

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, AT HYDERABAD

C.A. No. 24/621A/HDB/2016

Date of Order: 09 .12.2016

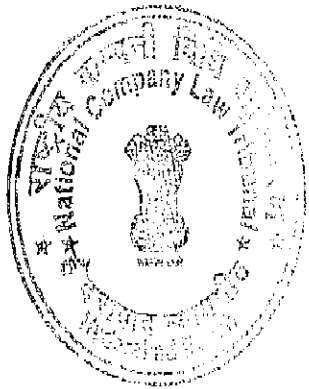
In the matter of:

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OF THE ORIGINAL

1. Avni Energy Solutions Private Limited
Andhra Pradesh Industrial Infrastructure Corporation,
Industrial Area Locality, Plot No.B2-3,
Tirupati-517520, Andhra Pradesh.

2. Mr. Brijmohan Rathi,
Director,
S/o Sri. Pyarelal Rathi,
3-A/103, Green Acres,
Lokhandwala Complex, Andheri-West,
Mumbai-400 053, Maharashtra.

3. Ms. Sangeeta Brijmohan Rathi,
Director,
D/o Sri. Naresh Kabra, # 3-A/103, Green Acres,
Lokhandwala Complex, Andheri-West,
Mumbai-400 053, Maharashtra.



4. Mr. Gururaja Ganesh,
Director,
S/o Sri. Ganesh, No.205, Santa Clara Apts,
18th MN 3rd CRS 4th T BLK, Jayanagar,
Bangalore-560041, Karnataka.

..... Applicants

Counsel for the Applicants:

.....Mr. S. Chidambaram

Practising Company Secretary

CORAM:

HON'BLE Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDICIAL)

HON'BLE Mr. RAVIKUMAR DURAISAMY, MEMBER (TECHNICAL)

ORDER

(AS PER RAVIKUMAR DURAISAMY, MEMBER (TECH))

1. The Application was initially filed before Hon'ble Company Law Board, Chennai Bench, Chennai. Since the National Company Law Tribunal, Hyderabad Bench (NCLT) has been constituted for the cases pertaining to states of Andhra Pradesh & Telangana the case is transferred to NCLT, hence, we have taken it on records of NCLT, Hyderabad Bench and deciding the case.
2. The present application is filed under section 621A of the Companies Act, 1956 by Avni Energy Solutions Private Limited and its Directors Mr. Brijmohan Rathi, Mrs. Sangeetha Brijmohan Rathi and Mr. Guraraja Ganesh for compounding the offence under sections 146 & 147 of the Companies Act, 1956 for non-maintaining of its Registered Office in the address given to Registrar of Companies and no name board also.
3. The brief facts of the case as averred in the application are as follows:-
 - a. The company is a Private Limited Company, incorporated on 28.05.2009 bearing Registration No.063799 and CIN No.U40300AP 2009PTC063799 and having its registered office at Andhra Pradesh Industrial Infrastructure Corporation, Industrial Area Locality, Plot

No.B2-3, Tirupati, Cuddapah-517520, Andhra Pradesh w.e.f 07.01.2016. The registered office was previously situated at Door No. 20-3-25/G1, Siva Jyothi Nagar, Tirupati, Andhra Pradesh and Company has obtained order from the Regional Director, South Eastern Region, Hyderabad confirming resolution passed for shifting of registered office from the state of Andhra Pradesh to State of Maharashtra, Mumbai.

- b. The Authorized Share Capital of the company is Rs.5,00,00,000/- (Rupees Five Crores only) divided into 50,00,000 (Fifty Lakhs) equity shares of Rs.10/- (Rupees Ten) each and its issued, subscribed and paid up capital is Rs.3,58,10,810/- (Rupees Three Crores Fifty Eight Lakhs Ten Thousand Eight Hundred Ten only) divided into 35,81,081 (Thirty Five Lakhs Eighty One Thousand and Eighty One) equity shares of Rs.10/- (Rupees Ten) each.
- c. The Applicant Company was a closely held company incorporated, owned and managed by only two persons viz., Mr. Y.S. Kiran Kumar Reddy, Managing Director holding 6,84,000 equity shares of Rs. 10/- each and Mr. Gururaja Ganesh, Director holding 2,16,000 equity shares of Rs. 10/- each. Mr. Brijmohan Rathi acquired the entire shareholding of Mr. Y.S. Kiran Kumar Reddy. The Board in its meeting held on 31.08.2011 approved the transfer of 6,84,000 equity shares from Mr. Y.S. Kiran Kumar Reddy to Mr. Brijmohan Rathi and later Mr. Y.S. Kiran Kumar Reddy resigned on 16.12.2011 and new directors Mr. Brijmohan Rathi and Mrs. Sangeetha Rathi were appointed on

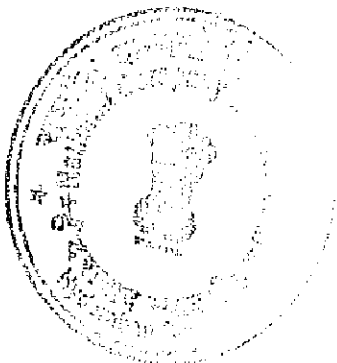
18.01.2011 and 25.02.2011 respectively. Mr. G. Ganesh continued as Director and Shareholder of the Company.

