

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

2

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 09.10.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CA No.219/131/HDB/2018
NAME OF THE COMPANY	VIE Foods Pvt Ltd
NAME OF THE PETITIONER(S)	VIE Foods Pvt Ltd
NAME OF THE RESPONDENT(S)	Registrar of Companies Hyderabad
UNDER SECTION	131

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
<i>T. Sujan Kumar Reddy</i>	<i>Advocate</i>	<i>9160001435</i>	<i>TSuj</i>

ORDER

Orders pronounced vide separate orders.


Member(Judl)

Pavani

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

CA.No.219/131/HDB/2018

Under Section 131 of Companies Act, 2013

R/w Rule 77 of the NCLT, Rules, 2016

In the Matter of

M/s. VIE FOODS PRIVATE LIMITED

.....Applicant

Vs

Register of Companies, Hyderabad

.....Respondent

Date of Order: 09th, October, 2018

Coram:

Hon'ble Shri RatakondaMurali, Member (Judicial)

Parties / Counsels Present

For the Applicant Company: M B Suneel,
PCS.

For Respondent : Shri T. Sujan Kumar Reddy, Advocate.

Per: Hon'ble Shri RatakondaMurali, Member (Judicial)

Heardon:

21.02.2018,22.03.2018,10.04.2018,24.04.2018,10.05.2018,11.06.2018,06.07.
2018,23.07.2018,07.08.2018,14.08.2018,24.08.2018,14.09.2018,25.09.2018.

ORDER

1. The Applicant Company M/s. VIE FOODS PRIVATE LIMITED has filed the present Application under Section 131 of the Companies Act, 2013.

2. The averments made in the Company Application are briefly described hereunder:-
- a. The Applicant Company was incorporated under the Companies Act, 1956 on 31.07.2013 as a private Limited Company with Registrar of Companies, Andhra Pradesh and Telangana. Its registered address is situated at 10-5-391/10/7, Flat No. WC2, Smritinsha Apt, Mithila Nagar, Road-12, Banjara Hills, Hyderabad -500034.
 - b. The main objects of the Applicant Company are to carry on the business of manufactures and to refinement, processing, preservation, dehydration, canning, bottling, freezing, packing and repacking of Dry fruits, nuts, flax seeds, fruits and vegetable products and cereal products, squashes, soup, syrups, juice and the ice concentrates.
 - c. The Authorized Share Capital of the Applicant Company is Rs.55,00,000/- (Rupees Fifty Five Lakhs only) divided into 5,50,000 (Five Lakhs Fifty Thousand Only) Equity shares of Rs.10/- (Rupees Ten only) each. The Issued, Subscribed and Paid-up Capital of the Company is Rs.29,77,500/- (Rupees Twenty Nine Lakhs Seventy Seven Thousand Five Hundred only) divided into 2,97,750 (Two Lakhs Ninety Seven Thousand Seven Hundred And Fifty) equity shares of Rs.10/- (Rupees Ten only) each .
 - d. It is averred in the Company Application that , the Board of Directors of the company in its meeting held on 30.08.2017 have approved the Financial Statements of the Company for the Financial Year 2016-17 and the same has been submitted to the statutory auditors of the Company for their report. Subsequently, the board has placed the audited accounts in the ensuing Annual General Meeting for the F.Y.2016-17 and the shareholders of the Company have considered, approved and adopted the Financial Statements as recommended by the board at the Annual General Meeting of the Company held on 29.09.2017.
 - e. It is averred in the Company Application that, after approval of Financial Statements by the Shareholders the Board of Directors at their meeting held on 22.01.2018 found that there are some errors in the Financial Statements and hence does not comply with the provisions of Section 129 of the Companies Act, 2013. Subsequently, Members of Board passed a Resolution for Voluntary revision of

Financial Statements of the Company pursuant to Section 131 of the Companies Act,2013 read with Rule 77 of the NCLT, Rules 2016.

