

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 229/16**

C.A. 290/621A/CB/2015

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

**IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A READ WITH SECTION 166 AND 168 OF THE COMPANIES
ACT, 1956 AND SECTION 441 OF THE COMPANIES ACT, 2013.**

AND

**IN THE MATTER OF M/S FISHER & PAYKEL HEALTHCARE INDIA
PRIVATE LIMITED**

C.A. 290/621A/CB/2015

1. M/S Fisher & Paykel Healthcare India Private Limited
339/1, HIG 'A' Sector, II Stage Extension,
Yelahanka New Town,
Bangalore-560064.
2. Mr. Thekkanathu Paily Bastin.
11305, Prestige Monte Carlo Apartments,
Yelahanka
Bangalore-560064
3. Mr. Paul Nigel Shearer
79 Whites Road RD1,
Howick Auckland 2571 NZ
4. Mr. David Michael Boyle,
15 Coldstream West Road,
Victoria Coldstream 3770 AU
5. Mr. Michael Grenfell Daniell,
314A Jervois Road Herne Bay
Auckland New Zealand 1011

- APPLICANTS

PARTIES PRESENTED:

Mr. Padmasree Balaji, No.17, Nandani Enclave, 1st
Floor, RMV Extension 2nd Stage, Bhoopsandra, 2nd
A Main, Bangalore-560032, Practicing Company
Secretary and Authorised representative for the
Applicants.

Heard on : 04/08/2016, 05/08/2016, 29/08/2016, 19/09/2016 and 27/09/2016

ORDER

The Petition was originally filed before the Company Law Board, Southern Region, Chennai under Section 621A of the Companies Act, 1956 for purpose of compounding for violation of provisions of section 166 of the Companies Act, 1956. Consequent upon the establishment of National Company Law Tribunal Bench at Bengaluru, the said case was transferred to this Tribunal on abolition of Company Law Board, Southern Region, Chennai Bench and numbered as T.P No. 229/2016.

The 1st Applicant is a company Registered under the name and style of "FISHER & PAYKEL HEALTHCARE INDIA PRIVATE LIMITED". Incorporated on 07/07/2008 vide Registration No. U5150KA2008FTC047061. The Registered office of the company is situated at # 339/1, HIG 'A' Sector, II Stage Extension, Yelahanka New Town, Bangalore-560064.

The Authorized share capital of the 1st Applicant Company is Rs 5,00,000/- (Rupees five Lakhs only) divided into 50,000 (fifty thousand only) Equity Shares of Rs 10/- each. The issued, subscribed and paid up capital of the Company is Rs 1,00,000/- (Rupees one lakh only) divided into 10,000 (Ten thousand only) Equity Shares of Rs 10/- each.

The main objects of the 1st Applicant Company is to provide and engage in all activities relating to importing, exporting, distribution, sales and marketing all types and kinds of medical and healthcare instruments and all related services in or outside India; to provide services relating to clinical education in connection with medical and healthcare equipment; to provide and offer by use of any communication medium, post-sales support, telesales and to deal in or with all software, hardware and programmes of any and all kinds and description, develop, research, test, maintain etc., Details of the main objects of the 1st Applicant Company are mentioned in the Memorandum and Articles of Association.

The averments in the Application are briefly stated hereunder:-





The Annual General Meeting for the financial year ending 31st March 2012 was held on 30/11/2012. The Company closed its books of accounts on 31/03/2012. The 1st Applicant Company ought to have held the Annual General Meeting as per provisions of the Companies Act, 1956 on or before 30/09/2012. The reason for the delay in holding the Annual General Meeting as stated in the Company Petition is that, the Financial Controller of the Company who was in charge of handling the finance and corporate law compliance matter suddenly left the Company without giving adequate notice. After new Financial Controller took charge then he took steps and Annual General Meeting was held on 30/11/2012. Hence this application is filed for compounding.

Originally the petition was filed by the 1st Applicant Company and 2nd Applicant herein. The Registrar of Companies, Karnataka, Bangalore vide his report bearing No. ROCB/PS/621A/047061/2015 dated 12/10/2015 has stated that, 3 more Directors of the Applicant Company viz., Mr. Paul Nigel Shearer, Mr. David Micheal Boyle and Mr. Michael Grenfell Daniell were also at default when violation took place. Thus Practicing Company Secretary filed fresh application impleading 3 more Directors who are Applicant Nos. 3 to 5.

Thus 1st Applicant Company admitted violation of provisions of section 166(1) of the Companies Act, 1956, in not holding Annual General Meeting for the financial year 2011-12 within the prescribed time, which 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:”

We have heard the Practicing Company Secretary for the Petitioners and we have seen the documents filed by the Petitioners along with the petition. We have seen Annual Reports for the financial year ending 31st March 2012. We have seen the Memorandum & Articles of Association of the Company. The Petitioners filed extract of Board Resolution dated 29/06/2015, the reasons for the delay in holding the Annual General Meeting that the Finance Controller of the



Company left the Company without any prior notice. Thus there was delay of 61 days in holding the Annual General Meeting. As per provisions of section 168 of the Companies Act, 1956 if default is made in compliance with the provisions of sub-section 166, the company and every officer of the company who is in default are liable to pay fine.

This suo-moto application is filed by the petitioners. We are of the view that violation can be compounded by levying compounding fee on the Applicants which is shown in the table:-

Sl. No.	Particulars	Violation of Sec.166 of Companies Act, 1956	Delay of 61 days	Total Rs.	Grand Total Rs.
1	1 st Applicant Company	Rs. 10,000/-	61 x 500/-	30,500/-	40,500/-
2	2 nd Applicant	Rs. 10,000/-	61 x 500/-	30,500/-	40,500/-
3	3 rd Applicant	Rs. 10,000/-	61 x 500/-	30,500/-	40,500/-
4	4 th Applicant	Rs. 10,000/-	61 x 500/-	30,500/-	40,500/-
5	5 th Applicant	Rs. 10,000/-	61 x 500/-	30,500/-	40,500/-
			Total		2,02,500/-

In pursuant to our Order dated 27/09/2016 mentioned herein above, the Applicants have paid the compounding fee by depositing Demand Draft bearing No. 019389 dated 14/10/2016 for Rs.2,02,500/- (Rupees Two lakh two thousand five hundred only) of ICICI Bank, Bengaluru drawn in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai".

As the compounding fee has been remitted by the Applicants, the offence stated in the petition is compounded. A copy of this Order be sent to Registrar of Companies, Karnataka, Bengaluru for appropriate action.

(RATAKONDA MURALI)
MEMBER, JUDICIAL

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 17th DAY OF OCTOBER 2016