

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

CA No. 59/621A/HDB/2016

Date of Order: 21 .12.2016

In the matter of:

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

1. Cambridge Technology Enterprises Limited
Regd.office at Unit No. 04-03, Level 4
Block I, Cyber Pearl, HITTEC City
Madhapur, Hyderabad-500 081
2. Mr. Stefan Hetges, Whole Time Director
3. Mr. Motaparthi Venkateswara Rao Kasi, Director
4. Mr. Mallipudi Anand Pattabhiram kumar, Director
5. Mr. Venna Ramana Reddy, Company Secretary
(Applicant No. 2 to 5 are represented
By power of attorney holder Mr. DRR Swaroop
Whole Time Director)

... Applicants

Authorised Representative for the Applicants: Mr. S. Chidambaram, PCS

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

ORDER

(As per Rajeswara Rao Vittanala, Member(J))

1. This application was initially filed before the Hon'ble Company Law Board, Chennai Bench, Chennai. Since the 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 it.

2. The present Company Application bearing No.59/621A/HDB/2016 has been filed by the Applicants u/s 621A r/w Section 217 (2AA) of Companies Act 1956 (which is referred as Act here after) by seeking to allow them to compound the alleged offence committed under u/s 217(2AA) of the Companies Act, 1956.
3. The brief facts which are relevant to the issue raised in the present application are:
 - a. Cambridge Technology Enterprises Limited (which is referred to as Company herein after) was incorporated as a Private Limited Company on 28th January, 1999 under the Companies Act, 1956 with Registration No.CIN L72200AP1999PLCO30997 in the State of Telangana and, the registered office of the Company is at 04-03, Level 4, Block 1, Cyber Pearl, Hitec City, Madhapur, Hyderabad – 500 081, Telangana, India. The authorised capital of the company is Rs.30 Crores as on 31.03.2015 divided into (3) Crores equity shares of Rs.10/- each. The main object of the Company as per its Memorandum of Association are to set up and run electronic data processing centre and to carry on the business of data processing, word processing, software



consultancy, designing , developing, manufacturing, marketing and trading in all types of computer software in all areas etc.

- b. Pursuant to the inspection of the books of account and other records of the Company made by the Office of the Regional Director, Southern Region, Chennai, Ministry of Corporate Affairs, under section 209A of the Companies Act 1956, a common notice bearing No. JDI/MAS/21/2010 dated 26.07.2010 was issued to the Company by Shri Lakshmi Prasad K, Deputy Director of the RD office by pointing out various violations/Contraventions of provisions of the Companies Act 1956 (which is herein after referred to as Act) committed by the Company under Section 383A, 372A, 205,205A ,217(3), 211(3A)(3C) R/w AS9, AS 26 ,AS 13, AS 20, 217(2AA), 211 R/w Schedule VI, Part I, 193(1), 211 R/w Schedule VI, Part I & II , 147, 224(1A) of the Act.



4. In pursuant to the above inspection, the Company has filed the present application suo-motu by praying the Tribunal to allow them to compound the offence alleged to have been committed u/s 217(2AA) of the Act ,on reasonable terms and conditions, as it may deem fit and just. The allegation made by the office of Regional Director in the said notice is that the Board of Directors in the reports dated 31.07.2007, 22.09.2008 and 28.08.2009, for the financial years ended dated 31.03.2005, 31.03.2006, 31.03.2007, 31.03.2008 and 31.03.2009, has

stated under Directors' Responsibility Statement that "the appropriate accounting standards have been followed in the preparation of annual accounts".

However, on examination, it is found that the Company did not comply with the Accounting Standard 9 relating to 'Revenue Recognition ; the Accounting Standard 26 relating to 'Intangible Assets' ; the Accounting Standard 13 relating to 'Accounting for Investment'; and the Accounting Standard 20 relating to 'earnings per share. Hence, it is held that the above Board's Report dated 31.07.2007, 22.09.2008 and 28.08.2009, attached to the Annual Report for the financial years ended dated 31.03.2005, 31.03.2006, 31.03.2007, 31.03.2008 and 31.03.2009 were not in tune with the provisions of Section 217(2AA) of the Act. And thus the provision of Section 217(2AA) of the Companies Act, 1956 is alleged to have been contravened.

5. The applicants submitted a common explanation dated 17.08.2010 by justifying the action taken by the Company and, thus submitted that there was no violation under any of the Accounting Standards and, consequently there is no violation of Section 217(2AA) of the Act and thus, requested to drop the alleged violation. However, the applicants choose to compound the said alleged offence by the present application seeking to compound the offence.