- f. It is averred in the Company Application that, the Company has received an amount of Rs. 84,00,000/- (Rupees Eighty Four Lakhs only) from Mrs. Jella Paavani towards share application for allotment of shares. The Board of Directors of the applicant company at their meeting held on 08.12.2016 have allotted 2,10,000 Equity Shares of Rs.10/- (Rupees Ten only each) each to Mrs. Jella Paavani for an amount of Rs. 40/- per equity share (Rupees Forty only) including a premium of Rs.30/- (Rupees Thirty only) per share and accordingly filed Form PAS-3 with the Registrar of Companies on 12.12.2016 evidencing allotment of shares at a Premium.
- g. It is averred in the Company Application that, as per the Provisions of Section 129 of Companies Act, 2013 out of the Rs. 84,00,000/- (Rupees Eighty Four Lakhs only) an amount of Rs. 21,00,000/- (Rupees Twenty One lakhs only) being the face value of 2,10,000 (Two Lakhs Ten Thousand) equity shares allotted by the Company should be shown under the head "SHARE CAPITAL" under sub-heading "ISSUED, SUBSCRIBED AND PAID-UP CAPITAL" and balance amount of Rs. 63,00,000/- (Rupees Sixty Three Lakhs only) being the premium amount on equity shares allotted by the Applicant Company should be shown under the head "RESERVES AND SURPLUS" under sub-heading "SECURITIES PREMIUM RESERVE".
- h. It is averred in the Company Application that, the Company is into the business of processing and supply of various foods products which includes import and export of the same. In the process of import and export on certain occasions the Company is required to remit various payments like freight and other miscellaneous expenses after the business hours of the company. To meet such expenses in exigencies as a policy the Company used to keep some amounts into the personal accounts of the Directors and the concerned director will make the payments on behalf of the Company directly from their personal account and periodically they will give the account detailing of the amounts spent by them. Further, Mrs. Jella Paavani, who is the Director of the Company was in control of the day to day operations of the Company. Accordingly, on various occasions as a company's policy an amount of Rs.15,95,758/- (Rupees Fifteen Lakhs Ninety Five Thousand Seven Hundred and Fifty Eight only) has been remitted to

the personal account of Mrs. Jella Paavani to meet the expenses for freight and other miscellaneous expenses in the course of its business. The said amounts should be reflected in the balance sheet under the head "OTHER CURRENT ASSETS".

- i. It is averred in the Company Application that, while preparing the Financial Statements for the Financial Year ended 31.03.2017 the Company instead of showing an amount Rs. 63,00,000/- (Rupees Sixty Three Lakhs only) being the premium amount on equity shares allotted by the Applicant Company under the head "RESERVES AND SURPLUS" under sub-heading "SECURITIES PREMIUM RESERVE" and an amount of Rs. 15,95,758/- (Rupees Fifteen Lakhs Ninety Five Thousand Seven Hundred and Fifty Eight only) under the head "OTHER CURRENT ASSETS" has erroneously shown an amount to the tune of Rs.47,04,242/- (Rupees Forty Seven Lakhs Four Thousand Two Hundred and Forty Two only) being part of the Premium received under the head "LONG TERM BORROWINGS" under sub-heading "LOAN FROM DIRECTORS" and the balance amount of Rs. 15,95,758/- (Rupees Fifteen Lakhs Ninety Five Thousand Seven Hundred and Fifty Eight only) of premium amount was adjusted against the advances given by the Company to Mrs. Jella Paavani towards meeting the various business expenses of the company.
- j. It is averred in the Company Application that, An amount of Rs. 63,00,0000/- (Rupees Sixty Three Lakhs Only) should be included under the head "Reserves and Surplus" under sub-heading "SECURITIES PREMIUM RESERVE" and an amount of Rs. 15,95,758 (Rupees Fifteen Lakhs Ninety Five Thousand Seven Hundred and Fifty Eight Only) should be reflected under the head "OTHER CURRENT ASSETS" as advances to Mrs. Jella Paavani.

