

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

**C.P. No.89/BB/2017**

**IN THE MATTER OF COMPANIES ACT, 2013 AND  
IN THE MATTER OF COMPANIES ACT, 1956 UNDER SECTION 621A  
FOR COMPOUNDING OF OFFENCE UNDER SECTIONS  
159 AND 220 OF THE COMPANIES ACT, 1956  
AND  
IN THE MATTER OF SREE VALLIAPPA TEXTILES LIMITED**

Judgement/Order delivered on: **28<sup>TH</sup> September 2017**

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

- 1) **Sree Valliappa Textiles Limited,  
Valliappa Nagara, Hejjala,  
Bangalore-562109.**
- 2) **Shri C.Valliappa  
No.434, 3<sup>rd</sup> Cross, 3<sup>rd</sup> Block,  
Koramangala, Bangalore-560034.**
- 3) **Shri V.Chockalingam,  
No.434, 3<sup>rd</sup> Cross, 3<sup>rd</sup> Block,  
Koramangala, Bangalore-560034.**
- 4) **Shri Valliappa Thiagarajan  
No.434, 3<sup>rd</sup> Cross, 3<sup>rd</sup> Block,  
Koramangala, Bangalore-560034.**

**APPLICANTS**

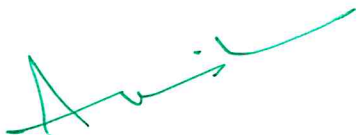
For the Petitioner (s): Mr. R.Mugunthan, Vanjula, 10 (New No.23),  
Arisikara Street, Mylapore, Chennai-600004 –  
Chartered Accountant and Authorised Representative for  
the Applicants.

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

**O R D E R**

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 Sections 159 and 220 of the Companies Act, 1956.

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




The 1<sup>st</sup> Applicant Company was incorporated under the Companies Act, 1956 on 17<sup>th</sup> May 1963, under the name and style of “**Sree Valliappa Textiles Limited**” vide Registration No. **U17110KA1963PLC001496**. The Registered office of the company is situated at Valliappa Nagara, Hejjala, Ramanagara, Bangalore-562109.

As per the averments made in the application, the Authorized share capital of the 1<sup>st</sup> Applicant Company is Rs. 1,50,00,000/- divided into 1,40,000 Equity Shares of face value of Rs.100/- each and 10,000 Redeemable Preference Shares of Rs 100/- each.

The Main objects of the 1<sup>st</sup> Applicant Company is to carry on the business of manufacturing, bleaching, dyeing, printing, selling yarn, cotton and/or staple fibre, cloth and other fabrics made from raw cotton, jute, wool, synthetic and other suitable materials; and generally to carry on the business of Spinning and Weaving Mill Proprietors in all their branches 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.

It is further averred in the Company Application that, a Show Cause Notice bearing No. ROCB/MMM/SCN/Sec159-220/006945/2015 dated 13<sup>th</sup> March 2015 was issued by the Registrar of Companies, Karnataka, Bangalore to the 1<sup>st</sup> Applicant Company and its Directors for non-compliance of Balance Sheet; Profit & Loss Account and Annual Returns for the financial years 2011-12, 2012-13 and 2013-14 as required under the provisions of Sections 159 and 220 of the Companies Act, 1956. However, the 1<sup>st</sup> Applicant Company has made legitimate reply vide letter dated 4<sup>th</sup> December 2015 denying the alleged violation of the various provisions of sections 159, 166, 210 and 220 of the Companies Act, 1956 and also filed its Annual Returns for the financial years 2011-12, 2012-13 and 2013-14 in Form 20B on 10<sup>th</sup> August 2015 and on 11<sup>th</sup> August 2015 and Financial Statements for the financial years 2011-12, 2012-13 and 2013-14 in Form 23AC & 23ACA on 17<sup>th</sup> September 2015 and on 6<sup>th</sup> October 2015 with the Registrar of Companies, Karnataka, Bangalore and the period of default section wise and year wise is given in the table as shown below:-

<b>For non-compliance of the provisions of Section 159 of the Companies Act, 1956</b>				
Year	Default period existed between		Date of filing Form 20B	No. of days delay
30.06.2012	01/03/2013	09/08/2015	10.08.2015	<b>890 days</b>
30.06.2013	01/03/2014	09/08/2015	10.08.2015	<b>525 days</b>
31.03.2014	01/12/2014	10/08/2015	11.08.2015	<b>250 days</b>
<b>For non-compliance of the provisions of Section 220 of the Companies Act, 1956</b>				
Year	Default period existed between		Date of filing Form 23AC & 23ACA	No. of days delay
30.06.2012	31/01/2013	16/09/2015	17/09/2015	<b>956 days</b>
30.06.2013	31/01/2014	16/09/2015	17/09/2015	<b>592 days</b>
31.03.2014	31/10/2014	05/10/2015	06.10.2015	<b>340 days</b>

Thus 1<sup>st</sup> Applicant Company admitted violation of provisions of sections 159 & 220 of the Companies Act, 1956, in not filing Annual Returns and Financial Statements for the financial years ending 30<sup>th</sup> June 2012, 30<sup>th</sup> June 2013 and 31<sup>st</sup> March 2014 within the prescribed time.

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.”






Section 220 of the Companies Act, 1956 for compounding reads as follows:-

“After the balance sheet and the profit and loss account have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar within thirty days from the date on which the balance sheet and the profit and loss account were so laid, or where the annual general meeting of a company for any year has not been held, there shall be filed with the Registrar within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act.”

Section 220 (3) reads as follows:-

“if default is made in complying with the requirement of sub-sections (1) and (2), the company, and every officer of the company who is in default, shall be liable to the like punishment as is provided by Section 162 for a default in complying with the provisions of Section 159, 160 or 161.

The contravention of Section 220 is punishable under section 162(1) of the Companies Act, 1956 reads as follows:

“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”.

Section 162(2) speaks as follows:-

“(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 Practicing Chartered Accountant for the Applicants who contended that, this is a suo-moto application filed by the Applicants for compounding of violation committed under sections 159 & 220 of the Companies Act, 1956. The Practicing Chartered Accountant further contended that, the said violations occurred due to the technical breach and it was neither willful nor intentional and there is no malafide intention on the part of the Company or its officers/directors and further contend that, a lenient view may be taken while compounding the offence. The Practicing Chartered Accountant further contended that, the 1<sup>st</sup> Applicant Company had complied with the requirement and filed Form No.20B and Form 23AC and 23ACA with the Registrar of Companies, Karnataka, Bangalore.

The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/SVK/01496/621A/2017 dated 5<sup>th</sup> July 2017 has stated in his report that, compounding cannot be made for the years 2012-13 and 2013-14 on the ground that, Section 621 of the companies Act, 1956 does not permit. He also stated that, separate applications to be filed for each year. The observations of the Registrar of Companies, Karnataka, Bangalore cannot be accepted since the application is filed for compounding for violation of 3 years. By filing single application the Applicants can seek compounding for different years.

Secondly, this is the first application filed for compounding by Applicants. No information furnished by the Registrar of Companies, Karnataka, Bangalore that any violation was compounded within 3 years prior to this Application. Therefore, it cannot be said that violation for the year 2012-13 and 2013-14 cannot be compounded. It shall be treated as first offence only. The Registrar of Companies, Karnataka, Bangalore Company further reported that, the Applicants 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 19<sup>th</sup> November 2015 of the 1<sup>st</sup> Applicant Company wherein the Board of Directors resolved for filing compounding Application. We have seen copy of Show Cause Notice bearing No. ROCB/MMM/SCN/Sec159-220/006945/2015 dated 13<sup>th</sup> March 2015 issued by the Registrar of Companies, Karnataka, Bangalore and the reply given by the 1<sup>st</sup> Applicant company. We have also seen copy of Form No. 20B and Form 23AC and 23ACA alongwith 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 Chartered Accountant that lenient view may be taken, we hereby levy compounding fee for delay in complying sections 159 & 220 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 with No. of days delay			Total
		2011-12	2012-13	2013-14	
1	1 <sup>st</sup> Applicant Company	890 x 50 = 44,500/-	525 x 50 = 26,250/-	250 x 50 = 12,500/-	83,250/-
2	2 <sup>nd</sup> Applicant - Director	890 x 50 = 44,500/-	525 x 50 = 26,250/-	250 x 50 = 12,500/-	83,250/-
3	3 <sup>rd</sup> Applicant - Director	890 x 50 = 44,500/-	525 x 50 = 26,250/-	250 x 50 = 12,500/-	83,250/-
4	4 <sup>th</sup> Applicant - Director	890 x 50 = 44,500/-	525 x 50 = 26,250/-	250 x 50 = 12,500/-	83,250/-

Sl. No.	Particulars	Violation of Sec.220 of Companies Act, 1956 with No. of days delay			Total
		2011-12	2012-13	2013-14	
1	1 <sup>st</sup> Applicant Company	956 x 50 = 47,800/-	592 x 50 = 29,600/-	340 x 50 = 17,000/-	94,400/-
2	2 <sup>nd</sup> Applicant - Director	956 x 50 = 47,800/-	592 x 50 = 29,600/-	340 x 50 = 17,000/-	94,400/-
3	3 <sup>rd</sup> Applicant - Director	956 x 50 = 47,800/-	592 x 50 = 29,600/-	340 x 50 = 17,000/-	94,400/-
4	4 <sup>th</sup> Applicant - Director	956 x 50 = 47,800/-	592 x 50 = 29,600/-	340 x 50 = 17,000/-	94,400/-

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on **12<sup>th</sup> October 2017** for compliance.

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL