

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

C.P. No. 80/2017

**IN THE MATTER OF COMPANIES ACT, 2013  
UNDER SECTION 441 FOR COMPOUNDING OF OFFENCE  
UNDER SECTION 96 READ WITH SECTION 99  
OF THE COMPANIES ACT, 2013  
AND  
IN THE MATTER OF  
LEEBOY INDIA CONSTRUCTION EQUIPMENT  
PRIVATE LIMITED**

Judgement/Order delivered on: 31<sup>st</sup> August 2017

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

- 1) LeeBoy India Construction Equipment Private Limited,  
Plot # 289-292, Bommasandra Jigani Link Road,  
KIADB Industrial Area Jigani Hobli,  
Anekal Taluk, Bangalore-560105.
- 2) Ms. Suma.G.P, Company Secretary  
900, Krishna Reddy Layout,  
Electronic City, Bangalore-560100.
- 3) Mr. Sagar, Previous Company Secretary,  
H.N. 28/8,17A Main 6<sup>th</sup> Cross,  
N.S Palya Road, BTM Second Stage,  
Bangalore-560076.
- 4) Mr. Perdit Kumar Tiwari - Director.  
D-148, 1<sup>st</sup> Floor, Defence Colony, New Delhi-110 001.
- 5) Mr. Kalvin Arthur Majeskie – Director,  
8824 Ashby Pointe CT, Sherrills Ford,  
286737306, United States of America.
- 6) Mr. Gan Boon Jin – Director,  
11 Joo Chiat Avenue, 428133, Singapore
- 7) Mr. Tan Lai Wah Rudy – Director,  
34 LI PO Avenue, 788728, Singapore.
- 8) Mr. Tank Kok Kiang Bernard Richard – Director  
12, Bukit Teresa Close, 099784, Singapore.
- 9) Mr. Ravinder Singh – Director,  
50 Namly Drive, 267461, Singapore. - **APPLICANTS**

For the Petitioner (s) Mr. Parameshwara G. Bhat, Practicing Company Secretary  
and Authorised representative for the Applicants.

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




## ORDER

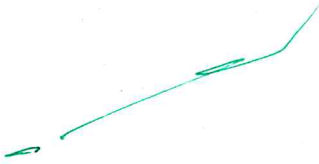
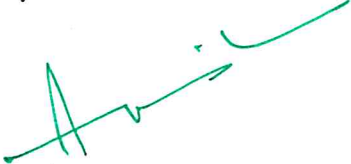
The Application was filed by the Applicant Company under Section 441 of the Companies Act, 2013 for the purpose of compounding for violation of provisions of Section 96 of the Companies Act, 2013 and it was numbered as C.P No. 80/2017 in this Tribunal.

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

The 1<sup>st</sup> Applicant Company was incorporated under the Companies Act, 1956 on 23<sup>rd</sup> September 2010 as a Private Limited Company under the name and style of "LeeBoy India Construction Equipment Private Limited" vide Registration No. U34100KA2010FTC055294. The Registered office of the company is situated at Plot # 289-292, Bommasandra Jigani Link Road, KIADB Industrial Area, Jigani Hobli, Anekal Taluk, Bangalore-560105.

The Authorised Capital of the 1<sup>st</sup> Applicant Company as on date is Rs 151,00,00,000/- divided into 14,84,50,000 class A-Equity Shares of Rs 10/- and 25,50,000 class-B Equity Shares of Rs 10/- each. The Issued, subscribed and paid up capital of the Company as on date is Rs.147,97,08,040/- divided into 14,70,32,117 class-A Equity Shares of Rs.10/- each and 9,38,687 Class-B Equity Shares of Rs 10/- each.

The Main objects of the 1<sup>st</sup> Applicant Company is to carry on the business in India or elsewhere of designers, developers, manufacturers, producers, processors, makers, assemblers, inventors, convertors, agents, dealers, indenters, importers, exporters, designers, suppliers, repairers, buyers, marketers, sellers, service providers and distributors of all kinds of motor vehicles, construction equipments, dumpers, bulldozers, haulers, bobcat loaders, power gravel compactors, cranes, trucks, lorries, buses, cars, chassis, tractors, and all other types of motor vehicles and construction equipments, engines and related parts, accessories and replacement parts, services associated with the said products and other activities compatible therewith 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 that, the 1<sup>st</sup> Applicant Company could not hold its Annual General Meeting for the financial year 2014-15 within the stipulated period as required under the provisions of Section 96 of the Companies Act, 2013. However, the 1<sup>st</sup> Applicant Company held its Annual General Meeting for the financial year 2014-15 on 6<sup>th</sup> November 2015 with a delay of 37 days and the period of default is from 30<sup>th</sup> September 2015 to 6<sup>th</sup> November 2015.

It is further averred that, the Applicants suo-moto filed this Application and the violation occurred purely unintentional and are not prejudicial to the interest of any stakeholders of the Company and further stated that, no member of public nor any Government or Quasi Government nor any other person was/will be put to any loss or damage by the aforementioned violations. The Applicant Company unequivocally declares that the offences committed, do not affect the public interest, in any way and no harm is caused to the public interest.

The 1<sup>st</sup> Applicant Company represented by its Company Secretary suo-moto filed this application admitting violation and prayed for compounding. Thus there was violation of provisions of section 96 of the Companies Act, 2013.

The provisions of section 96 of the Companies Act, 2013 reads as follows:-

“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:

Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:

Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.”

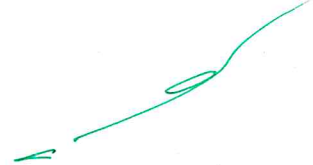
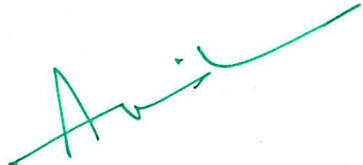
For violation of provisions of section 96 is punishable under section 99 of the Companies Act, 2013 which reads as follows:-

If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

We have heard the Practicing Company Secretary for Applicants. The Practicing Company Secretary contended that, the default occurred due to unavoidable circumstances and beyond the control of the 1<sup>st</sup> Applicant Company. The Practicing Company Secretary for Applicants further contend that, the Applicant Company had complied with the requirement of Section 96 of the Companies Act, 2013 and filed true copy of the Notice for convening the Annual General Meeting on 6<sup>th</sup> November 2015. The Practicing Company Secretary for Applicant further contend that, this is a suo-moto application filed by the Applicants for compounding of violation.


The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/AHN/SA/55294/2016 dated 15/11/2016 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 22<sup>nd</sup> December 2015 of the 1<sup>st</sup> Applicant Company wherein the Board of Directors resolved for filing compounding Application. We have seen copy of Notice for holding the 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 96 of the Companies Act, 2013 on the Applicants as shown in the table given below:-



Sl. No.	Particulars	Violation of Sec.96 of Companies Act, 2013		Total Rs.
		For violation	37 days delay	
1	1 <sup>st</sup> Applicant Company	20,000/-	500/- x 37 =18,500/-	38,500/-
2	2 <sup>nd</sup> Applicant – Company Secretary	20,000/-	500/- x 37 =18,500/-	38,500/-
3	3 <sup>rd</sup> Applicant- Previous Company Secretary	20,000/-	500/- x 37 =18,500/-	38,500/-
4	4 <sup>th</sup> Applicant-Director	20,000/-	500/- x 37 =18,500/-	38,500/-
5	5 <sup>th</sup> Applicant-Director	20,000/-	500/- x 37 =18,500/-	38,500/-
6	6 <sup>th</sup> Applicant-Director	20,000/-	500/- x 37 =18,500/-	38,500/-
7	7 <sup>th</sup> Applicant-Director	20,000/-	500/- x 37 =18,500/-	38,500/-
8	8 <sup>th</sup> Applicant-Director	20,000/-	500/- x 37 =18,500/-	38,500/-
9	9 <sup>th</sup> Applicant-Director	20,000/-	500/- x 37 =18,500/-	38,500/-

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

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL