

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
CHENNAI BENCH

Arguments heard on 01.09.2016

Orders passed on .22.12/16.

T.C.A Nos. 26 & 27 of 2016

Petitioner :

1. M/s.Sugal & Damani Share Brokers Ltd. Rep by Mahesh B.Chandak
2. N.Sugalchand Jain rep. by PCS Shri Jagdish P.Mundhara

-- Vs --

Respondent : The Registrar of Companies, Tamil Nadu, Chennai

PCS Mr.Jagdish P.Mundhara, representative for the applicants

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ANANTHA PADMANABHA SWAMY  
MEMBER(JUDICIAL)

CH MOHD SHARIEF TARIQ  
MEMBER(JUDICIAL)

**ORDER**

ANANTHA PADMANABHA SWAMY, MEMBER (JUDICIAL) :- (ORAL)

The record reveals that two petitions came to be filed before the Company Law Board, Chennai on 12<sup>th</sup> October 2015 which stood transferred to National Company Law Tribunal, Chennai Bench, having been re-numbered as TCA No.26 and 27 of 2016 (CA/287 of 2015 and CA/288 of 2015).

1. Heard the representative of the petitioner and perused both the applications which are similar in nature and are clubbed for disposal by way of a common order. The brief facts of the case are that M/s.Sugal & Damani Share Brokers Ltd. is a company having been incorporated on 07.05.1993 under the Companies Act, with CIN : L65991TN1993PLC028228, having its registered office at City Centre Plaza, No.7, Anna Salai, First floor, Chennai-2.

2. The facts of the case, as per the submissions of the applicants, are that during the course of inspection of the company under section 209A of the Companies Act, 1956,

(i) it was found that the company has granted a short term loan of Rs.25 lakhs in favour of M/s.Sugal & Damani Securities (Madras) Private Ltd. which is beyond the limits of 60% prescribed under section 372A of the Companies Act, 1956 and thus the company has not complied with the requirements of the said section.

(ii) it was also found that the company without getting prior approval from the Central Government has granted loan to Rs.25 lakhs to M/s Sugal& Damani Share & Stock Brokers Pvt. Ltd in which Shri Sugalchand Natmal Jain was one of the directors and thus has not complied with the requirements laid down under section 295(1)(a) of the Companies Act, 1956.

3. The Registrar of Companies, Tamil Nadu, for the above said violations, issued two separate show cause notices dated 24<sup>th</sup> November 2016 to the applicants. At the time of hearing, the authorised representative of the applicants has submitted that the applicants have violated the provisions u/s 372A(1) and the provisions u/s 295(1)(a) inadvertently and the committal of offences was neither wilful nor wanton. It is submitted that the applicants did not want to dispute and in order to settle the issue and buy peace, they admit the violations and pray that the matter may be compounded by taking a lenient view.

3. (a) The violation of the provisions of section 372A(1) of the Companies Act, 1956 is punishable under section 372A(9) of the Act. The section provides that the *“company and every officer of the company who is in default shall be punishable with imprisonment which may extend to two years or with fine which may extend to fifty thousand rupees for each violation”*.

b) The violation of provisions of section 295(1)(a) of the Companies Act, 1956 is punishable under section 295(4) of the Act. The section provides that

*“Every person who knowingly a party to any contravention of sub-section (1) or (3), including in particular any person to whom the loan is made or who has taken the loan in respect of which the guarantee is given or the security is provided shall be punishable either with fine which may extend to fifty thousand rupees or with simple imprisonment for a term which may extend to six months.”*

4. The Deputy Registrar of Companies, Tamil Nadu & A&N Islands, Chennai, while offering his comments has given the calculations pertaining to the amount of fine for violations of the provisions of the Act, as stated below : -

i) Violations of Section 372A(1)

Defaulter	Violation section	Period of violation	Fine Amount
Sugal & Damani Share Brokers Ltd	372A(1)	31.03.2004	Rs.50,000/-
N.Sugal Chand Jain, Whole Time Director	372A(1)	31.03.2004	Rs.50,000/-
Total			Rs.1,00,000/-

ii) Violations of Section 295(1)(a) : For the violations, the penalty of Rs.50,000/- for each person is  $\text{Rs.50000} \times 2 = \text{Rs.1,00,000/-}$  is prescribed.

5. It has been stated by the Deputy Registrar that the loan granted to the whole time director has been repaid in full on 31.3.2007. The Office of the Deputy Registrar has no objection and submitted that the company may be directed to file e-form INC 28 along with compounding order, if passed.

6. Having considered the submissions of the representative of the applicants and the report of the Deputy Registrar of Companies, in exercise of the powers conferred under Section 621-A of the Companies Act, 1956, the offences are allowed to be compounded ~~by taking a lenient view~~ by imposing the fine to the tune of Rs. 50000 on each of the applicants for violation under section 372A(1) of the Act, 1956 and a fine of Rs. 50,000 on each of the applicants for violation under section 295(1)(a) of the Act, 1956. However, the Applicant No.2 shall pay the amounts from his own resources. The applicants shall comply with the order within three weeks from the date of the order and the company shall file e-form INC 28 along with the compounding order with the Registrar of the Companies, Chennai in due time. Accordingly, both the applications are disposed of.

  
ANANTHA PADMANABHA SWAMY  
MEMBER(JUDICIAL)

  
CH MOHD SHARIEF TARIQ  
MEMBER(JUDICIAL)