3. The present Financial Statement and revised statement along with relevant schedules are detailed below:

Balance Sheet as at 31st March, 2017:

Particulars	Notes to Accounts	As at 31 st March 2017	
		Amount Rs.	
		Existing	Revised

I. EQUITY AND LIABILITIES			
(1) Shareholders Funds			
(a) Share Capital	1	29,77,500	29,77,500
(b) Reserves and Surplus	2	(1,48,31,869)	(85,31,869)
(c) Share Application Money	-		
(2) Non-Current Liabilities			
(a) Long Term Borrowings	3	1,57,04,242	1,10,00,000
(b) Deferred Tax Liability	4	(55,163)	(55,163)
(3) Current Liabilities			
(a) Short Term Borrowings	5	65,81,226	65,81,226
(b) Other Current Liabilities	6	5,85,033	5,85,033
(c) Trade Payables	7	4,52,243	4,52,243
(d) Short Term Provisions	8	1,27,800	1,27,800
Total		1,15,41,012	1,31,36,770
II. Assets			
(1) Non-Current Assets			
(a) Fixed Assets			
Tangible Assets	9	91,532	91,532
Intangible Assets		23,224	23,224
(2) Current Assets			
(a) Inventories	10	66,23,036	66,23,036
(b) Trade Receivables	11	14,08,071	14,08,071
(c) Cash and Cash Equivalent	12	26,06,025	26,06,025
(d) Other Current Assets	13	7,89,124	23,84,881
Total		1,15,41,012	1,31,36,770

Note 2 Reserves and Surplus:

Particulars	As at 31 st March 2017	
	Amount Rs.	
	Existing	Revised
1. Securities Premium Reserve	23,32,500	86,32,500
Opening Balance	(1,14,06,496)	(1,14,06,496)
2. Current Year Profit/ Loss	(57,57,873)	(57,57,873)
Total	(1,48,31,869)	(85,31,869)

Note 3 Long Term Borrowings:

Particulars	As at 31 st March 2017	
	Amount Rs.	
	Existing	Revised
1. Loan from Directors		
Pavani Jella	47,04,242	-
Brijesh Chandwani	1,10,00,000	1,10,00,000
Pamidimalla Jagadish Reddy	-	-
Total	1,57,04,242	1,10,00,000

Note 13 Other Current Assets:

Particulars	As at 31 st March 2017	
	Amount Rs.	
	Existing	Revised
1. Kanth Trends	5,59,155	5,59,155
2. Telephone Deposit	500	500
3. Rent Deposit	40,000	40,000
4. Advances to Suppliers	1,89,469	1,89,469
5. Other Advances	-	15,95,757
Total	7,89,124	23,84,881

4. In accordance with Rule 77(4) of the National Company Law Tribunal Rules, 2016 the Company had advertised the Application in newspaper dated 7th, March, 2018 i.e., Business Standard (English Daily) and Nava Telangana (Telugu Daily) both in Hyderabad edition.

5. Notice was ordered to the Income Tax Department, to the Central Government and to the Roc. Income Tax Department has filed the Report. Income Tax Department has given No Objection for considering the Application. Roc has filed report vide no. Roch/Legal/SEC131/89247/VIE/2018/4319 dated 21.03.2018 reiterating the averments stated in the Application and also stated that the Application may be considered on merits.

6. The Registrar of Companies Hyderabad on behalf of the Central Government submitted his report vide memo No. ROCH/ LEGAL/ SEC131/89247/VIE/2018 dated 13.08.2018 stating as follows:-

a. In the report it was observed that the Company's share capital was only 1,00,000/- divided in to 10,000 equity shares of Rs.10/-each from the

