

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 122A/2016

C.A. 17/621A/CB/2014

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

IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 621A OF AN OFFENCE UNDER SECTION 383A (1)
OF THE COMPANIES ACT, 1956
AND

IN THE MATTER OF M/S CARMEL ASIA HOLDINGS PRIVATE LINTIED

C.A. 17/621A/CB/2014 IN T.P.NO. 122A/2016

1. M/S Carmel Asia Holdings Private Lintied,
56B/34, 1st Main,
Vyalikaval, Lower Palace Orchards,
Bangalore-560003.
2. Shri B. Ramesh Babu,
E 604, Temple Bells, 26/1
Industrial Suburb, Yeshwanthapur,
Bangalore-560022.
3. Shri Yeduguri Sandinti Jagan Mohan Reddy,
269/S/98, Sagar Society,
Road No.2,
Banjara Hills,
Hyderabad-500034.
4. Smt. Yeduguri Sandinti Bharathi Reddy,
269/S/98, Sagar Society,
Road No.2,
Banjara Hills,
Hyderabad-500034.

- APPLICANTS

PARTIES PRESENTED:

Mr. J.Sundharesan, Practicing Company Secretary
and Authorised representative for the Applicants.

Heard on: 04/08/2016, 30/08/2016, 08/09/2016, 4.10.2016, 25.10.2016,
09/11/2016 and 25.11.2016.

ORDER

The Petition is filed on behalf of Petitioners/Applicants under Sec.621A of the Companies Act 1956, Originally the Compounding petition was filed before Company Law Board, Southern Region, Chennai. The Petition was numbered as C.A. 17/621A/CB/2014. 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 it is renumbered as T.P 122A/16 on the file of the Tribunal. This petition is filed by the Petitioners with a prayer to record compounding of the offence.

Contents of the Company Petition are briefly stated hereunder:

The 1st applicant is a company which was incorporated as Private Limited Company under the Companies Act, 1956 vide Certificate of Incorporation No. U85110KA2005PTC037807 on 30th November 2005 in the name and style of "Carmel Asia Holdings Private Limited", the Registered Office of the company is situated at No. 56B/34, 1st Main, Vyalikaval, Lower Palace Orchards, Bangalore-560003.

The Authorised Share Capital of the applicant company as per the latest Audited Balance Sheet is Rs.200,000,000/- (Rupees twenty crores only) divided into 20,000,000 (Two Crores) Equity Shares of Rs 10/- each and issued, subscribed and paid up capital is Rs. 152,202,910 (Rupees Fifteen Crores Twenty two lakhs two thousand nine hundred and ten only) comprising of 15,220,291 (One Crore fifty Two lakhs twenty thousand two hundred and ninety one only) Equity Shares Rs 10/- each as on date.

The main object of the company is to carry on business as an investment company and to invest the moneys of the company in the purchase of shares, stocks, debentures, debenture stocks, bonds. To apply for and obtain the membership interest and trading privileges in various stock exchanges and security exchanges. To invest in television, media, telecommunications, power generation industry, real estate etc., Details of the main object of the Company are stated in the petition.



The Petitioner Company M/s Carmel Asia Holdings Private Limited, represented by its Director Shri B. Ramesh Babu has approached the erstwhile Company Law Board, now National Company Law Tribunal for the default committed by the petitioner company under section 383A of the Companies Act, 1956 with a prayer for compounding of the offence for the financial years 2006-07, 2007-08, 2009-10, 2010-11 and 2011-12 and total No. of days of delay are 2102. The Registrar of Companies, Karnataka, Bangalore vide letter No. ROCB/STA/Co.No.37807/Section 621-A/269 and 383A/Report/2014 dated 08/01/2014 has informed that no whole time Company Secretary was appointed as required under section 383A(1) of the Companies Act, 1956 for the financial years 2006-07, 2007-08 and 2011-12. Further, during the financial years 2007-08, 2008-09, 2009-10 and 2010-11, a whole time Secretary was appointed for a period of one month. The Registrar of Companies, Karnataka, Bengaluru has also informed that Mr. K.N. Surya Prakash, Mr. G.R Hari, Mr. Vasantha Poojary and Ms. Kusum Lata were appointed, but resigned and now 1st Applicant Company appointed a whole time Company Secretary Mr. Phaneendras w.e.f. 26/08/2013 and the Company has filed Form No.32 for the same.

The Registrar of Companies, Karnataka, Bengaluru has also informed that they have issued Show Cause Notice on the basis of inspection under section 209A of the Companies Act, 1956 and the Ministry's file No. 1/30/2013-CLII (SER) dated 18/06/2013. The Ministry of Corporate Affairs vide letter dated 05/02/2013 has submitted the inspection report. It has also observed that the 1st Applicant Company has replied to Deputy Registrar of Companies vide their letter dated 10/9/2013 for the Show Cause Notice. The Practicing Company Secretary of the Company has informed that, the Petitioner Company is a subsidiary of M/s. Sandur Power Company Limited and as such the company did not generate much from its activities and operations and due to limited exposures the appointed company Secretaries are leaving the company in a short period. Hence the company is not able to get full time secretary during the intervening period.



It also reflects that Petitioner Company has taken reasonable efforts to comply with the provisions of section 383A of the Companies Act, 1956 but could not get a Company Secretary for the continuous period.

Section 383A (1) of the Companies Act, 1956 speaks which is penal provisions as follows:-

“Every company having such paid-up share capital as may be prescribed shall have a whole-time secretary, and where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company.”

Section 383(1A) reads as follows:-

“if a company fails to comply with the provisions of sub-section (1) the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.”

We have heard the Practicing Company Secretary for the company on 4/08/2016, 30/08/2016, 08/09/2016, 4.10.2016, 25.10.2016, 09/11/2016 and 25.11.2016. We have seen the affidavits dated 26/09/2016 and 14/11/2016 filed by Mr. Ramesh Babu, Director who is 2nd Applicant. We have seen the report of the Registrar of Companies, Karnataka at Bangalore and also we have seen the Memorandum and Articles of Association of the Company and the Board Resolution dated 17th September 2013 authorizing the Company to file compounding application. We have seen the copies of inspection report under section 209 of the Companies Act, 1956. We have seen the Show Cause Notice and the reply and also the financial statements.

The compound of the offence has been considered in view of affidavits dated 26/09/2016 and 14/11/2016 given by Mr. Ramesh Babu, Director and also submission made by the Practicing Company Secretary for the company on 4/10/2016 and 25/10/2016 that there is no investigations pending or initiated against the company or any of the officer of the company for any offence under the Companies Act, 2013 or Companies Act, 1956.

This order is limited for compounding of the violation under the provisions of Section 383A of the Companies Act, 1956.

This suo-moto application is filed by the Applicants for compounding the violation under section 383A(1) which is punishable under section 383A(1A) of the Companies Act, 1956. The offence can be compounded by levying compounding fee on the Applicants as given below:-

Sl. No.	Particulars	Violation of Sec.383A of Companies Act, 1956 (No. of days)	Total Rs.
1	1 st Applicant Company	2102x 75/-	1,57,650/-
2	2 nd Applicant -Director	2102x 75/-	1,57,650/-
3	3 rd Applicant- Director	1677 x 75/-	1,25,775/-
4	4 th Applicant- Director	424 x 75/-	31,800/-

In pursuant to our Order dated 29th November 2016 mentioned herein above, the Applicants have paid the compounding fee by depositing 4 Demand Drafts of Oriental Bank of Commerce, Bangalore drawn on 09/12/2016 in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai" as detailed below:-

Sl. No.	Particulars of Applicant	Fee Amount/D.D Rs.	DD No. & Date
1	1 st Applicant Company.	1,57,650/-	489930 dt. 09/12/2016
2	2 nd Applicant Director	1,57,650/-	949096 dt. 09/12/2016
3	3 rd Applicant Director	1,25,775/-	949098 dt. 09/12/2016
4	4 th Applicant Director	31,800/-	949100 dt. 09/12/2016

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 15th DAY OF DECEMBER 2016