

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

C.A. NO. 320/621A/CB/2014

(T.P. NO. 137/HDB/2016)

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OF THE ORIGINAL**

Date of Order: 09.12.2016

Between:

1. Monarch Ergonomics India Pvt Ltd,
Regd. Office: #304, 4th Floor, Bhuvana Towers,
S.D.Road, Secunderabad -500003, Telangana.
2. Mr. Jagannathan Koteswaran, Managing Director,
RF-15, Ambience Canton Park, Pet Basheerabad,
SRV. No.9 to 11, 15, Qutbullapur Mandal,
R.R.Dist, Hyderabad -500085.
3. Mr. Jagannathan Parameswaran, Director
RH 1, Row House, Survey No. 9, 10, 11, 15,
Canton Park, Pet Basheerabad,
Jeedimetla, Hyderabad – 500085.

...Applicants

AND

Registrar of Companies,
Andhra Pradesh & Telangana,
2nd Floor, Corporate Bhawan, GST Post,
Tattiannaram, Nagole, Bandlaguda,
Hyderabad-500068, Telangana, India.

...Respondent

Counsel for the Applicants

...Mr. A Ravi Shankar
Practicing Company Secretary

CORAM

HON'BLE Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDICIAL)

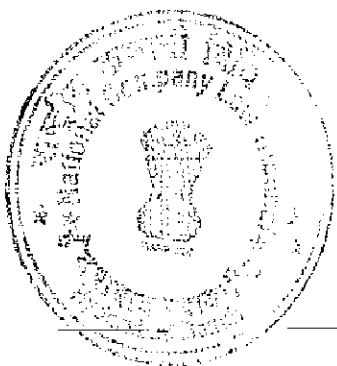
HON'BLE Mr. RAVIKUMAR DURAISAMY, MEMBER (TECHNICAL)

ORDER

(As per Ravikumar Duraisamy, Member (Technical))

1. The Application was initially filed before Hon'ble Company Law Board, Chennai Bench, Chennai. Since, National Company Law Tribunal, Hyderabad Bench has been constituted for the cases pertaining to the states of Andhra Pradesh and Telangana, the case is transferred to Hyderabad Bench of National Company Law Tribunal, hence, we have taken the case on records of National Company Law Tribunal, Hyderabad Bench and deciding the case.
2. The present Application was initially filed by Mr. Jagannathan Koteswaran, Managing Director and Mr. Jagannathan Parameswaran, Director of Monarch Ergonomics India Pvt Ltd under Section 621A of the Companies Act, 1956 for compounding the offences in respect of violation of Provisions of Sec. 94(2) of the Companies Act, 1956 by praying the Tribunal that the offences may be compounded and minimum penalty be levied on the Applicants.
3. The brief facts of the case as averred in the application are as follows:

- A. The applicant company was incorporated on 02-04-2004, as a private limited company having its registered office at Flat no.304, 4th Floor, Bhuvana Towers, S.D.Road, Secunderabad-500003, Telangana.
- B. The main objects for which the company was formed as set out in the Memorandum of Association are as follows:
- (a) To establish and carry on trading and manufacturing of furniture viz., chairs, tables to import and export sales.
 - (b) To engage in and carry on the business as importers, exporters, manufacturers, purchase, sell or otherwise acquire all plant, machinery and related to furniture items.
 - (c) Acting as commission agent of furniture trade including export and import sales.
- C. As per the Provisions of Section 94 of the Companies Act, 1956 every company having a share capital, may, if so authorised by its articles, can increase its share capital by such amount as it thinks expedient by issue of new shares and alter the Memorandum and Articles of Association provided that the approval of members is taken approving for such increase and alteration of memorandum and articles accordingly. However, the company has infringed the aforesaid provisions as the company has increased the share capital of the company without the approval of members. Pursuant to the Section 209A of the Companies Act, 1956 Registrar of Companies has conducted the inspection of the records and a show cause notice dt.01-04-2011 was issued to the company stating the violation of



Section 94(2) of the Companies Act, 1956 for which the company has agreed for compounding of offence. Company received show cause notice and submitted its reply dt.26-04-2011 with the Registrar of Companies stating that, since our company is a private limited company where in only two directors and they also happen to be the shareholders of the company, hence we called for board meeting rather than General Meeting, as the result will not have any impact to the public at large or detrimental to the interest of other stakeholders. Further, stated that the offence has inadvertently arisen due to circumstances prevailing at that time and it was unintentional and without any malafide motive and the applicants hereby confirm that the offence under the said section of the Act is a first offence of its nature.

