

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

C.P. No. 75/2017

**IN THE MATTER OF COMPANIES ACT, 1956 AND
IN THE MATTER OF COMPANIES ACT, 2013 UNDER SECTION 441
FOR COMPOUNDING OF OFFENCE UNDER SECTIONS 96
OF THE COMPANIES ACT, 2013**

AND

IN THE MATTER OF UNITED SPIRITS LIMITED

Judgement/Order delivered on: **31st August 2017**

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

- 1) **United Spirits Limited,**
'UB' Tower, # 24,
Vittal Mallya Road,
Bangalore-560001
- 2) **Mr. Anand Kripalu - Managing Director &**
Chief Executive Officer,
United Spirits Limited,
Spring Leaf, Flat -G (3rd Floor), No.6, 1st Cross,
Bruton Cross Road, Bangalore-560025.
- 3) **Mr. Sanjeev Churiwala- Chief Financial Officer,**
United Spirits Limited,
Flat 806, Aspen Block, Prestige St. Johns Wood,
80, Prestige St. Johns Cross Road,
Tavarekere, Bangalore-560029.
- 4) **Mr. Ramachandran Venkatesan Iyer – Company Secretary,**
United Spirits Limited,
Flat No.G-3, Gitanjali Apartments,
1039 New Thippasandra HAL, 3rd Stage,
Bangalore-560075.

- **APPLICANTS**

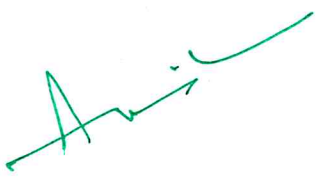
For the Petitioner (s) Mr. Sarvotham P. Partner, ASR & Co., # 102, Rams
Infantry Manor, Bangalore-56000, Practicing Company
Secretary and Authorised representative for the Applicants.

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

ORDER

The Application was filed by the Applicant Company under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of Section 166 of the Companies Act, 1956 read with section 96 of the Companies Act, 2013 and it was numbered as C.P No. 75/2017 in this Tribunal.

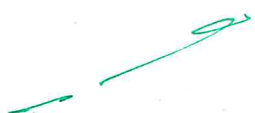

The averments made in the Company Application are briefed hereunder:-




The 1st Applicant Company was incorporated under the Companies Act, 1956 on 31st March 1999, under the name and style of “**United Spirits Limited**” vide CIN No. **LO1551KA1999PLC024991**. The Registered office of the Company is situated at UB Tower, # 24, Vittal Mallya Road, Bangalore-560001.

The Main objects of the 1st Applicant Company is to manufacture Alcohol, rectified spirit, potable and industrial alcohol; to manufacture, brew, distill, blend, compound, prepare, process, render portable or marketable all sorts of liquors, wines, spirits and beers and to carry on all or any of the business of malt factors, general and wine and spirits merchants, either as exporters or importers and distilleries, commission agents, warehousemen, bottlers, bottle makers, bottle stopper makers, potter, manufacturers of and dealers in aerated and mineral waters and other drinks, licensed victuals, beer house keepers, yeast dealers etc., Details of the objects of the company are mentioned in the Memorandum and Articles of Association of the Applicant Company.

It is further averred in the Company Application that, the 1st Applicant Company could not hold the Annual General Meeting for the financial year 2014-15 within the stipulated period as required under Section 96 of the Companies Act, 2013 to place before the Board of Directors for approval of the Financial Statements for the year ending 31st March 2015 within the stipulated time for the reason that, during the financial year 2013-14 because of certain exceptional matters that were identified by the company's auditors and that resulted in audit qualifications, the Board of Directors of the Company initiated an inquiry into these matters giving rise to the audit qualifications and based on findings of the inquiry the Board of Directors decided to report the matter under the applicable law to the various authorities including the Office of Regional Director, South East Region, Hyderabad by providing copies of the inquiry report. In pursuant to this, the Regional Director, South East Region, Hyderabad has started conducting of inspection under Section 206 of the Companies Act, 2013 which was commenced in early May 2015 and continued beyond August 2015. Due to this, the Applicant Company made an application by filing Form GNL-1 on 14th August 2015 before the Registrar of Companies, Karnataka, Bengaluru explaining the circumstances and sought an extension of time to hold the Annual General Meeting for the