date of incorporation till 31.3.2016. The authorized share capital of the Company as on 31.03.2017 is Rs. 55,00,000 divided in to 5,50,000 equity shares of Rs. 10/- each and the paid up capital is Rs.29,77,500 divided in to 2,97,750 equity shares of Rs.10/- each. A sum of Rs. 23,32,500 is shown as "Securities Premium" as on 31.03.2017. Thus, it may be seen that the company has issues 2,87,750 equity shares of Rs.10/- each during the Financial year 1.04.2016 to 31.03.2017 which also includes 2,55,250 equity shares if Rs. 10/- each to Smt. Jella Pavani. Out of total Shareholding of 2,60,249 Shares (5000+4999+2,10,000+40,250 Shares) held by Smt. Jella Pavani, the transaction of allotment of 2,10,000 Equity shares of Rs.10/- each with premium of Rs.30/- per share is nnow sought to be rectified by the Petitioner Company.

- b. The Company has filed necessary e-forms PAS-3 with ROC within the time provided under the Act along with Board Resolution for allotment of Shares.
 - c. On examination of the bank statement and the PAS-3 filed by the Company it is seen that the Company has received the amounts from the shareholder which have been incorrectly accounted which needs rectification on the amount mentioned under reserves and surplus, long term borrowings and other current assets in the Financial Statements made as at 31.03.2017.
 - d. This rectification appears to be aimed at improving the net worth of the Company which otherwise was not properly represented due to incorrect disclosure of shareholders funds.
7. I have heard the Counsel for the Applicant Company, Counsel for Roc, RD.
8. Section 131(1) & (2) stipulates that

(1) If it appears to the directors of a company that—

(a) the financial statement of the company; or

(b) the report of the Board,

do not comply with the provisions of section 129 or section 134 they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar:

Provided that the Tribunal shall give notice to the Central Government and the Income- tax authorities and shall take into consideration the

representations, if any, made by that Government or the authorities before passing any order under this section:

Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year:

Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

(2) Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—

(a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and

(b) the making of any necessary consequential alternation.

9. Further I have seen the Audited Balance Sheet as on 31st March, 2017. There are some errors and also the Audited Balance Sheet does not strictly comply with provisions of Section 129 (1)

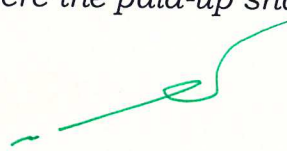
Section 129(1) read as follows:

“ The Financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III”.

10. Further I have seen the Form- PAS-3(Return on Allotment), it is seen from the Form that the Company has received amount from the shareholder and clearly demarcated between nominal amount and premium per security. From the Provisions of Section 52(1) of the Companies Act, 2013 Premium received on shares shall be transferred to “Securities Premium Account”.

Section 52(1) read as follows:

Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a “securities premium account” and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.



11. After hearing the Counsel for the Applicant Company and after perusal of material documents on record, the report of Central Government, the report of Income Tax Department , the report of Ro C and after going through the provisions of Section 131 of the Companies Act, 2013 read with Rule 77 of the NCLT, Rules, 2016 , this Tribunal is of the view that the the Financial Statement for the Year ended 31st March 2017, have been incorrectly accounted which needs rectification on the amounts mentioned under long term borrowings, reserves and surplus, and other current assets.

12. By exercising the powers conferred on this Tribunal under Section 131 of the Companies Act, 2013, and R/w Rule 77 of the NCLT Rules, 2016, the Company application bearing CA No.219/131/HDB/2018 is disposed of with the following directions:

1. The certified copy of the order of the Tribunal shall be filed with the Registrar of Companies within thirty days of the date of receipt of the certified copy.
2. The applicant Company is directed to convene the meeting of its Shareholders for approving the revision of financial statements and the notice of meeting shall be published in Business Standard (English Daily) and Nava Telangana (Telugu Daily) both in Hyderabad edition.
3. The Company is directed to place the revised financial statements, statement of directors and the statement of auditors for consideration of shareholders before a decision is taken on adoption of the revised financial statements.
4. The Company is directed to file the revised financial statements along with the statement of auditors with the Registrar of Companies within thirty days from the date of approval by the general meeting.


9/10/18
RATAKONDA MURALI
MEMBER (JUDICIAL)