4. We have heard Mr. A. Ravi Shankar, Counsel for the applicants. On September 6, 2016 he submitted a copy of the show cause notice received by the company and copy of reply given by the company in respect of show cause notice received. Later on September 14, 2016 the Counsel for the applicants submitted an application to implead the company in the present compounding application and an amended application was filed by the Counsel on 17-10-2016 including the company as well.

As per the amended application the present Authorised Share Capital of the company is Rs.5,10,00,000/- (Rupees Five Crore Ten Lakhs Only)

divided into 51,00,000 Equity Shares of Rs.10/- each and the Paid-up Capital of the company is Rs. 5,10,00,000/- (Rupees Five Crore Ten Lakhs Only) divided into 51,00,000 Equity Shares of Rs.10/- each.

5. Show cause notice No. RAP/KRR 209A/Sec.94(2)/ 2011/2983 dated 01.04. 2011 was issued by the Deputy Registrar of Companies, Hyderabad for the states of Andhra Pradesh and Telangana. It is stated that the company Monarch Ergonomics India Pvt Ltd was ordered for inspection by the Ministry of Corporate Affairs, Government of India, vide Directorate's letter No. RD/IW/1/2010 dated 05-02-2010 under Section 209A of the Companies Act, 1956. In pursuance of such directions, the Assistant Registrar of Companies, Hyderabad had conducted inspection of the company and observed that the company had filed Form No.5 on 24-12-2004 with this office for increase in authorised share capital from Rs.5 lakhs to Rs.15 lakhs with date of resolution being 15th December, 2004. However upon perusal of the minutes books during the course of inspection, it was observed that the company has not obtained approval of shareholders as required under section 94(2) of the Companies Act, 1956 and called explanation of the company.
6. The company, in its reply stated that it is a mere oversight of not passing a members resolution at the EGM/AGM and the directors were not of any malafide intention to do this. If it is considered as a non-compliance under Section 94(2) of the Act, the company is ready to go for

compounding of offence. In view of the admittance by the company, the non-compliance of provisions of Section 94(2) is established.

7. The Registrar of Companies, while affirming the facts of the case, stated that on 27-05-2011 the company and its Managing Director Sri Jagannathan Koteswaran and another director Sri Jagannathan Parameshwaran have submitted an application vide SRN B12953345 under Section 621A of the Companies Act, 1956 for compounding the offence committed under Section 94 of the Companies Act, 1956 for which fine is liveable U/s.629A of Companies Act, 1956. As per Section 629A the company and every officer of the company who is in default, shall be punishable with fine, which may extend to Rs.5000/- (Rupees five thousand only) and where the contravention is continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

8. In view of the above facts and circumstances and in the interest of justice we pass the order as follows:

- (i) We are imposing a penalty of Rs.2,50,000/- (Rupees Two Lakh Fifty thousand only) on the Applicant Company and Rs.50,000/- (Rupees Fifty thousand only) each on Applicant 2 & 3 which is to be paid within 3 weeks from the date of receipt of the Order and report compliance of the same.

- (ii) From the available records it is understood that the company has not obtained shareholders approval as required U/s.94 of the Companies Act, 1956. Therefore, we direct the company and the directors to pass appropriate resolution within one month from the date of receipt of this order and report compliance to Registrar of Companies, Hyderabad as well as to the Registry.

The Applicants are warned not to repeat any violation else strict action will be taken thereby. In view of the above, the case is disposed off.

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Sd/-

RAVIKUMAR DURAISAMY
MEMBER (T)

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (J)

V. Annapoorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68