- d. The applicants have submitted that the company's registered office at the time of acquisition of the company was situated at # Door No.20-3-25/G1, Siva Jyothi Nagar, Tirupati, Andhra Pradesh. It was informed and understood that the said registered office premises belongs to relative of Mr. Y S Kiran Kumar Reddy and was maintained, managed and controlled by him and there was no issue in continuing the same as its registered office. Further, pursuant to the mutual understanding between old promoters and new promoters, the present promoters continued the said premises as its registered office also because it had its factory in Tirupati. There was no reason that time to immediately shift the registered office. Also because of the cordial relationship shared by Mr. Y S Kiran Kumar Reddy and Mr. Brijmohan Rathi, it was decided to continue the said premises as its registered office.
- e. Since then Company has been continuing its registered office ensuring necessary compliance but business was growing in Bangalore and Mumbai hence, the promoters and the present management decided to shift the registered office to Mumbai where they reside.
- f. Accordingly, the Regional Director (RD), MCA, Hyderabad in petition filed vide SRN B78639556 dated 04.07.2013 u/s 17 of the Companies Act, 1956 allowed the said petition and confirmed the resolution passed for alteration of its Memorandum of Association by substitution of the words "State of Maharashtra, Mumbai" in place of words "State of

Andhra Pradesh” and order was passed on 26.09.2014, the certified true copy of which was received through speed post on 09.10.2014 and was filed in Form INC-28 with Registrar of Companies (RoC) on 06.11.2014 vide SRN No. C31770514 dated 06.11.0214 within due time (30 days from the date of receipt of copy of Order copy) as per Section 13(4) of the Companies Act, 2013 read with Rule 31 of the Companies (Incorporation) Rules, 2014 which came into effect from 01.04.2014. However, due to technical reasons with MCA filing, 30 days period was calculated erroneously by system from date of passing of the order and not from date of receipt of order, because of which form INC 28 could not be approved with status giving “pending for Form 21 (new form INC 28)” calling for condonation for delay in filing. Further as per online MCA system, without the approval of INC 28, company could not file and failed to file INC 22 intimating the new registered office address in the State of Maharashtra.

- g. The above error message was immediately brought to the notice of MCA, in response to which MCA stated that INC 28 could not be approved as the date of RD order was 26.09.2014 and suggested the Applicants to contact concerned RoC “to remove condonation.” They have also written mails to RoC and approached RoC and its officers but failed to get proper solution to resolve this technical issue and INC 28 could not be approved for filing INC 22.

- h. While the company was making its sincere efforts to give effect to shifting of its registered office, Mr. Y.S. Kiran Kumar Reddy, Ex-



promoter director of the company lodged his first false complaint against the company vide his letter dated 01.12.2014 making allegations of illegal transfer of shares and claiming himself to be director of the company even after resigning from his directorship. Mr. Y.S. Kiran Kumar Reddy, Ex-promoter director of the company resigned from the Company on 16.12.2011 and transferred all his stake in the company to Mr. Brijmohan Rathi (present promotor and director).

- i. Based on the complaint of Mr. Y.S. Kiran Kumar Reddy who is neither the director of the company nor the shareholder of the company, the RoC initiated inquiry and filed a complaint before the Court of Hon'ble Special Judge for Economic Offences, Andhra Pradesh.
- j. It is further submitted that pursuant to Section 17 of the Companies Act, 1956, a public notice, inviting objections from all the stakeholders, was issued in newspapers namely Business Standard and Prajashakti on 09.07.2012 inviting objections from all the stakeholders. Another public notice was issued on 03.06.2013 and 06.06.2013 editions respectively.

In response to the public notice u/s 17, the company submits that they did not receive any objection from any of the stakeholders and to the best of their knowledge and belief even the Registrar of Companies and the Regional Director's office also didn't receive any objection and hence the petition was allowed and order was passed.

- k. As the situation of the registered office is in dispute, to ensure that company has proper registered office under the control of the present

management and also to ensure compliance of the provisions of the Companies Act and other applicable statutes, the Board has shifted the registered office from # Door No.20-3-25/G1, Siva Jyothi Nagar, Tirupati, Andhra Pradesh to Andhra Pradesh Industrial Infrastructure Corporation, Industrial Area Locality, Plot No.B2-3, Tirupati, Andhra Pradesh-517520 with effect from 07.01.2016.

