPOUNDING OF OFFENCE UNDER SECTION
211 OF THE COMPANIES ACT, 1956
AND**

IN THE MATTER OF JIFFLE TECHNOLOGIES PRIVATE LIMITED

Judgement/Order delivered on: **26TH October 2017**

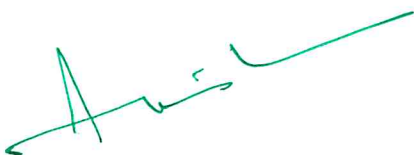
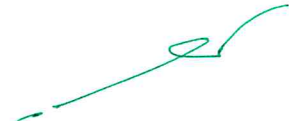
Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

1. **Jiffle Technologies Private Limited,
No.1589/B, 36th Cross,
Banashankari 2nd Stage,
Bengaluru-560070.**
2. **Mr. Vincent Manoharan Sunder- Director,
Jiffle Technologies Private Limited,
33, Viviani Road, Apt 203 Pearson Residency,
Richards Town,
Bangalore-560005.**
3. **Mr. Sivashunmugam Columbus - Director,
Jiffle Technologies Private Limited,
D3, 9-05, South City Arekere,
Mico Layaout,
Bangalore-560076.**

- **APPLICANTS**

For the Petitioner (s): Mr. G.M.Ganapathi, No.31, Vidya Bhavan
3rd Floor, West Anjaneya Temple Street,
Basavanagudi, Bengaluru-560004
- Practicing Company Secretary
and Authorised Representative for the Applicants.

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

ORDER

This Application was filed by the Applicants under Section 441 of the Companies Act, 2013, corresponding under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of Section 211 of the Companies Act, 1956.

The averments made in the Company Application are briefly described hereunder:-

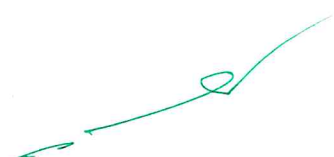
The Company **M/s Jiffle Technologies Private Limited** was incorporated under the Companies Act, 1956 on 30th November 2012 vide Certificate of Incorporation No. **U74999KA2012PTC066964**. The Registered office of the Company is situated at No. 1589/B, 36th Cross, Banashankari 2nd Stage, Bengaluru-560070.

As per the averments made in the Application, the Authorized Share Capital of the Company is Rs. 55,00,000/- divided into 5,50,000 Equity Shares of face value of Rs.10/- each. The issued, subscribed and paid up share capital of the Company is Rs. 1,00,050/- divided into 10,005 Equity Shares of Rs.10/- each.

The Main objects of the Company is to carry on the business of software development, programming, coding, providing e-services, online services, running websites and creating online platform for scheduling meetings etc., Details of the objects of the company are mentioned in the Memorandum and Articles of Association.

It is further averred in the Application that, during the course of secretarial review initiated by the management of the Company about the corporate compliances, it was noticed that the Company has not complied with the provisions of Section 211 of the Companies Act, 1956 (corresponding Section 129 of the Companies Act, 2013) regarding filing of Financial Statements of the Company for the reason that:-

- 1) While preparing the financial statements containing the profits & loss account and Balance Sheet for the period ended 31st March 2013 and 31st March 2014, the paid-up equity share capital of the Company was wrongly mentioned as under:



a) Balance sheet as at 31/03/2013:

- (i) The paid-up share capital of the Company as at 31/03/2013 was Rs 100/- divided into 10 equity shares of Rs 10/- each, whereas it was wrongly shown as Rs 1,00,050/-divided into 10,005 equity shares of Rs 10/- each and
- (ii) Under Note No.4(b) details of shareholders holding more than 5% shares in the Company, M/s Ipolipo Inc., 440N, Wolfe Road, Sunnyvale, CA94085, U.S.A., was shown as shareholder holding 99.89% of shares, whereas it should have been two shareholders holding 5 equity shares each (50% of the paid up share capital held by each shareholders).
- (iii) Under Note No. 12, Other Assets, Rs 100/- was due from Directors was mentioned. Whereas, the said amount of Rs 100/- was due from shareholders.
- (iv) Under Note No.12, Other Assets – Due from subscribers – Rs 99,950 is mentioned. Whereas, the subscribers to the memorandum have given their intention not to subscribe and consent for others to subscribe vide their letter dated 11.12.2012. Hence this would not have been mentioned.

Copy of balance sheet for the year 201-13 is shown as **Annexure-III**.

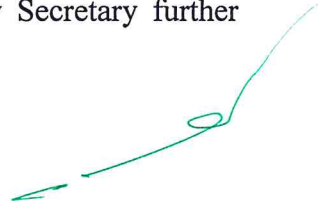
b. Balance Sheet as at 31/03/2014:

- (i) Under Note No. 4(b), Equity shares at the beginning and end of the year was wrongly mentioned as 10,100 shares. Whereas the shares at the beginning of the year was 10 shares and at the end of the year was 110,005 equity shares.

Copy of balance sheet for the year 201-13 is shown as **Annexure-IV**.

