

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

T.P.NO. 275/2016

DATED: THURSDAY THE 8TH DAY OF JUNE 2017

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

**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
KOHLER INDIA CORPORATION PRIVATE LIMITED**

T.P.NO. 275/2016

1. Kohler India Corporation Private Limited,
No. 1238/6, 6th Cross, 10th Main,
R.M.V Extension, Sadashivanagar,
Bangalore-560080.
2. Mr. Salil Sadanandan, Managing Director,
307 A, Beverly Park 1, Meherauli,
Gurgaon Road,
Gurgaon-122002, Haryana
3. Mr. Puneet Sharma, Managing Director,
E-323, Third Floor, Jangpura Extension,
Newe Delhi-110014.
4. Ms. Tanushree Ghildiyal, Company Secretary,
9/B, New Road,
Dehradun, Uttarakhand -

APPLICANTS

PARTIES PRESENT:

Mr. Subramaniam Parasuraman Nagarajan, S-818,
Eighth Floor, South Block, Manipal Centre, 47,
Dickenson Road, Bangalore-560042 - Practicing
Company Secretary and Authorised Representative
for the Applicants.

Heard on: 20/03/2017 and 21/04/2017,

ORDER

The Application was originally filed before the Company Law Board, Southern Region, Chennai for the purpose of compounding for violation of provisions under Section 96 of the Companies Act, 2013 and it was unnumbered. 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. 275/2016.

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



The 1st Petitioner Company was incorporated under the Companies Act, 1956 on 20th September 1999, as a Private Limited Company under the name and style of "Kohler Power Systems and Services Private Limited" Subsequently, the name of the Petitioner Company was changed to Kohler India Corporation Private Limited on 20th June 2005. The Registered office of the company is situated at No. 138/6, 6th Cross, 10th Main, R.M.V Extension, Sadashivanagar, Bangalore-560080.

As per the latest Balance Sheet the Authorized share capital of the 1st Petitioner Company is Rs. 1,061,00,00,000/- divided into 95,60,00,000 Equity Shares of Rs 10/- each and 10,50,00,000 – 11% Cumulative Participating Fully convertible Preference shares of Rs 10/- each. The paid up capital of the Company is Rs. 940,83,95,250/- consisting of 94,08,39,525 Equity Shares of Rs 10/- each.

The Main objects of the 1st Applicant Company is to carry out the business of procurers, suppliers, distributors, producers, manufacturers, storers, carriers, importers and exporters of Engines, power generating sets; to carry out works in respect of the whole or any part or parts or any electricity generating station, captive power plants, gaseous and solid fuels, generating sets; to provide consultancy, technical and maintenance services, and carry out setting up of electricity generating station 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 Petition 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 due to the statutory audit of the company could not be completed for want of additional queries/information 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 16th November, 2015 with a delay of 46 days.

It is also averred in the Company Petition that, the above offence committed by the Petitioners without any malafide intentions and no detriment has been caused to the public because of the contravention and there is no mens rea.





This Company Application was originally filed before Company Law Board, Southern Region, Chennai on 11/04/2016. This file was received from Company Law Board after constitution of National Company Law Tribunal Bench at Bengaluru. This petition was numbered as T.P No. 275/2016. 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 Company and its Directors 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 20/03/2017 and 21/04/2017. The Practicing Company Secretary contended that, the default occurred due to the statutory audit of the company could not be completed for want of additional queries/information and hence the Annual General Meeting could not be held within the stipulated time. The Practicing Company Secretary for Applicants further contend that, the Petitioner Company had complied with the requirement and filed e-Form AOC 4 XBRL and MGT 7 20B on 18th January 2016 with the Registrar of Companies, Karnataka, Bangalore.

The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/MMM/Sec 441/Sec 96/2017 dated 10th February 2017 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 5th February 2016 of the Petitioner Company wherein the Board of Directors resolved for filing compounding petition, copy of Form No. AOC-4XBRL and Form No. MGT-7 along with ROC Challan filed with Registrar of Companies-Karnataka at Bangalore. 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	46 days delay	
1	1 st Applicant Company	10,000/-	250/- x 46 = 11,500/-	21,500/-
2	2 nd Applicant - Managing Director	10,000/-	250/- x 46 = 11,500/-	21,500/-
3	3 rd Applicant - Managing Director	10,000/-	250/- x 46 = 11,500/-	21,500/-
4	4 th Applicant - Company Secretary	10,000/-	250/- x 46 = 11,500/-	21,500/-

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 22ND June 2017 for compliance.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE

8th DAY OF JUNE, 2017.