BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 174/2016
IN
C.A. NO. 223/2015
(DATED: WEDNESSDAY THE 25TH JANUARY 2017)

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

IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 297 READ WITH SECTION 621A AND 629A
OF THE COMPANIES ACT, 1956
AND

IN THE MATTER OF M/S STANLEY LIFESTYLES LIMITED

T.P. NO. 174/2016 IN C.A.NO. 223/22015

1. **M/s Stanley Lifestyles Limited,**
   # 12/7, Shama Rao Compound,
   Mission road,
   Bangalore-560027.

2. **Mr. Sunil Suresh, Whole Time Director,**
   No. 275, 10th Cross, Wilson Garden,
   Bangalore-560027.

3. **Mrs. Shubha Sunil, Whole Time Director,**
   No. 275, 10th Cross, Wilson Garden,
   Bangalore-560027. - **APPLICANTS**

PARTIES PRESENTED: Mr. S.Vivekananda, VGB Associates, No. 23/6, Vasupuram, 3rd Floor, Muniswamy Road, Shivajinagar, Bangalore-560051, Counsel & Authorised Representative for the Applicants.

Heard on: 11/08/2016, 30/08/2016, 20/09/2016, 22/09/2016, 20/10/2016, 24/10/2016, 10/11/2016, 30/11/2016, 15/12/2016, 16/12/2016 & 03/01/2017

ORDER

The Application was originally filed before the Company Law Board, Southern Region, Chennai under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of section 297 of the Companies Act, 1956 and it was numbered as C.A 223/2015. 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 re-numbered as T.P No. 174/2016.

The averments made in the Company Application are briefly described hereunder:-

The 1st Applicant Company was incorporated under the Companies Act, 1956 on 11th October 2007 as a Public Limited Company in the name and style of "Stanley Lifestyles Limited" vide CIN No. U19116KA2007PLC044090. The Registered office of the company is situated at # 12/7, Shama Rao Compound, Mission Road, Bangalore-560027.

The Authorized share capital of the Applicant Company is Rs.6,00,00,000/- (Rupees Six Crores only) consisting of 60,00,000 Equity Shares of Rs 10/- each. The paid up share capital of the Company is Rs 5,75,82,490/- (Rupees Five Crores Seventy five lakhs eighty two thousand four hundred and ninety only) made up of 57,58,249 Equity Shares of Rs. 10/- each.

The Main objects of the 1st Applicant Company is to carry on the business of manufacturers, processors, importers, exporters, buyers, sellers, stockists, dealers, commission agents for leather hides and skins, adhesives and formulations of all kinds products of leather goods and to take over the partnership business of Stanley Seating, Bangalore by the way of Registration as a Limited Company pursuant to section 567 of the Companies Act 1956 (Under Chapter IX of the Companies Act, 1956); to carry on the business of all kinds of footwear articles, stationery items and to carry on the business of whole sale and retail dealers of all kinds of wearing apparel etc.,

It is averred in the Company Application that, the 1st Applicant is a company, Applicants 2 and 3 are the Whole Time Directors of 1st Applicant Company. It is averred that 1st Applicant Company is doing business of manufacture and sale of furnitures and that company used to sell generally furnitures on credit basis to regular customers and on the same basis the 1st Applicant company used to sell furnitures to related parties. However, 1st Applicant Company obtained approval from the Board of Directors in respect of sale to the related parties, but by inadvertence and faux pas the Central Government approval as required under proviso to section 297 of the Companies Act, 1956 was not obtained as paid up capital of the Applicant Company was more than one crore.

The company has entered into related parties transactions and the details of which are given in the Annexure F.

It is averred the default mentioned above was due to reasons beyond the control of the company, which were committed without any mala fide intention on the part of the Applicants, and it is not likely to cause any prejudice to either the Company, or to its members or creditors. Further, the Applicants undertake to take due care in future to ensure that there is no default in compliance with the provisions of the Act with respect to the matter in question.

Thus the suo-moto application filed by the Company and its Directors under Section 621A of the Companies Act, 1956 for violation of provision of section 297 for compounding.

Provisions of section 297 (1) of the Companies Act,1956 reads as follows:-

> "Except with the consent of the Board of Directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company –
> (a) for the sale, purchase or supply of any goods, materials or services, or
> (b) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the Company".