4. We have heard Mr. S. Chidambaram, Practicing Company Secretary for the Applicants, perused the application and also the report of RoC, forwarded vide his report No.ROCH/Legal/Sec146/621A/Avni/STACK/2016/1192 dated 31.05.2016 which stated that compounding application submitted by Avni Energy Solutions Private Limited and its Directors Mr. Brijmohan Rathi, Mrs. Sangeetha Brijmohan Rathi and Mr. Guraraja Ganesh for compounding the offence under sections 146 & 147 of the Companies Act, 1956 vide SRN C61600458 be considered on merits by this Hon'ble Tribunal.

5. RoC has stated that a complaint was received from Mr. Y.S. Kiran Kumar Reddy, one of the ex-directors of Petitioner Company, alleging non-maintenance of registered office address. RoC has deputed an official for verifying the registered office address, the said official has verified the address and submitted a report on 18.02.2015, stating that the petitioner company is not maintaining the registered office in the address given to Registrar of Companies since 07.04.2011 and there is no name board also.

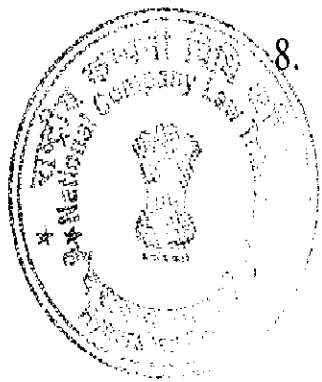
A show cause notice was also issued by RoC vide Ref No. RAP/STA (CK)/SCN1246/63799/2015/2533 dated 09.03.2015 to the Applicant Company and its Directors asking as to why the penal action under Section 146 (4) and 147 (2) shall not be initiated against the applicants within 15 days from the date of the notice, failing which legal action will be taken without further reference.

(a) Based on the said report and complaint, RoC has filed the prosecution complaint u/s. 146 & 147 of the Companies Act, 1956 before Hon'ble Economic Offence Court Hyderabad, and the case is now posted for cross examination of PW1 on 30.06.2016. The applicant company in its application stated that they were maintaining the registered office in the same address which is under the control of ex-director (complainant), only when they receive the show cause notice from this office on 09.03.2015 they came to know that registered office is not there, and applicant company is saying that they received the shifting of registered office order from RD(SER) on 09.10.2014 and a letter from Registrar of Companies on 11.12.2014 at the same registered office address and from the letters written by Y.S. Kiran Kumar Reddy to RoC dated 22.12.2014 and another to the other directors dated 18.12.2014 shows that the company registered office address is Siva Jyothi Nagar, Tirupathi, hence applicant is claiming that they maintained registered office in the same address upto 22.12.2014. Subsequently, on 07.01.2016 company has shifted its registered office to APIIC, Industrial area locality, Plot No.B2-3, Tirupati, Cuddapah, Andhra Pradesh and filed from INC-22 on 02.03.2016.

6. RoC, has stated that, the company has not maintained its registered office in the address given to Registrar of Companies and there is no name board displayed also, hence company and officers in default have violated section 146 and 147 of the Companies Act, 1956 the same fact was also admitted by the Company and the directors.

The RoC has also informed that since one of the ex-director has filed a complaint against shifting of registered office, and the present application is a compounding application u/s 146/147, the matter related to the Applicant's prayer seeking direction to RoC to register form INC 28 may be dealt separately.

7. Memo dated 28.10.2016 has been received from the Counsel for Applicants submitting that Mr. Gururaja Ganesh, Director of the company who is one of the applicants in the present application has passed away on 02.10.2016. and the proof regarding expiry of the Mr. Gururaja Ganesh, has also been furnished by the Counsel for applicants on 06.12.2016. Since, Applicant No.4 is no longer alive, the present proceedings against him abates.



8. In the aforesaid facts and circumstances of the case and in the interest of justice, we consider the delay from 07.04.2011 for non-compliance under Section 146 and 147 and the prayer related to form INC 28 will be dealt separately as per the advice of the RoC report. Accordingly, we allow the Applicant Company and Applicant No. 2 and Applicant No.3 for compounding of offence under the aforesaid provisions with following terms and conditions:

- a. We are imposing a fine of Rs. 2,00,000/- (Rupees Two Lakhs only) on the Applicant Company and Rs. 1,00,000/- (Rupees One Lakh only) each on Applicant No. 2 and 3 as per Section 146 (4) for non-compliance of Section 146 of the Companies Act, 1956 which is to be paid within 3 weeks from the date of receipt of copy of the order and report compliance of the same.
- b. We are further imposing a fine of Rs. 2,00,000/- (Rupees Two Lakhs only) on the Applicant Company and Rs. 1,00,000/- (Rupees One Lakh only) each on Applicant no. 2 and 3 as per Section 147 (2) for non-compliance of Section 147 of the Companies Act, 1956 which is to be paid within 3 weeks from the date of receipt of copy of the order and report compliance of the same.
- c. The applicants are warned to be careful in the future and if such conduct is ever repeated, then appropriate proceedings shall be initiated and a serious view shall be taken.

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In terms of above, the case is disposed off.

Sd/-

RAVIKUMAR DURAISAMY
MEMBER (TECH)

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (JUDL)

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