



**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD**

**CA No. 11/621A/HDB/2016**

**Date of Order: 20.10.2016**

In the matter of:

1. ADP Private Limited  
6-3-1091/C/1, Fortune-9,  
Raj Bhavan Road  
Hyderabad – 500082, Telangana
2. Sh. Shakti Sagar  
Managing Director  
Mansvi, Plot No. 54, Ashwini Heights  
Jubilee Hills,  
Hyderabad – 500033, Telangana
3. Sh. Ashish Kumar Mundada,  
Company Secretary  
“Guru Krupa”, H. No. 12-11-205/1,  
Brahmin Basthi, Warasiguda  
Secunderabad- 500016, Telangana

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OF THE ORIGINAL**

.....Applicants

Vs

The Registrar of Companies,  
Telangana and Andhra Pradesh  
II Floor, Corporate Bhawan  
GSI Post, Bandlaguda  
Nagole, Thatti Annaram Village  
Hyderabad – 500068, Telangana

..... Respondent

Counsel for the Applicants

..... Mr. Ramakrishna Gupta,  
Partner at R & A Associates  
Practising Company Secretary

**RAM:**

N'BLE Mr. RAVIKUMAR DURAISAMY, MEMBER (TECH)

N'BLE Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDL)



**ORDER**

**(As per Ravikumar Duraisamy, Member (Tech))**

1. The Application was initially filed before Hon'ble Company Law Board, Chennai Bench, Chennai. Since, NCLT, Hyderabad Bench has been constituted for the cases pertaining to the states of Andhra Pradesh and Telangana, the case is transferred to Hyderabad Bench. Hence, we have taken the case on records of NCLT, Hyderabad Bench and deciding the case.
2. The present application is filed under Section 621A of the Companies Act, 1956 for compounding the offences under Section 297 of the Companies Act, 1956 by the Applicant Company, its Managing Director and the Company Secretary of the Applicant Company by praying the Tribunal to take lenient view in compounding the offences committed under the said Act during the period from 1<sup>st</sup> July, 2012 to 31<sup>st</sup> March, 2014 and impose minimum consolidated compounding fee.
3. The brief facts of the case as averred in the Application are as follows:
  - a. The Applicant Company was incorporated on 20<sup>th</sup> May, 1999 and its Registered office is situated at 6-3-1091/C/1, "Fortune 9", Raj Bhavan Road, Somajiguda, Hyderabad- 500082



- b. The Authorized Share Capital of the Applicant Company is Rs. 23,00,00,000/- (Rupees Twenty Three Crores Only) divided into 1,45,00,000 Equity Shares of Rs.10/- each and 85,00,000 Preference shares of Rs.10/- each. The Paid-up Capital of the Company is Rs. 20,82,76,500/- (Rupees Twenty Crore Eighty two lakhs Seventy Six thousand five hundred only) divided into 1,23,27,650 Equity shares of Rs.10/- each and 85,00,000 Preference Shares of Rs.10/- each.
- c. The main objects of the Company are to undertake business as designers, engineers, manufacturers, buyers, sellers, hirers, importers, exporters, agents and dealers of all types of computer software including operating systems, higher level languages, new languages, compilers, software debugging techniques and packages, etc.
- d. As per Section 297 of the Companies Act, 1956, 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 for sale, purchase or supply of any goods, materials or services, etc provided that in the case of a company having a paid up share capital of not less than Rs. 1 Crore, no such contract shall be entered into, except with the previous approval of the Central Government.
- e. During the course of its business, the Applicant Company had entered into a Subcontracting Agreement effective 1<sup>st</sup> July, 2012 with ADP India Private Limited, Chennai for rendering such services as specified in the Subcontracting Agreement on behalf of ADP Private Limited to ADP Private Limited's clients.



f. Though the Paid-up Capital of the Applicant Company is more than Rs. 1 Crore, it had not obtained prior approval of the Central Government, as required under Section 297 of the Companies Act, 1956, especially since the said agreement is with a Private Limited Company whose Director is a Director of Applicant Company. Thus, the Applicants have contravened the provisions of Section 297 of the Companies Act, 1956.

g. It is submitted by the Applicants that the above mentioned violation was neither wilful nor wanton and that the Company had inadvertently not filed the applications seeking prior approval from the Central Government. However, they mentioned that when it came to the notice of the Board of Directors that the agreement entered into with ADP India Private Limited, Chennai would fall under the purview of Section 297 of the Companies Act, 1956, the Company had taken prompt steps to terminate the subcontracting agreement with effect from 31<sup>st</sup> March, 2014.

4. We have heard Mr. R. Ramakrishna Gupta, Learned Counsel for the Applicants. During the course of hearing, he submitted two case-laws which explain the meaning of 'officer in default' under Section 5 of the Companies Act, 1956. In the case of Ravindra Narayan v. Registrar of Companies [1994] 81 Comp. Cas. 925 decided by Hon'ble Rajasthan High Court, it is clearly stated that a director or directors fall within the definition of "officer in default" as mentioned in Section 5 of the Companies Act, 1956, if the Company does not have any of the officers specified in Clause (a) to Clause (c), i.e. the Managing Director or the Managing Directors; Whole-Time Director or Whole-Time Directors; and the Manager. The same point was reiterated even



in the case of Smt. G. Vijayalakshmi v. Securities and Exchange Board of India [2000] 25 SCL 183 decided by Hon'ble Andhra Pradesh High Court.

In the present case, the learned Counsel for the Applicants wanted to support his argument for including only the Managing Director and Company Secretary along with the Company as Applicants and not the other directors through the above mentioned legal citations.

In addition to these documents, he also filed a copy of compounding order passed by the Company Law Board, Chennai (CLB) in the case of contradee party (i.e. ADP India Private Limited) for the same offence under Section 297 of the Companies Act, 1956 wherein the directors of the Company were interested for the total value of Rs. 1,23,36,008/- for a period from 01.07.2012 to 31.03.2014, thereby violating the provisions of Section 297 of the Companies Act, 1956. The Chennai Bench ordered the Applicant Company to pay a compounding fee of Rs.50,000/- and other Applicants Rs, 25000/- each within fifteen days. The Applicants submitted the copy of this Order praying that the Tribunal may take lenient view and levy the compounding fee in the same line as CLB as it is the same offence.

5. We have also perused the report of the RoC submitted vide ROCH/Legal/Sec297/621A/ ADPL/STACK/2016/649 dated 06.05.2016. RoC, while reiterating the facts mentioned in the Application, has stated that the Applicant Company along with its Managing Director, Mr. Shakti Sagar and Company Secretary, Mr. Ashish Kumar Mundada submitted an application under Section 621A of the Companies Act, 1956 for compounding the offence under Section 297 of the Companies Act, 1956 vide SRN C05860648. RoC has further stated



that the Applicants have violated Section 297 from 1<sup>st</sup> July, 2012 to 31<sup>st</sup> March, 2014.

6. We have carefully perused all the documents submitted to the Tribunal by the Applicants through their learned counsel and the report of RoC. There is no doubt that there has been a violation of Section 297 of the Companies Act, 1956 by the Applicants from 1<sup>st</sup> July, 2012 to 31<sup>st</sup> March, 2014 and after the notice of the violation, the subcontracting agreement was terminated by the Board of Directors by a letter dated 28<sup>th</sup> March, 2014. However, there is no denying the fact that there has been a violation pertaining to the period from 1<sup>st</sup> July, 2012 to 31<sup>st</sup> March, 2014.
7. We are of the view that prior approval sought to be obtained from the Central Government is interalia with an object to safeguard the interest of various stakeholders viz shareholders, creditors, suppliers, etc and also to bring in transparency in the corporate dealings with respect to related party transactions.
8. In the present Application, the Applicants have not obtained prior approval of the Central Government for any of the related party transactions carried on from 1<sup>st</sup> July, 2012 to 31<sup>st</sup> March, 2014 which is mandatorily required as per the law.
9. In the light of aforesaid facts and circumstances of the case and in the interest of justice, the prayer as sought by the applicants is premature and we are not



inclined to consider the same at this stage. Therefore, the applicants are directed to approach the Central Government for approval of each of the related party transactions in accordance with section 297(1) of the Companies Act, 1956 and they are at liberty to approach this Tribunal subsequently in accordance with law. In terms of above, the present Company Application is disposed off accordingly.

Sd/-

**RAVIKUMAR DURAISAMY**

**MEMBER (TECH)**

Sd/-

**RAJESWARA RAO VITTANALA**

**MEMBER (JUDL)**

*V. Annapoorna*  
**V. ANNA POORNA**  
Asst. DIRECTOR  
NCLT, HYDERABAD - 68

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