

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

CA No. 01/621A/HDB/2016

Date of Order: 21.10.2016

In the matter of:

1. Deccan Chronicle Holding Limited
36, Sarojini Devi Road,
Secunderabad – 500003, Telangana
2. Mr. Tikkavarapu Venkatram Reddy,
Chairman
Plot No. 54, H.No-8-2-703/A-6/C
Road No.12, Banjara Hills
Hyderabad- 500034, Telangana
3. Mr. Tikkavarapu Vinayak Ravi Reddy,
Vice chairman and Managing Director
Plot No. 53, H.No-8-2-703/A-6/C
Road No.12, Banjara Hills
Hyderabad- 500034, Telangana
4. Mr. Karthik Iyer Parasuram,
Vice Chairman
H.No-8-2-283/B/5, Plot No.2
Road No. 3, Banjara Hills
Hyderabad – 500034, Telangana

.... Applicants

Counsel for the Applicants

..... Mr. Siva. K. Gopinatham

Dhir and Dhir Associates

Advocate

CORAM:

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

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

ORDER

(As per Ravikumar Duraisamy, Member (Tech))

1. The present application is filed by the Applicants under Section 621A of the Companies Act, 1956 for compounding the offences under Section 297 of the Companies Act, 1956 before the Hyderabad Bench of NCLT, praying the Tribunal to take a lenient view in compounding the offences committed under the Companies Act, 1956. ✓
2. The brief facts of the case as averred in the Application are as follows: ✓
 - a. The Applicant Company is a Company which was incorporated on 16th December, 2002 in the name and style of Deccan Chronicle Holdings Limited under the provisions of the Companies Act, 1956 and registered as a Limited Company with the Registrar of Companies, Hyderabad (RoC) having CIN L22122AP2002PLC040110.
 - b. The present Authorised Share Capital of the Company is Rs. 70,00,00,000/- (Rupees Seventy Crore only) divided into 35,00,00,000 Crore (Thirty Five Crore) Equity Shares of Rs. 2/- each out of which Rs. 41,79,44,438/- (Forty One Crores Seventy Nine Lakhs Forty Four Thousand Four Hundred Thirty Eight only) divided ✓

into 20,89,72,219 (Twenty Crores Eighty Nine Lakhs Seventy Two Thousand Two Hundred and Nineteen only) Equity Shares of Rs.2/- each have been issued and have been fully subscribed and paid up.

- c. The main objects of the Applicant Company are to carry on business of printers and publishers of newspapers, magazines, periodicals, journals, books and pamphlets and other library works in different languages and to carry on all or any of the business of printers, publishers, stationers, lithographers, typefounders, sterotypers, electrotypers, off-set printing, photographic printers, photolithographers, chrome-lithographers, engravers, diesinkers, book binders, card printers, Calendar printers, translators, paper and ink and or other stationery goods, book sellers, advertising agents, Engineers, and dealers in or manufacturers of or importers and exporters of any other article, goods, finished or unfinished or other things of a character or kind similar or analogous to the forgoing of any of their connected directly or indirectly with them, etc. ✓
- d. As per Section 297 (1) of the Companies Act, 1956, a Company having a Paid-up Share Capital of Rs. 1,00,00,000/- (Rupees One Crore only) or more is required to obtain prior approval from the Central Government for entering into contract/to carry out any transactions with the Director of the Company or his relatives(s) 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 of which the Director is a member or Director.

- e. The Applicants submitted that the Applicant Company had carried out transactions like obtaining services/made payments from/to M/s Flyington Freighters Private Limited and the Company has transferred fund from time to time to M/s Flyington Freighters Private Limited towards maintenance charges of aircraft of an amount of Rs. 99,45,98,392.03/- during the period 16.10.2007 to 31.03.2011.
- f. The Applicants submitted that they did not obtain necessary prior approval of the Central Government for carrying out the above-mentioned transactions as the amount was given as advance on various dates for purchase of cargo aircraft and to meet legal and other connected expenditure on commercial prudence for the benefit of the Applicant Company and hence the Applicant Company felt that there is no contravention of the provisions of Section 297 of the Companies Act, 1956 in respect of such transactions.
- g. It was further submitted by the Applicants that there is no subsisting contract between the Company and Flyington Freighters Private Limited and the entire amount was realized back by the Company and duly accounted for in its books of accounts. The original idea was to acquire cargo aircraft by the Applicant Company and later on, it was thought to completely acquire the shareholding of Flyington Freighters Private Limited and make that Company a platform for air



cargo business. In the process, it was also conceived to amalgamate Flyington Freighters Private Limited with the Applicant Company. In this scenario, the Applicant Company had advanced funds of Rs. 99,45,98,392.03/- during the period 16.10.2007 to 31.03.2011 to Flyington Freighters Private Limited for purchase of cargo aircraft and to meet legal and other connected expenditure. Since, the things turned out at a later date, and as per the version of Flyington Freighters Private Limited, there arose a problem with Airbus Company consequent upon which, the deal was not materialized. Because of these reasons, the Applicant Company had terminated the understanding and therefore called back its money and in compliance of which, Flyington Freighters Private Limited repaid the entire advance of Rs. 99,45,98,392.03/-.

- h. Subsequently, a show cause notice RAP/209A/DROC (SRD)/CK/DCHL/Sec297/ 2014/ 1148/15 dated 05.08. 2014 was issued by the Deputy Registrar of Companies, Hyderabad for the states of Andhra Pradesh and Telangana. Accordingly, the Applicants stated that they have filed the present application suo-motu for compounding of offence under Section 621A of the Companies act, 1956.
- i. It is also submitted that the defaults committed by the Applicants are of technical nature, which were committed inadvertently and without any malafide intentions on the part of the Applicants and it is not



likely to cause any prejudice to either the Applicant Company, or to its members or creditors as the Applicant Company has collected the entire amount advanced from Flyington Freighters Private Limited. It is further submitted by the Applicants that they will take due care in future to ensure that there is no default in compliance with the provisions of the Companies Act, 1956 regarding the matter in question.

3. We have heard the Learned Counsel for the Applicants, perused the RoC report dated 11.04.2016 and other connected case records available in the file.
4. The RoC, while affirming the contentions made in the petition, has stated that “the Applicants have not clearly mentioned in their Petition as to how the offences were made good and that while the Tribunal is considering the compounding application, the Applicants may be put to strict proof of the same.” The RoC has mentioned that the Applicant Company was ordered for inspection under Section 209A of the Companies Act, 1956 by the Ministry of Corporate Affairs, vide Ministry’s letter No.F.No.7/345/2012-C:/II dated 13.09.2012. Further, RoC explained that, while inspecting the books and records of the company, the Inspecting Officers observed that the company entered transactions with M/s Flyington Freighters Pvt Ltd in which a director of



DCHL holds directorship, without prior approval of Central Government as required under Section 297(1), although the Paid-up capital of the DCHL is more than Rs.1 crore. The matter was taken to the DCHL vide letter dated 17.05.2013 but the reply of the Company was not satisfactory. Therefore, the Inspecting Officer opined that DCHL and its Board of Directors have violated Section 297(1) and are liable for penal action under Section 629A of the Companies Act, 1956.

5. In the show-cause notice dated 05.08.2014, it was stated that when the matter regarding various violations/issues was taken up with the Company vide letter dated 17.05.2013, the Applicant Company wilfully did not reply to the above issue in their reply dated 04.06.2013. Although there was a reply by the Applicant Company on 04.07.2013, it did not seem satisfactory to the RoC as they failed to comply with provisions of Section 297(1) of Companies Act, 1956.
6. Though the Applicants have stated that the present Application is filed suo-motu under Section 621A of the Companies Act, 1956 but it is noted that they have come before this Tribunal only after a show cause notice dated 05.08.2014 was issued by RoC.
7. Though the Applicant Company has stated that it has carried back all the amount advanced to the Flyington Frieghters Private Limited from the available records, the same appears to be without charging any interest



for almost 3.5 years. We are of the considered view that just receiving back the advances (principle) given at various points of times for almost 3.5 years without charging any interest is not a prudent way of running a business especially being a listed company (having 37,991 shareholders as on 31.03.2011). Because of non-charging of interest, the Company lost crores of rupees as interest income which has caused prejudice to the Applicant Company, its shareholders, etc. Transparency in operations is one of the key elements in Listed Company and appropriate disclosure of Related Party Transactions are very essential to various shareholders and as such, the same is the duty of the Company/Board of Directors to give true and fair picture of the functioning of the Company to its shareholders especially any decisions having adverse financial impact on the Company which inturn will have an impact on the shareholders directly or indirectly. As generally known, Related Party transactions are gaining importance/prominence since a couple of decades. Related Party transaction may create potential conflict of interest which can result in benefit of the other party than the Company itself or its shareholders and thus which needs to be regulated. ✓

8. The Applicants have submitted a ledger statement for the period of 1st April, 2008 to 31st March, 2012. Upon perusal of the same, it is observed that substantial amount of approx. Rs. 75 crores out of Rs. 99.45 crores advanced was received only in the month of March, 2011.



9. With regards to the averments made in the Application that it is not likely to cause any prejudice to the Applicant Company, its members or creditors is totally not acceptable in view of the above discussions in pre-paras as the Applicant Company is a listed company having 37,991 shareholders.
10. The Company has stated that there is no subsisting contract between the Company and Flyington Freighters Pvt Ltd. With regard to the same, we are again of a considered view that giving an advance of more than Rs. 99 crores at various points of time, without any subsisting contract is not a judicious/acceptable business practise and any person with reasonable business knowledge would not conduct business/transactions involving such huge money (Rs. 99.45 Crores) without entering into a legal contract. Therefore, the submissions of the Applicants are not convincing.
11. In view of the aforesaid discussion, 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.
12. In the present Application, the Applicants have not obtained approval



from the Central Government for any of the related party transactions carried out for a period of almost 3.5 years which is mandatorily required as per the law.

13. In the light of aforesaid facts, circumstances and discussions of the case and comments of RoC asking the Tribunal to consider the Application by putting the Applicants to strict proof since the Applicants have not mentioned clearly as to how the offences were made good, 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, which were entered with Flyington Frighters Private Limited, in accordance with section 297 of the Companies Act, 1956 and they are at liberty to approach this Tribunal subsequently in accordance with law.

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 in view of the facts of the case and quantum of money involved moreso the Applicant Company being a Listed Company. In terms of above, the present Company Application is disposed off accordingly.

Sd/-

Sd/-

RAVIKUMAR DURASAMY
MEMBER (TECHNICAL)

RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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