6. The applicants submit that the Company or its officers/Directors have not intentionally, deliberately and wilfully violated the above provisions of the Act. It is further stated the alleged offence is not intentional and, in any case, it will not cause any prejudice to the interest of the members or other creditors or others dealing with the Company. The Company also declared un-equivocal terms that the offence in question does not affect the public interest in any way, and no harm is caused to the public interest. It is further stated that the new Management of the company has taken actions and implemented policies designed to prevent any future default.

7. The Registrar of Companies, Hyderabad for Telangana and Andhra Pradesh, has forwarded its report on the issue, vide ROC-AP&TG/Legal/Sec217(2AA)/621A/CTEL/STACK/2016/1810 dated 01.08.2016. It is stated therein that DRR Swaroop, Whole Time Director, Stefan Hetges, M. Venkateshwar Rao Kasi, Mallipudi Anand Pattabhiramkumar and V. Ramana Reddy Company Secretary, through their power of attorney holder, have submitted an application on 24th June, 2016 u/s 621A of the companies Act for compounding of the offence u/s 217 (2AA) of the companies Act, 1956.



It is stated that the subject Company was registered in the name of Unique Solutions(India) Private Limited with Registrar of Companies, Hyderabad, Telangana on 28th January, 1999 and consequently changed its name as :a) Cell Exchange(India) Private Limited on 21st January, 2003, b) Cambridge Technology, Enterprises Private Limited on 12th

March, 2004 c) Cell Exchange (India) Private Limited on 22nd July, 2004 d) Cambridge Technology Enterprises Private Limited on 16th March, 2005 e) And on 31st March 2006, the Company was converted into a public limited Company vide resolution dated 14th March, 2006. Accordingly, the Company was changed to Cambridge Technology Enterprises Limited vide CIN No. L72200AP1999PLC030997.

8. It is further stated in the report that it is first offence of the Company coming for Compounding. As per section 217(6) of the Companies Act, 1956, if any such person, being a Director of a Company, fails to take all reasonable steps to comply with the provisions of sub-sections (1) to (3), or being the Chairman, signs the Boards report otherwise than in conformity with the provisions of sub-section(4), he shall, in respect of each offence, be punishable with imprisonment for a term, which may extend to six months, or with fine, which may extend to 20,000/- or with both.

Ultimately, the Registrar of Companies did not oppose the application for compounding of the offence in question and, thus submitted to the Tribunal to consider the case on merits.

9. Heard Sri S. Chidambaram, learned Practicing Company Secretary for the applicants and, have carefully perused all the pleadings and, material papers filed in its support and, the relevant case laws.



10. The learned PCS, while reiterating various contentions raised in the company application, has further submitted that CLB/NCLT is having the power to compound the offence in question. Moreover, the company has committed the offence in question for the first time and, the Registrar of the Companies has also not opposed the application and, they have come to the Tribunal suo moto. In support of his contentions, he has relied upon the following cases:

- i) Hoffland Finance Limited in re(1997)13 SCL 12(CLB-Delhi)
- ii) VLS Finance Limited Vs. Union of India (2005) 123 Company cases33 (Delhi)

He has thus submitted that NCLT has full powers to compound offences attracting imprisonment or fine or both, even without referring to any Criminal Court or Special Courts. And the word 'Or' indicates an alternative equivalent to either (Meriam Webster Dictionary) Therefore; he prayed that the Tribunal can allow the present composition of offence.

11. In the light of above discussion of the case, the following two issues arise for consideration:

- a) In what types of cases, the CLB/NCLT can exercise its powers under Section 621A of Companies Act, 1956, for composition of offence(s), without reference to Criminal Court.



- b) Whether the present case is a fit case to allow composition of alleged offence.

12. Under the new Companies Act 2013, NCLT is empowered to compound offences leading to fine only u/s 441. Section 441 reads as follows:

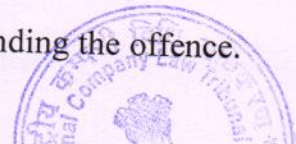
“(1) Notwithstanding anything contained in the code of Criminal Procedure, 1973(2 of 1974), any offence punishable under this Act (whether committed by a company or any officer thereof) **with fine only, may, either before or after the institution of any prosecution, be compounded by the Tribunal or Central Government etc.** So there is no ambiguity in the new Act, 2013 that Tribunal has power and jurisdiction for offence(s) liable for fine only.

