

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

T.P. 238/2016

DATED MONDAY, THE 30th DAY OF JANUARY, 2017

PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI ASHOK KUMAR MISHRA, MEMBER TECHNICAL

IN THE MATTER OF COMPANIES ACT, 2013 (18 OF 2013)
SECTION 621A READ WITH SECTION 168 OF THE COMPANIES ACT, 2013
AND SECTION 96 OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF M/S. DYNAFUSION TECHNOLOGIES PRIVATE LIMITED

AND

IN THE MATTER OF MR. RAJASHEKHAR RAO, MANAGING DIRECTOR
DYNAFUSION TECHNOLOGIES PRIVATE LIMITED

1. M/s. Dynafusion Technologies Private Limited,
No.214, 1st Floor, Bellary Road,
Sadashivnagar,
Bengaluru – 560 080.

2. Mr. Rajashekhar Rao,
Managing Director,
M/s. Dynafusion Technologies Private Limited,
R/o d2-103, 6TH Main, 15th Cross,
White House Apartments, R.T. Nagar,
Bangalore – 560 032.

... Petitioners

PRESENT : Mr. Vinay B.L.,
Practicing Company Secretary,
1605A, 28th Main Road,
29th Cross, BSK II Stage,
Bangalore – 560 070.

ORDER

Heard on 09.01.2017 and 20.01.2017.

This is a Company Petition which was originally filed before the Company Law Board, Southern Region, Chennai, and numbered as CA/310/621A/CB/2015. Consequent upon establishment of National Company Law Tribunal Bench at

Bengaluru, the said case was transferred to this Tribunal and which was re-numbered as TP No.238/2016.

This application is filed by the applicants who are the Company and its Managing Director for compounding for violation of provisions of Section 96 read with Section 450 of Companies Act, 2013.

The averments made in the application are as follows:

The first applicant company is incorporated with name and style of M/s. DYNAFUSION TECHNOLOGIES PRIVATE LIMITED, having its Registered Office at No.214, 1st Floor, Bellary Road, Sadashivnagar, Bengaluru – 560 080, CIN No. U72200KA2009PTC051091, with date of incorporation 05th October, 2009.

The main business of the Company is providing scientific and engineering software, hardware and services in the areas of automotive, aerospace, electrical and electronic, embedded systems and control, mechatronics, test and measurement, mathematical modelling and simulation, electronic components, robotics, industrial machinery and automation, manufacture, semi-conductor, nano-technology, materials science, marine and offshore engineering, oil and gas, energy and power, civil structural engineering, mechanical engineering, information technology, telecom, networking and medical.

The authorised share capital of the Company is 15,00,000/- and paid-up capital being Rs.10,20,000/-.

The first applicant is a Private Limited Company and the second applicant is its Managing Director.



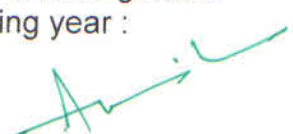

It is stated that the Company should have conducted the Annual General Meeting for the financial year ending 31st March, 2014 before 30th September, 2014, but has conducted the Annual General Meeting on 14th November, 2014, i.e., with a delay of 45 days. The averments made in the application also reflects that the Directors of the Company were not in the station since August, 2014 and hence the Annual General Meeting could not be conducted before the due date of 30th September, 2014. The Annual General Meeting was conducted on 14th November, 2014 at the Registered Office of the Company after a lapse of 45 days. The applicants have also submitted that there is no monetary gain to the Company or monetary loss to the exchequer because of the said default.

The applicants have also submitted that the Company has violated provisions of Section 96 of the Companies Act, 2013. However, the violation of the same is governed by Section 99 of the Companies Act, 2013, which was not in force at that time.

The applicant has filed an affidavit stating that the provisions of Companies Act, 1956 on the subject may be made applicable as it relates to the period of financial year 2013-14. As a result, the petitioner Company and its Managing Director have violated provisions of Section 166(1) of the Act, 1956 which is as follows:

"166. [(1) 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 :

Provided that a company may hold its first annual general meeting within a period of not more than eighteen months from the date of its incorporation; and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year :



Provided further that the Registrar may, for any special reason, extend the time within which any annual general meeting (not being the first annual general meeting) shall be held, by a period not exceeding three months.]

The punishment for violation of Section 166 (1) of Companies Act, 1956 is provided in Section 168 of Companies Act, 1956 which reads as follows:

"168. 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]."

Mr. Vinay B.L., the Practising Company Secretary has also submitted that they have erroneously mentioned Section 450 of the Companies Act, 2013 for punishment for violation of Section 96 of the Companies Act, 2013. He further submitted that the Company's Directors being out of station during the intervening period and accordingly, they have unintentionally violated the provisions of Section 166 of the Companies Act, 1956 for holding of Annual General Meeting of the Company. The Board of Directors in their meeting held on 29th December, 2014 had also confirmed the same that due to non-availability of the Directors and shareholders in the station, the Annual General Meeting could not be conducted within the due date and hence, there is a delay of 45 days and the Board has approved the proposal for compounding/condoning the delay.

We have received report with letter bearing No.ROCB/AHN/621A/051091/2015, dated 10.10.2015/04.11.2015 from the Registrar of Companies, Bengaluru, who stated that violation can be compounded by levying compounding fee on the

petitioners. We have also perused the Minutes of the Board of Directors of the Company dated 31st December, 2015, minutes of the Annual General meeting held on 14th November, 2014, Memorandum of Association and Articles of Association of the Company. Considering the submissions made by the Practicing Company Secretary for petitioners and after going through the contents of the petition and documents filed, we direct the petitioners to pay the compounding fee as detailed hereunder:

Sl. No.	Particulars	Violation of Section 168 of Companies Act, 1956	Delay of 45 days	Total Rs.	Grand Total Rs.
1.	1 st applicant Company	Rs.20,000	45 x 500	22,500.00	42,500.00
2.	2 nd applicant	Rs.20,000	45 x 500	22,500.00	42,500.00
			TOTAL		85,000.00

The compounding fee levied shall be paid by the petitioners within 15 days from the date of this order. *i.e on or before 14th Feb 2017 g*

30.1.17
(RATAKONDA MURALI)
MEMBER, JUDICIAL

30.1.17
(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

psp.