NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

T.P. No. 151/621A/NCLT/AHM/2016(New)
C.A. No. 416/621A/CLB/MB/2012(Old)

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU**
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 9.1.2017

Name of the Company: Maheshwari Logistic Pvt. Ltd.

Section of the Companies Act: Section 297 of the Companies Act, 1956

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER

None present for both parties.
Order pronounced in open court. Vide separate order attached.

For compliance, list the matter on 6.2.2017.

9.1.17
BIKKI RAVEENDRA BABU
MEMBER (JUDICIAL)

Dated this the 9th day of January, 2017.

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER (JUDICIAL)

T.P. No. 151/621A/NCLT/AHM/2016 (New)

C.A. No. 416/621A/CLB/MB/2012 (Old)

In the matter of:

1. Maheshwari Logistics Private Limited
2. Mayadevi Krishnaawtar Kabra, Director
3. Varun Krishnavtar Kabra, Director
4. Amit Kailashnarayan Maheshwari,
   Whole-Time Director
5. Vinay Premnarayan Maheshwari,
   Whole-Time Director. : Petitioners.

The Petition having come up for hearing before this Tribunal on 9.11.2016 in the presence of learned Company Secretary, Ms. Shilpa Thapar, and having stood over for consideration till this date, this Tribunal pronounced the following order on 9th January, 2017:

<u>FINAL ORDER</u>

Pronounced on 9th January, 2017

1. This Petition is filed by Maheshwari Logistics Private Limited and its four Directors under Section 621-A of the Companies Act, 1956 for violation of Section 297(1) of the Companies Act, 1956.

2. The First Petitioner is the Company. Petitioners No. 2 and 3 are the Directors of the Company. Petitioners No. 4 and 5 are Whole-Time Directors of the Company.

3. The First Petitioner Company is a Private Limited Company engaged in the business of general carriers and freight forwarders and transport to deal in certain chemicals, papers, materials and substances.

4. The following are the related party Companies;
   i. M/s. Maheshwari Infotech Private Limited (Related Party No.1)
   ii. M/s. Maheshwari Brothers (Related Party No.2)
   iii. M/s. Mahesh Roadways (Related Party No.3)
   iv. M/s. Maya Texturisers Private Limited (Related Party No.4)
   v. M/s. Maheshwari Coal Corporation (Related Party No.5)
   vi. M/s. Shree Ganesh Traders (Related Party No.6)

First Petitioner Company entered into the following transactions with related Party No.1: -

Sr .No.	Nature of Transactions	Financial Year 2009-2010 (Rs)	Financial Year 2010-2011 (Rs)	Financial Year 2011-2012 (Rs) (PROVISIONAL)
1	Services of software development and maintenance work	480,000 /-	480,000 /-	480,000 /-

First Petitioner Company entered into the following transactions with related party No.2: -

Sr. No.	Nature of Transactions	Financial Year 2006 -2007 (Rs)	Financial Year 2007 -2008 (Rs)	Financial Year 2008 -2009 (Rs)	Financial Year 2009 - 2010 (Rs)	Financial Year 2010 - 2011 (Rs)	Financial Year 2011 - 2012 (Rs.)
1	Purchase of coal	2408790/-	87288029/-	10786813/-	1269449/-	34399597/-	1676573/-
2	Sale of coal	7779788/-	1485902/-	5336895/-	N.A	N.A	5827710/-
3	Lorry revenue	N.A	404853/-	N.A	N.A	N.A	N.A
4	Freight	N.A	N.A	3289	N.A	N.A	N.A

First Petitioner Company entered into following transactions with related party No.3: -

Sr.No.	Nature of Transactions	Financial Year 2007-2008 (Rs)	Financial Year 2008 - 2009 (Rs)
1	Lorry revenue	319424 /-	N.A
2	Freight	N.A	229358/-

First Petitioner Company entered into following transactions with related party No.4: -

Sr. No.	Nature of Transactions	Financial Year 2008-2009 (Rs)	Financial Year 2009-2010 (Rs)	Financial Year 2010-2011 (Rs)	Financial Year 2011-2012 (Rs)
1	Purchase of coal	11232000/-	N.A	N.A	N.A
2	Sale of coal	N.A	N.A	N.A	149827125/-
3	Commission paid	N.A	625274/-	658554/-	641792/-

First Petitioner Company entered into following transactions with related party No. 5: -

Sr. No.	Nature of Transactions	Financial Year 2008 - 2009 (Rs)	Financial Year 2010 -2011 (Rs)
1	Purchase of coal	339427/-	738616/-

First Petitioner Company entered into following transactions with related party No. 6: -

Sr .No.	Nature of Transactions	Financial Year 2010-2011(Rs)
1	Purchase of waste papers and other related items	10561933/-

It is stated that the First Petitioner Company carried out the related party transactions with the above related parties in the last 6 financial years, i.e., 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, and 2011-2012. It is further stated that the Company is having Paid-up Capital of Rs. 4,40,00,000 at present which is increased eventually. It is also stated that the Company did not obtain necessary prior approval of the Central Government for carrying out above mentioned transactions with six related parties and it is contrary to the provisions of Section 297 of the Act. It is further stated that the Directors of the 1st Petitioner Company are interested in the transactions carried out between the 1st Petitioner Company and related parties. But the transactions are not prejudicial to the interests of the 1st Petitioner Company and its members. The above transactions are fairly disclosed in the Annual Reports of the Company. It is further stated that as per the provisions of Section 297(1) of the Companies Act, 1956 a company having a Paid-up Share Capital Rs. One Crore or more is required to obtain prior approval from the Central Government for entering into contract/to carry out any transaction with the Director of the Company and his relative or a firm in which such director or his relative is a partner or any other partner in such a firm or a private company in which the director is a member or director.

5. Basing upon the Petition, the Registrar of Companies, by his Report dated 25.10.2012 stated that Company and its Directors violated Section 297 of the Companies Act. The Report of the Registrar of Companies dated 25th October 2012 shows that as per the Balance Sheet of the Company as on 31.3.2011, the Paid-up Capital of the Company was Rs. 4,40,00,000.

6. The Registrar of Companies, by his letter dated 25th October, 2012 referred the matter to the Company Law Board, Mumbai. The Company Law Board, registered it as "416/2012." After the establishment of this Tribunal, the same is transferred to this Tribunal and renumbered as 'TP No. 151/2016.'

7. During the hearing of this Petition, the learned Company Secretary appearing for the Petitioners submitted, that the Paid-up Share Capital of the 1st Petitioner Company was increased to more than Rs one Crore only with effect from 31.3.2012 and prior to that, Paid-up Share Capital of the Company was less than 1 Crore and therefore the violation of Section 297(1) of the Companies Act is there only in respect of the related transactions that entered into after 31.3.2012.

8. The learned Company Secretary further submitted that the Company applied to the Regional Director on 6.4.2012 and 13.4.2012 for approval for entering into related party transactions and obtained approval from the Regional Director, Ahmedabad, vide orders dated 30th August, 2012 to enter into contract with 6 related parties for the period from 1.5.2012 to 30.4.2015.

9. Since there is a variation between the Paid-up Share Capital of the Company as can be seen from the Balance Sheet as on 31.3.2011 and the Report of the Registrar of Companies, the learned Company Secretary appearing for the Petitioners stated that the related party transactions after 31.3.2012 till 30.4.2012 are only two. But according to the initial Report of the Registrar of Companies, the number of transactions are '25'. Therefore, this Tribunal asked for a clarification on the Report of the Registrar of Companies regarding

the Paid-up Capital of the Company for the period from 2006-2007 to 2011-2012 year-wise, and regarding the transactions in question year-wise.

10. The Registrar of Companies, in his Report dated 3.11.2016, stated as follows;

> *"It is submitted that as per record of this office and submission made by the company vide its letter dated 19/10/2016 that during the year 2011-12 the company has increased its paid up Share Capital from Rs. 29,97,000/- to Rs. 4,43,870,000/-. It is further submitted that paid up share capital of the Company as on 31/03/2012 was Rs. 4,43,80,000/- which is above one Crores w.e.f. 31/03/2012. Therefore, the provision of section 297(1) of the Companies Act, 1956 was attracted to the company and its officers w.e.f. 31/03/2012."*

The Registrar of Companies, in his Report further stated that the provision of Section 297 of the Companies Act, with regard to the previous approval of the Central Government, is applicable to the Company with effect from 31.3.2012. The Registrar of Companies in his further Report dated 3rd November, 2016 stated that the Company has entered into two transactions regarding service of software development and maintenance with one related M/s. Maheshwari Infotech Pvt. Ltd. for the period from 31/03/2012 to 30/04/2012. The Registrar of Companies, in his further Report stated that the Company applied to the Regional Director for approval for entering into related party transactions and the approval was accorded by the Regional Director, Ahmedabad by his order dated 30th August, 2012 for the period from 1.5.2012 to 30.4.2015. The Registrar of Companies also enclosed the certificate of the Chartered Accountant regarding increase in the Share Capital and the related party transactions.

11. A perusal of the entire material on record and the contents of the Petition, the Report of the Registrar of Companies dated 25th October, 2012 and the 2nd Report of the Registrar of Companies dated 3.11.2016 show that violation is in respect of not obtaining prior approval of the Central Government by the Petitioner for entering into related party transactions.

12. The Proviso to Section 297(1) says that the previous approval of the Central Government is necessary in case of a company having Paid-up Capital of not less than one Crore Rupees. That means, a Company having a Paid-up Share Capital of Rs. One Crore or more if entered into related transactions, it must obtain previous approval of the Central Government. Therefore, the crucial aspect is what was the Paid-up Capital of the Company on the date of relevant transactions.