The violation of provisions of section 297 of the Companies Act, 1956 which is punishable under section 629A which reads as follows:-

> "If a company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to Rs 5,000/-and where the contravention is a continuing one, with a further fine which may extend to Rs 500/- for every day after the first during which the contravention continues".

We have heard the learned Counsel for Applicants on 11/08/2016, 30/08/2016, 20/09/2016, 22/09/2016, 20/10/2016, 24/10/2016, 10/11/2016, 30/11/2016, 15/12/2016, 16/12/2016 & 03/01/2016. In the course of arguments the learned counsel filed memo containing the details of transactions in the table as shown below for financial years from 2008-09 to 2013-14. The 1st Applicant Company has entered into purchase, sale and service contracts transactions with Designo, Saasha Life Style Products Private Limited, Artex Aesthetes, ABS Seating Private Limited, Staras Seating Private Limited, Classee, Stanley Boutique consisting of interested directors and Directors themselves entered into transaction for which board approval was obtained to enter into agreement and by inadvertence and without the Central Government approval as required under proviso to Section 297 of the Companies Act, 1956. Thus there was violation of provisions of section 297 of the Companies Act, 1956.

It is also stated in the Application that default committed under Section 297 of the Companies Act, 1956, is unintentional and occurred inadvertently. Therefore, this suo-motto application is filed by the 1st Applicant Company and its Directors under section 621A of the Companies Act, 1956 for compounding the violation of section 297 of the Companies Act, 1956 which is punishable under section 629A of the Act.

During the course of enquiry, the Counsel for Applicants has filed affidavit of the Whole Time Directors of the 1st Applicant Company giving details of transactions during the respective years at arms length basis as per market value. The same is given in the table as shown below:-

4(a)

Name of the Related Party	Nature of Relationship	Nature of transaction	Financial Year wise Amount in INR					
			31/03/2009	31/03/2010	31/03/2011	31/03/2012	31/03/2013	31/03/2014
Designo	Mr. Sunil Suresh, Director is a Partner	Sales	13,41,79,529	10,65,24,062	3,23,01,749	-	-	-
		Purchase				-	-	-
Saash Life Style Products Pvt. Ltd.	Mr. Sunil Suresh, Director is a Director and shareholder	Sales	1,47,84,834	1,19,23,078	1,08,36,103	-	-	-
Artex Aesthetes	Mr. Sunil Suresh, Director is a Partner	Sales	3,86,24,215	59,37,791	closed	-	-	-
ABS Seating	Mr. Sunil Suresh, Director is a Director and shareholder	Sales	1,72,56,747	3,14,70,525	4,10,76,561	5,33,29,426	5,26,01,604	5,66,15,289
		Carriage Outwards						
Starass Seating Pvt. Ltd.,	Mr. Sunil Suresh, Director is a Partner	Sales	7,12,01,397	5,07,42,698	4,64,80,164	4,38,88,802	4,22,77,142	5,14,52,156
		Carriage Outwards						
Classee	Mr. Sunil Suresh, Director is a Partner	Sales	5,90,88,974	4,91,74,189	4,80,76,817	5,29,02,666	5,51,89,927	2,97,17,934
		Carriage Outwards						
Stanley boutique	Mr. Sunil Suresh, Director is a Partner	Sales	2,67,25,055	2,57,85,390	3,21,97,086	5,21,96,716	4,19,29,426	3,56,63,311
		Carriage Outwards						
Grand Total			**36,18,60,751**	**28,15,57,733**	**21,09,68,480**	**20,23,17,610**	**19,19,98,099**	**17,34,48,690**

The learned counsel also filed Affidavit of the two whole time directors, the Applicants 2 and 3 herein, wherein they confirmed that the transactions were related party transactions and all transactions were at arms length. Further they confirmed that they failed to obtain prior approval of the Central Government for related party transactions for period between 2008-09 to 2013-14. Further they confirmed through Affidavit that Annual turnover of the company was at **Rs 72,42,42,373.20** and the percentage of related party transactions is around 33.34% on comparison with the turnover and they undertake that they would not repeat this violation.