The disclosures made in the balance sheet for the year 2012-13 and 2013-14 did not comply the provisions of Section 211 of the Companies Act 1956, corresponding Section 129 of the Companies Act, 2013. Thereby company has failed to give true and fair view of affairs of the Company. It is further averred that, the said violation was not intentional but occurred due to bonafide reasons as stated above.

The Practicing Company Secretary for the Applicants contended that, this is a suo-moto application filed by the Applicants for compounding of violation committed under section 211 of the Companies Act, 1956 corresponding Section 129 of the Companies Act, 2013. The Practicing Company Secretary further

contended that, the said violation occurred due to bonafide reasons and it was neither willful nor intentional and is not with any malafide intention and further contend that, a lenient view may be taken while compounding the offence.

Section 211 (1) of the Companies Act, 1956 reads as follows:-

“Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such other form as may be approved by the Central Government either generally or in any particular case; and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance sheet under the heading ‘Notes’ at the end of that Part:”

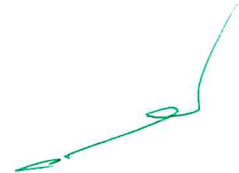
Section 211(7) of the Companies Act, 1956 is penal provision for violation reads as follows:-

“If any such person as is referred to in sub-section (6) of section 209 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, 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 ten thousand rupees, or with both:

We have heard the Practicing Company Secretary for Applicants on 18/09/2017 and 16/10/2017. The Practicing Company Secretary for Applicants has cited the following citations for considering the offence for compounding:-

- 1) CP No. 16/150/ND/2017 dated 15.09.2017 – M/s Dharampal Satyapal Ltd., of NCLT- New Delhi Bench.
- 2) CP No. 16/113/2017 dated 04.10.2017 – M/s Orient Industrial Resources Ltd., of NCLT- New Delhi Bench.

The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/AHN/STA/SEC.621A/066964/2017 dated 4th September 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.

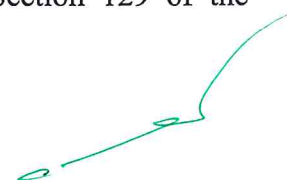

The Registrar of Companies, Karnataka at Bangalore has also informed the Tribunal that, violation is punishable under Section 211 of the Companies Act, 1956. We have seen the decision cited by the Practicing Company Secretary for Applicants. We have also seen the Circular issued by the Ministry of Corporate Affairs relied by the Practicing Company Secretary. The Notification is as follows:

S.O 1936(E):- In exercise of the powers conferred by clause (a) of sub-section (1) of section 434 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 1st June 2016, on which all matters or proceedings or cases pending before the Board of Company Law Administration (Company Law Board shall stand transferred to the National Company Law Tribunal and it shall dispose of such matters or proceedings or cases in accordance with the provisions of the Companies Act, 2013 or the Companies Act, 1956.

The violation relates to the financial years ending 31/03/2013 and 31/03/2014, so the provisions of the Companies Act, 1956 would apply for this violation. Section 211 of the Companies Act, 1956 would apply to the facts of this case. Though the Petition was filed under section 441 of the Companies Act, 2013, but violation took place for the years ending 31/03/2013 and 31/03/2014. Hence, the Application is to be decided under the relevant provisions of the Companies Act, 1956. This violation is considered under section 621A of the Companies Act, 1956(corresponding to Section 441 of the Companies Act, 2013).

Further Ministry of Corporate Affairs, New Delhi has issued a General Circular bearing No. 08/2014 dated 4th April 2014, clarifying that the financial statements (and documents required to be attached thereto) auditors report, Board's report in respect of financial years, that commenced earlier than 1st April 2014, shall be governed by the relevant provisions/schedules/rules of the Companies Act, 1956 and that in respect of financial years after 1st April 2014, the provisions of the new Act shall apply.

In the light of Ministry of Corporate Affairs, New Delhi Circular clarification, this compounding application made by the Applicants of the Company have been considered for compounding the offence under section 621A of the erstwhile Companies Act, 1956 (corresponding to Section 129 of the Companies Act, 2013)

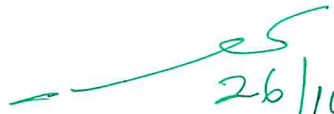


We have seen the Certified Copy of the extract of Board Resolution dated 24th March 2017 of the Company wherein the Board of Directors resolved for filing compounding Application, copy of Form No. GNL-1 along with ROC Challan filed with Registrar of Companies-Karnataka at Bangalore. After considering 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 non-compliance of the provisions of Section 211 of the Companies Act, 1956 for the financial years 2012-13 & 2013-14 on the Applicants 2 and 3 as shown in the table given below. The Company 1st Applicant is not liable and compounding fee is not levied on 1st Applicant.

Sl. No.	Particulars	Violation of Section 211 of the Companies Act, 1956		Grand Total Rs.
		2012-13	2013-14	
1	2 nd Applicant-Director	6,000/-	6,000/-	12,000/-
2	3 rd Applicant-Director	6,000/-	6,000/-	12,000/-

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 9th November 2017 for compliance.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL
26/10/17