



BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

CA No. 05/621A/HDB/2016

Date of Order: 26.10.2016

In the matter of:

1. Deccan Chronicle Holdings 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 & 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 NCLT, Hyderabad Bench, praying the Tribunal to take 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) 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) 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 Section 297 of the Companies Act, 1956 applies to the following entities:
 - i. Director or Relative of the Director;
 - ii. Firm in which the director or relative of director is partner;
 - iii. Any partner of the firm in which the director or relative of director is partner;
 - iv. A private company in which the director is a director or member;

They further stated that the firm, M/s Bhaggyam Builders, with which the transactions have been effected by the company during the period as mentioned in the Show Cause Notice does not fall under any of the

categories as stated in the provisions of Section 297 of the Companies Act, 1956 and thus is not a related entity with respect to the provisions. The following were/are the partners of the firm, M/s Bhaggyam Builders who are not directors in the Company or not related to the Directors in terms of Section 297 read with Section 6 of the Companies Act, 1956:

- i. Mrs. Shakuntala Subramanian
- ii. Mr. Balamurugan Subranian
- iii. Ms. Bhagyalakshmi Subramanian

And that any of the above persons do not hold any position of director in the Company or are relatives of any director of the Applicant Company. Also, none of the Directors of the Applicant Company hold any position of partner in the Firm, M/s Bhagyam Builders.

- f. The Applicants further stated that the Applicant Company had carried out transactions like obtaining services/made payments from/to M/s Bhaggyam Builders during the period 01.04.2005 to 31.03.2010.
- g. Subsequently, a show cause notice RAP/209A/DROC (SRD)/CK/DCHL/Sec297/ 2014/ 1148/12 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 Application, 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 transactions with M/s Bhaggyam Builders which is disclosed as an 'Associate Concern' as required under Accounting Standards- 18 (AS-18) in the respective Financial Statements. The requirements of Sections 297/299/301 of the Companies Act, 1956 are to be complied with by the Applicant Company for entering into transactions with M/s Bhaggyam Builders but they did not comply with the same. When the matter was taken to DCHL vide letter dated 17.05.2013, the reply was not satisfactory. The Inspecting Officer opined that the Applicants contravened the provisions of Section 297 of the Companies Act, 1956 and that the Company and its officers in default have rendered themselves liable for penal action under Section 629A of the Companies Act, 1956.

5. In the Show Cause Notice (SCN) dated 05.08.2014, the quantum of value of service shown in Books of Accounts which was availed from DCHL by Inspecting Officer is provided as follows:

Sl. No	Name of the party	Financial Year	Amount involved In Rs
1	M/s Bhaggyam Builders	01.04.2005 to 31.03.2006	48,31,751.96/-

2	-Do-	01.04.2006 to 31.03.2007	114,42,779.77/-
3	-Do-	01.04.2007 to 31.03.2008	3,02,86,243.51/-
4	-Do-	01.04.2008 to 31.03.2009	25,09,053.29/-
5	-Do-	01.04.2009 to 31.03.2010	1,50,00,000/-

The RoC stated that DCHL had transactions amounting to approx. Rs. 6.4 Crores with the above said firm during the said Financial Years up to 31.03.2010 but did not comply with the requirements under Section 297/299/301 of the Companies Act, 1956 despite being an 'Associate Concern' and thereby rendered themselves liable for action under Section 297/301 of the Companies Act, 1956. It was further stated that when the matter regarding various violations/issues were 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, the RoC found it not worth acceptance as DCHL has disclosed M/s Bhaggyam Builders as an 'Associate Concern' in the disclosure under AS-18 in the Annual Report of the year 2006-07, on its own, with whom it had huge related party transactions, therefore it was taken up for

the violation under Section 297/301 of the Companies Act, 1956. Since the reply of the Company was not accompanied/supported by any sound documentary evidence and mere submission could not be taken as admissible proof of evidence, thus the contentions made by the Board of Directors arguing that they are not Associate Concern even though they have themselves clarified as Associate Concern in the Annual Report on their own is left to be relied upon only.

6. The Tribunal accepts the observation of the RoC. The Applicant(s) have disclosed M/s Bhaggyam Builders as an 'Associate Concern' in its Annual Report for the Financial Year 2006-07 and have made huge related party transactions yet, in the present application, they are contradicting their own disclosure and the disclosure made in the publicly available document.
7. 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 SCN dated 05.08.2014 was issued by RoC.
8. The Applicants, on one hand, are denyin outrightly that M/s Bhaggyam Builders is not an 'Associate Concern' (inspite of the

disclosure in their 2006-07 Balance Sheet) but on the other hand, they state that the default was committed inadvertently which are totally contrary to each other.

9. 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.
10. With regards to the averments made in the Application that no prejudice has been caused to the shareholders is not acceptable since the Applicant Company is a listed company having 37,991 shareholders
11. In the present Application, the Applicants have not obtained prior approval from the Central Government for any of the related party transactions for 5 years as stated in pre-paras which is mandatorily required as per the law.

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12. 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 the related party transaction, which are entered with M/s Bhaggyam Enterprises, 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/-

**RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)**

Sd/-

**RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)**

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