13. It is argued by the learned Company Secretary appearing for the Petitioners that it is only from 31.3.2012, the Paid-up Share Capital of the 1st Petitioner Company has been increased above one Crore. She has also referred to the Balance Sheet of the year ending 31.3.2010 which shows that the Paid-up Share Capital of the Company is 23,97,000. The Certificate of the Chartered Accountant annexed to the Report of the Registrar of Companies dated 3rd November, 2016 shows that with effect from 31.3.2012 only the Paid-up Share Capital of the 1st Petitioner Company was increased from 88,00,000 to 4,48,00,000. That means, with effect from 31.3.2012 only, the Paid-up Capital of the Petitioner Company is more than one Crore. The Registrar of Companies, in his Report dated 3rd November, 2016 also stated that the Paid-up Share Capital of the Company as on 31.3.2012 was Rs. 4,48,80,000, which is above Rs.one Crore with effect from 31.3.2012. The Registrar of Companies further stated in his Report dated 3rd November, 2016, that Section 297(1) of the Companies Act, 1956 was attracted to the Company and its Officers with effect from 31.3.2012.

14. Therefore, now it has to be seen what were the transactions that were entered into after 31.3.2012.

15. The Report of the Registrar of Companies also shows that the Regional Director by his order dated 30th August, 2012 approved the related party transactions for the period from 1.5.2012 to 30.4.2015. The Registrar of Companies, in his further Report dated 3rd November, 2016 stated that the Company and its Officers have violated Section 297 of the Companies Act in respect of two transactions dated 30.4.2012 that related to M/s. Maheshwari Infotech Private Limited each worth 20,000 Rupees.

16. In view of the above said facts, and in view of the fact that Paid-up Share Capital of the Company was more than Rs. 1 Crore only with effect from 31.3.2012, the violation of Section 297(1) is there in respect of two related transactions mentioned in the report of ROC dated 03.11.2016.

17. The learned Company Secretary, appearing for the Petitioner Company, submitted that there is no wilful violation on the part of the Petitioner Company and soon after the Share Capital was increased to more than Rs. 1 Crore, it has applied for permission of the Regional Director in respect of the related transactions that entered into after 1.5.2012, and obtained approval of the Regional Director. She has submitted that lenient view can be taken in awarding amount.

18. There is no specific provision in the Companies Act, 1956 to deal with appropriate punishment for violation of Section 297(1). Therefore, one has to fall back upon Section 629-A of the Companies Act wherein it is provided, that the Company and every officer of the Company who is in default shall be punishable with fine which may extend to Five Thousand rupees and where the contravention is a continuing one, with a further fine which may extend to Five Hundred rupees for every day after the first during which the contravention continues.

19. In view of Section 629-A, Petitioners No. 1 to 5 are liable to pay fine Rs. 5000/- each for each of the two transactions mentioned in the report of ROC

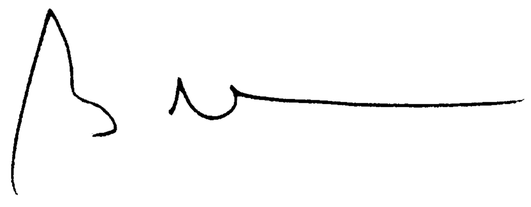
dated 3.11.2016 which comes to Rs. 50,000/-. Now it has to be seen whether there are any grounds to reduce the amount for compounding for violation of Section 297 in respect of the two transactions mentioned in the report of Registrar of Companies dated 3.11.2016. In this case, Petitioners have not clearly pleaded in the Petition on which date the share capital of the company was increased for more than One Crore and that resulted in correspondence with Registrar of Companies and calling for fresh report. Moreover, in the Petition, the related party transactions mentioned in the report of Registrar of Companies dated 3.11.2016, are not there. Therefore, in view of the above said conduct of the Petitioners, even though the value of the two transactions mentioned in the report of Registrar of Companies, dated 3.11.2016 are of only Rs. 40,000/-, this Tribunal is not inclined to reduce the amount for compounding.

20. Hence, the contravention committed by the Petitioners No. 1 to 5 in respect of two transactions mentioned in the report of ROC dated 3.11.2016 is compounded by this Tribunal on payment of Rs. 10,000 (Ten Thousand) each by Petitioners 1 to 5 by way of Demand Draft drawn on a Nationalised Bank in favour of Pay and Accounts Officer, Ministry of Corporate Affairs, Mumbai, within 3 (three) weeks from the date of this Order and the Petitioners shall file the original Demand Draft before the Registry of this Tribunal by 6th of February, 2017.

21. In case Petitioners fail to pay the amount as ordered above, the Registrar of Companies shall take appropriate action including prosecution of Petitioners as per applicable law under intimation to this Tribunal forthwith.

22. In respect of other transactions mentioned in the report of ROC dated 25.10.2012, this Tribunal is not passing any order and it is for the ROC to deal with those transactions depending on the Paid-up Share Capital of the Company on the date of transaction.

23. This Petition is disposed of accordingly.



24. For reporting compliance of the Order by the Petitioners, list the matter on 6th February, 2017.

09.1.17

SRI BIKKI RAVEENDRA BABU

MEMBER (JUDICIAL)

Dictated to Private Secretary.

Transcribed by him, and corrected and

Pronounced by me on this day of 09th January, 2017.

By RMR, PS.