The Applicants also filed the list of total transactions held in each year as shown in the table below:-

Sl. No.	Name of related party	No. of transaction year wise					
		2008-09	**2009-10**	**2010-11**	**2011-12**	**2012-13**	**2013-14**
1	Designo	225	220	88	-	-	-
2	Saash Life Style Products Pvt. Ltd.	135	111	109	-	-	-
3	Artex Aesthetes	189	29	-	-	-	-
4	ABS Seating	209	167	178	169	127	125
5	Starass Seating Pvt. Ltd.,	201	251	229	177	103	99
6	Classee	158	160	162	166	103	99
7	Stanley boutique	275	253	141	194	161	-
Total No. of Transactions		**1392**	**1191**	**907**	**706**	**494**	**323**

The contention of the learned Counsel for Applicants that, by inadvertence Applicants could not obtain prior approval of the Central Government in respect of related party transactions, but all transactions are at arms length.

The learned counsel would further contend, Applicant stopped doing transactions with related parties. The learned Counsel prayed for lenient view and further relied on the decision of the Company Law Board, Northern Region Bench reported in (1999)96 Comp Cas 525 (NRB)

Otto Burlingtons Mail Orders Private Limited in R.E.

"While compounding the offence the nature of the offence and the financial position of the company as well as the continuance of the default should be taken into account in quantifying the sum to be determined as compounding fee."

Report from the Registrar of Companies, Karnataka at Bengaluru was received vide letter No. ROCB/PS/621A/036515/2015 dated 21/08/2015. He has furnished information regarding No. of transactions held in each year i.e., 2008-09, 2009-10, 2010-11, 2012-13 and 2013-14 and also stated that, the Applicants may be directed to cease and desist from having transactions with related parties as mentioned in his report before the application is admitted for consideration and also to file proof to that effect.

We have seen the documents filed along with application. We have seen the Memorandum and Articles of Association. In the decision cited in Company Law Board, Northern Region Bench reported in (1999)96 Comp Cas 525 (NRB) - Otto Burlingtons Mail Orders Private Limited in R.E, compounding fee of Rs 2 lakhs was levied on the Company and Rs 20,000/- on each Director for violation of provisions of section 297 of the Companies Act, 1956 for related party transactions for the period from April 1996 to February 1997 i.e., for a period of 10 months. Whereas in the case before us related party transactions continued from 2008-09 to 2013-14 financial years. The Applicants continued related party transactions over a period of 6 years and volume of related party transactions represent nearly 1/3rd of the total turnover and involves huge number of transactions. Considering the provisions of law and considering the voluminous transactions that took place over the period of 6 years and considering the submissions made by the learned counsel for Applicants we levy compounding fee on the Applicants as detailed hereunder in the table:-

Sl. No.	Particulars	Violation of Sec.297(1) of the Companies Act, 1956 No. of transactions held in the respective financial year						Total Rs.
		2008-09 (1392)	**2009-10 (1191)**	**2010-11 (907)**	**2011-12 (706)**	**2012-13 (494)**	**2013-14 (323)**	
1	1st Applicant Company	1392x 50= 69,600/-	1191x 50= 59,550/-	907x 50= 45350/-	706x 50= 35300/-	494x 50 = 24700/-	323x 50= 16150	**250650/-**
2	2nd Applicant-Whole Time Director	1392x 50= 69,600/-	1191x 50= 59,550/-	907x 50= 45350/-	706x 50= 35300/-	494x 50 = 24700/-	323x 50= 16150	**250650/-**
3	3rd Applicant-Whole Time Director	1392x 50= 69,600/-	1191x 50= 59,550/-	907x 50= 45350/-	706x 50= 35300/-	494x 50 = 24700/-	323x 50= 16150	**250650/-**

In pursuant to our Order dated 10TH January 2017 mentioned herein above, the Applicants have paid the compounding fee by depositing 3 Demand Drafts of State Bank of India, Bangalore drawn on 24/01/2017 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	1st Applicant Company	**250650/-**	767114 dt. 24/01/2017
2	2nd Applicant-Whole Time Director	**250650/-**	767115 dt. 24/01/2017
3	3rd Applicant-Whole Time Director	**250650/-**	767116 dt. 24/01/2017

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, Bangalore for appropriate action.

25/1/17

(RATAKONDA MURALI)
MEMBER, JUDICIAL

25/1/17

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 25TH DAY OF JANUARY 2017