Whereas under Companies Act, 1956, powers of CLB are more under Section 621 A, for compounding of offences. However, there are two divergent views on the exercise of powers by the CLB u/s 621(A) in a case, where the Companies Act, prescribes a penalty of fine or imprisonment or imprisonment with fine and, also whether court permission is required, when a prosecution has already been instituted by the Registrar of Companies. There are two conflicting decisions on the question whether permission of the Court is necessary or not, before considering issue of compounding of offence committed under the Companies Act, 1956.



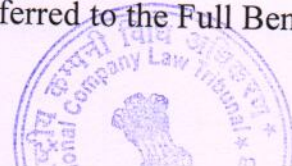
In Reliance Industries Ltd case (1997) 89 Company cases 67 CLB), the CLB, after discussing the issue in detail, has held that Company Law Board is vested with power, authority and jurisdiction to compound offences and, it is only when such compounding is done that the matter can be brought before the court for according permission to compound the offences, which are punishable with fine or imprisonment or both. However, in Hoffland Finance Ltd case, where default under section 68(a)(b) of the Companies Act, 1956 was under consideration, the Learned Member of CLB found that in earlier case, the Northern Region Bench of the Company Law Board, while considering similar default has directed the defaulter to obtain permission of the criminal court and, after obtaining such permission of the Criminal Court by the defaulter, the offence in question was compounded by the learned Member presiding over the Northern Region Bench of Company Law Board.

In view of above two conflicting views of Western Region Bench and the Northern Region Bench of Company Law Board, the Learned Member of Company Law Board, Northern Region Bench referred the issue to the full Bench, when similar question arise in Hoffland Finance Ltd. The issue referred is "whether before compounding any offences punishable under the Act, the Company Law Board could compound the offence without directing the accused or defaulter to obtain permission of the trial Court, where the prosecution was pending, and on obtaining such permission, the Company Law Board then could consider the question of compounding the offence.



13. Brief facts of Hoffland Finance Ltd are as follows:

- (a) Hoffland Finance Ltd has filed application for compounding of offence, which was duly forwarded by the Registrar of Companies, National Capital Territory of Delhi and Haryana have for compounding of offence committed under section 68(a) and 68(b) of the Act to the CLB. The Registrar of Companies has already instituted a criminal case against the company and 5 of the delinquent Directors and, the same was pending before the Addl. Chief Metropolitan Magistrate, Delhi. The default u/s 68(a) (b) attracts maximum penalty of Rs.10,000/- or imprisonment upto 5 years or with both. When the above application was taken up by the learned Member, Northern Region Bench, CLB, he was of the view that prior permission was necessary of the Criminal Court, where prosecution was pending and thus directed the applicants to move an application before the Addl. Chief Metropolitan Magistrate for permission to compound the offence. The learned Metropolitan Magistrate stated to have rejected the application on the ground, jurisdiction of the Court would come into operation only after the parties had compounded the offence. It was also observed that the Court could not issue any direction to any of the parties to compound the offence. Since there were conflicting decisions on the issue of taking permission of the court before considering the issue of compounding of offence, the issue was referred to the Full Bench of CLB, as mentioned above.



14. The Hon'ble full Bench consisting of Hon'ble Members P.Majumdar, S. Balasubramanian and C. Das, has referred 5 types of penalties, which have been provided in the Companies Act, for the violation/contravention of the provisions. They are (1) fine only, (2) imprisonment or fine, (3) imprisonment or fine or with both, (4) imprisonment and fine 5) imprisonment only. Before section 621A was inserted by the Companies Amendment Act 1988 (this section came into effect on May 31st, 1991), as per section 621 all offences against the Act were required to be tried by the Court, on the complaint of the Registrar or shareholder of the company or person authorised by the Central Government in that behalf. Section 621A was inserted on the recommendations of the Sachar Committee. After discussing the entire Law on the subject, Hon'ble Full Bench held that the sub-section 1 of section 621A confers power on the Regional Director to compound offences punishable with fine only subject to certain limitations. The Hon'ble Full Bench, vide its order dated 12th May, 1997, has interalia held as follows:

“The exercise of powers of the Company Law Board under sub-section (1), is not subject to the provisions of sub-section (7) and the decision of the Company Law Board in compounding an offence punishable with fine or imprisonment or with both is final and is only subject to the appeal to the High Court and the question of obtaining the permission of the court either before or after the composition does not arise”.



“The exercise of powers by the Company Law Board under Section 621A (1) is independent of exercise of powers by the court under sub-section (7), and all offences other than those which are punishable with imprisonment only or with imprisonment and also fine can, be compounded by the Company Law Board without any reference to Sub-Section (7), even in cases where the prosecution is pending in a criminal court.”

15. The similar issue was also raised in V.L.S. Finance Ltd Vs Union of India (UoI) and others on 5th November, 2003 before the Hon'ble Delhi High Court. One of the issues considered by the Hon'ble Delhi High Court in the case was whether or not the Company Law Board has the power to compound the offences punishable with fine or imprisonment or both without permission of the Court. As per clause 58 of the Companies Act (Amendment bill 1987, (32 of 1985), the power to compound shall not be exercisable by the Company Law Board and the Regional Director in relation to offences, which are punishable with imprisonment only or with imprisonment and fine.

After considering the issues raised there, the Hon'ble High Court, after taking into consideration of various relevant provisions including that of Section 621A of the Act and, the decision of the Full Bench in Hoffland Finance Limited, cited above in its judgment dated 5th November, 2003 held as follows:



“Accordingly, we hold that the exercise of powers by the Company Law Board under Section 621A (1) is independent of exercise of powers by the court under sub-section (7), and all offences other than those which are punishable with imprisonment only or with imprisonment and also fine can, be compounded by the Company Law Board without any reference to Sub-Section (7), even in cases where the prosecution is pending in a criminal court. It is an accepted position that there is no decision of the High Court or of the Supreme Court on the aforesaid question except for the aforesaid decision of the Company Law Board in Hoffland Finance Limited (supra).

16. The decision of the Hon'ble Delhi High Court in VLS Finance Limited vs Union of India & others was questioned before the Hon'ble Supreme Court of India by Civil Appeal No.2102 of 2004 which was dismissed vide order dated 10th May 2013 by holding that the power under sub-section (1) and Sub-Section (7) of Section 621A are parallel powers to be exercised by the Company Law Board or authorities mentioned therein and prior permission of the court is not necessary for compounding of the offence.

17. In fact, there is hardly any ambiguity for the powers to be exercised by CLB under Section 621A of the Companies Act, 1956. Only bar for compounding of offence by CLB is in a case where *an offence*



punishable with imprisonment only, or with imprisonment and also fine, and it can be done either before or after the institution of any prosecution.

Section 621A of the Act, read as follows:

(1) Notwithstanding anything contained in the Code of Criminal procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof), not being an offence punishable with imprisonment only, or with imprisonment and also fine, may, either before or after the institution of any prosecution, be compounded by-
(a) The Company Law Board etc

18. In the light of the above discussions of the provisions of section 621(A) of the Companies Act 1956, and the interpretations given by the Hon'ble Full Bench Judgement of the CLB: the Hon'ble High Court of Delhi in VLS Finance Ltd and the Hon'ble Supreme Court, as cited above, there is no iota of doubt about jurisdiction and power of the Company Law Board or NCLT to consider for composition of offences under the Companies Act, 1956, either before or after institution of the prosecution and, the only exception is in a case, where the offence alleged is liable to be punished with imprisonment only or with imprisonment and also with fine.

However, the Criminal Court does not have any jurisdiction before the Institution of criminal case but whereas the Company Law Board/ Tribunal has power and competency, under the Companies Act,



to entertain even suo moto application before institution of criminal case.

19. In the light of above discussion of the provisions relating to compounding of offence under Section 621A of the Act and, the law as declared by the Hon'ble Full Bench of CLB and Hon'ble High Court of Delhi, which was affirmed by the Hon'ble Supreme Court, we hold that this Tribunal is having power and jurisdiction to decide the issue in question in the present case.

20. It is not in dispute that offence in question is compoundable and, the applicants have also declared unequivocally that the new management of the Company has taken appropriate actions and implemented policies/designs to prevent any future defaults.

21. It is not in dispute that the present offence is the first of its kind committed by the Company and, the Registrar of Companies also has not opposed the case and left it to the consideration of Tribunal as per merits. The Company also committed not to recur this type of the offences in future.

22. In the light of the facts and circumstances of the case and, also in the interest of Justice, we are inclined to allow the present application by exercising the powers conferred under Section 621A of the Companies Act, 1956, however, subject to payment of compounding fees for the



alleged offence committed U/s 217(2AA) of the Companies Act, 1956. Accordingly, we direct each applicants to pay Rs.20,000/- (Rupees Twenty Thousand Only) which is the maximum penalty as prescribed under Section 217(6) of the Companies Act, 1956 within a period of three weeks from the date of the receipt of the copy of the order.

Further, we also direct the Registry to forward a certified copy of this Order to the Chairman, SEBI, Mumbai for appropriate action as deem fit since the Applicant Company is a Listed Company.

No order as to costs.

Sd/-

RAVIKUMAR DURASAMY

Member (T)



Sd/-

RAJESWARA RAO VITTANALA

Member (J)

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

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