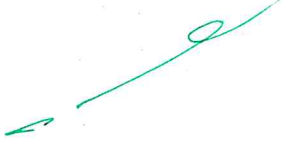
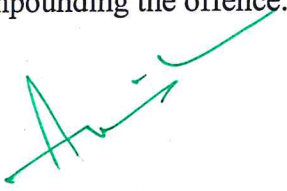


financial year 2014-15. However, the Registrar of Companies, Karnataka, Bengaluru vide his letter dated 4th September 2015 refused to grant extension of time to hold the Annual General Meeting for the financial year 2014-15 stating that the grounds submitted for extension was not sufficient for considering grant of extension for holding the Annual General Meeting. In the meantime, the 1st Applicant Company decided to convene the Annual General Meeting and thereby contravened the provisions of Section 96 of the Companies Act, 2013. However, the 1st Applicant Company has held the Annual General Meeting on 24th November, 2015 with a delay of 56 days.

It is also averred in the Company Petition that, the above offence committed by the Applicants without any malafide intentions on its part and the commission of offence is not willful but was occurred as result of the extraneous and exceptional circumstances as referred in the Company Petition.

This Petition was originally filed for violation of the provisions of section 96 of the Companies Act, 2013 as Applicants failed to convene the Annual General Meeting within the time prescribed. This application was moved for compounding under section 621A of the Companies Act, 1956. By the date of filing this Application provisions of Section 441 of the Companies Act, 2013 have not been notified. Section 99 of the Companies Act, 2013 was also not notified by the date of Application. Therefore, the provisions of Companies Act, 1956 would apply. Section 166 of the Companies Act, 1956 correspond to 96 of the Companies Act, 2013. Thus the Applicants have committed the violation of provisions of Section 166 of the Companies Act, 1956 punishable under Section 168 of the Companies Act, 1956. We have seen the report of the Registrar of Companies, Karnataka, Bangalore. He is also of the opinion that, the Applicants violated the provisions of Section 166 of the Companies Act, 1956 punishable under Section 168 of the Companies Act, 1956.

The Practicing Company Secretary 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 Practicing Company Secretary further contended 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.”

Section 96 of the Companies Act, 2013 reads as follows:-

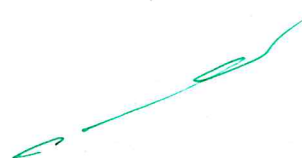
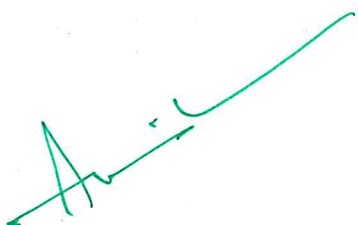
“(1) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year:”

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”.

We have heard the Practicing Company Secretary for Applicants on 23/08/2017. The Practicing Company Secretary contended that, the default occurred as a result of the extraneous and exceptional circumstances referred to it in the Company Petition and there has been no malafide intention on the part of the Applicants.



The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/MMM/Sec 441/Sec 96/2017 dated 08/12/2016 has stated in his report 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 25th April 2016 of the Applicant Company wherein the Board of Directors resolved for filing compounding petition, copy of application dated 14th August 2015 filed with Registrar of Companies-Karnataka at Bangalore for extension to hold Annual General Meeting. We have also seen copy of refusal letter received from Registrar of Companies-Karnataka at Bangalore for extension to hold Annual General Meeting. 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 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	56 days delay	
1	1 st Applicant Company	10,000/-	250/- x 56 = 14,000/-	24,000/-
2	2 nd Applicant - Managing Director & Chief Executive Officer	10,000/-	250/- x 56 = 14,000/-	24,000/-
3	3 rd Applicant – Chief Financial Officer	10,000/-	250/- x 56 = 14,000/-	24,000/-
4	4 th Applicant – Company Secretary	10,000/-	250/- x 56 = 14,000/-	24,000/-

The compounding fee levied shall be paid by the Applicant within 15 days from the date of this order and call this matter on 14th September 2017 for compliance.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL