

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

CA No. 03/621A/HDB/2016

Date of Order: 21 .10.2016

In the matter of:

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

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

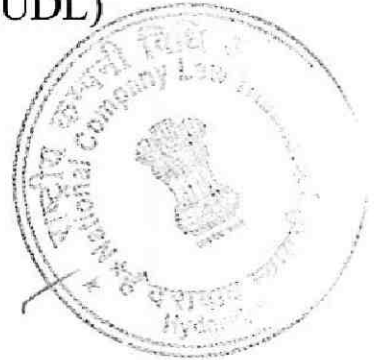
CORAM:

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 lenient view in compounding the offences committed under the said Act and impose minimum consolidated compounding fee.
2. The brief facts of the case as averred in the petition 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 will give party wise details with respect to the related parties in future and undertook to comply with the provisions of Section 297 of the Companies Act, 1956 ✓
- f. The Applicants further submitted that the contravention under Section 297 of the Companies Act, 1956 for obtaining prior approval from the Central Government for the said transactions is due to exigency of the nature of transaction and that the urgency to execute the transaction except the said there is no other intention or otherwise to violate the provisions of the Companies Act, 1956 ✓
- g. Subsequently, a show cause notice RAP/209A/DROC (SRD)/CK/DCHL/Sec297/ 2014/ 1148/11 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. ✓
- h. It is also submitted that the defaults committed by the Applicants 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. 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 and also perused the RoC report 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 Applicant Company had transaction with related parties as per Accounting Standards-18, the details given under significant accounting policies attached to Balance Sheet at 31.03.2008, 31.03.2009, 31.03.2010, 31.03.2011 and 30.09.2012 but without any break up. Further, it was noticed that the Applicant Company had not obtained prior approval of Central Government as required under Section 297(1). The Applicant Company had not provided the details of parties under related party disclosure and only the consolidated amount of transactions involved in the financial

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 opinioned 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, the details given under significant accounting policies attached to the Balance sheets as at 31.03.2008, 31.03.2009, 31.03.2010, 31.03.2011 and 31.09.2012, but without any breakup are as follows:

Sl.No	Sl. No under significant Accounting Policies	Volume of transaction during the year	Amount involved Rs in lakhs
1	2.6.1	1.04.2007 to 31.03.2008	9427.31
2	2.5.1	1.04.2008 to 31.03.2009	2345.49
3	2.4.1	1.04.2009 to 31.03.2010	2044.82
4	2.3.2	1.04.2010 to 31.03.2011	745.00
5	27.4	1.04.2011 to 30.09.2012	632.49

It was also mentioned 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 RoC as they have neither provided details of the transactions in the related party disclosure forming part of the above cited Annual Reports nor provided the same to the Inspecting Officers during inspection/nor produced the Contract Register required to be maintained under Section

301 of the Companies Act, 1956 even while replying. It was also stated by RoC that it found from their reply that “they are in touch with concerned related parties for finalization of terms of fresh contracts with an intention to close the existing contracts and apply to the Central Government for an approval fresh for new contracts with the parties.” Thus, DCHL had contracts with related parties during the period 2007-08 to 2011-12 without complying with the requirements u/s 297(1) of the Companies Act, 1956 that too without obtaining any prior approval of the Central Government as required under proviso to sub-section (1) of Section 297 of the Companies Act, 1956. Thus RoC has concluded that DCHL and its Board of Directors have contravened Section 297(1) of the Companies Act, 1956 and have rendered themselves liable for the penal action under Section 629A of the Companies Act, 1956.

It is clearly seen that DCHL has entered into huge related party transactions amounting to approx. Rs. 151 Crores from Financial Years 2007-08 to 2011-12 without providing any details of parties under related party disclosure, dates of transaction or breakup of such transactions entered into during the above mentioned period in accordance with AS-18. The submission of the applicants that due to exigency of nature of the transaction and urgency to execute the transaction and due to inadvertency, they have not obtained prior approval of the Company is totally not acceptable in the facts and circumstances of the case as discussed below. ✓

According to us, exigency/urgency can be for a single transaction or atmost for few transactions but it cannot be a continuous one for almost 5 years. Further, inadvertency also cannot be continued for 5 years as discussed above. In addition, merely stating that the said transactions are due to exigency of the nature of transaction and the urgency to execute the transaction without proper justification/explanation or showing any necessary proof or documents in support of such statements in the present application does not support their contention.

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. With regards to the averments made in the Application that no prejudice has been caused to the shareholders is not acceptable in view of the above discussion in pre-paras as the Applicant Company is a listed company having 37,991 shareholders.
8. In view of the above 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. As generally known, related party transaction is also gaining importance/prominence since couple of decades. Related Party transaction may create potential conflict of interest which can result in benefit of the party other than the Company or shareholder and thus which needs to be regulated.

9. In the present Application, the Applicants have not obtained approval from the Central Government for any of the related party transactions for which is mandatorily required as per the law.

10. In the light of aforesaid facts and circumstances 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 the related party transaction along with mentioning the details of breakup of each of the related party transaction, 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.

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)

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

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

