

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, AT HYDERABAD

CA No. 43/621A/HDB/2016

Date of Order: 28.11.2016

Between:

1. Jain Sons Finlease Limited

A Company incorporated under the Companies Act, 1956,
Having its Registered Office at
8-2-682/1, 4th Floor,
Road No. 12, Banjara Hills
Hyderabad – 500034

2. Mr. Sanjib Kumar Jha

Chief Executive Officer & Director of Jain Sons Finlease Limited
Residing at Flat No. 1601, 16th Floor, Ivy Towers
Vasant Valley Complex, Gen A K Vaidya Marg,
Behind Dindoshi Bus Depot,
Malad (E), Mumbai- 400097

AND

The Registrar of Companies, Hyderabad
2nd Floor, Corporate Bhawan,
GSI Post, Bandlaguda
Nagole, Hyderabad – 500068



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Counsel for the Applicants:

Mr. Manoj Kumar Koyalkar

Practising Company Secretary

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. The application was initially filed before Company Law Board, Chennai Bench, Chennai. Since, NCLT, Hyderabad Bench has been constituted for the cases relating 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 the case.
2. Heard Mr. Manoj Kumar Koyalkar, Practising Company Secretary (PCS) and perused all the averments and supported documents.
3. The learned PCS submits:
 - a. The present CA is filed by Jain Sons Finlease Limited (hereinafter referred to as Company) & its Director u/s 621A read with Section 297 of the Companies Act, 1956 by seeking to permit them to compound the alleged offence committed under u/s 297 of the Companies Act, 1956. The Applicants submit that Jain Sons Finlease Ltd was incorporated as public



company on 5th February, 1998 & is having its registered office at 8-2-682/1, 4th floor, Road No. 12, Banjara Hills, Hyderabad- 500034.

b. The main business of the company as set out in Memorandum of Association is to carry out business of leasing, financing; to carry on business of Transfer Agents, Sharebrokers, Portfolio Management, etc.

c. As per the provisions of Section 297 of the Companies Act, 1956, every company has to obtain prior approval of board for a transaction in which the Director/directors of the company is/are interested and prior approval of the Central Government is required to be taken for the companies where the paid-up capital exceeds 1 crore.

In the present case, the company's paid-up capital is Rs.13,84,97,230/- (Rupees Thirteen Crore Eighty Four Lakh Ninety Seven Thousand Two Hundred and Thirty only) and thus prior approval is required to be taken.

d. The Learned PCS submitted that the company has entered into Advisory Services Agreement with Intellectual Capital Advisory Services Private Limited (the "Holding Company" or "Intellectap") for raising the capital in the Company on 28.12.2011 for fees prescribed in the agreement. In this, Mr. Vinith Chandra Rai and Mr. Anurag Agarwal are directors in both the companies (common directors). The offence relates to the period from 28.12.2011 till the date of making the application and the total services received in two phases is Rs. 27,14,127/- .

e. The Company could not get prior approval of the above issue due to unintentional nature. As such, in order to strengthen the governing process and to arrive at an acceptable way to make good of violations, the applicants have filed the present application by seeking to compound the offence. It is



stated that the compounding of offence in the case would cause no loss to the company also and further he submitted that it was the first offence of this nature and thus lenient view be taken by levying minimum compounding fee.

4. Subsequent to hearing of the present case, Sh. Anurag Agarwal, the Director of the Company has addressed a letter 12.Oct. 2016 by undertaking the following:

- adhere to timely compliance of all applicable provisions of the Companies Act, 1956/2013, both in spirits and letter.
- not to repeat non-compliance of 188 of the Companies Act, 2013 (corresponding Section 297 of the Companies Act, 1956) in future.

5. The Registrar of Companies, Hyderabad (RoC) has forwarded the report vide ROCH/LEGAL/SEC297/621A/JSFL/ STACK/2016/2340 dated 6.10.2016 by submitting that the Applicants have admitted the violation of the provision of the Section 297 of the Companies Act, 1956 and the violation relates to the period from 28th December, 2011 to till the date of making this application and the delay was 1744 days. It is also confirmed that it is the first offence. The penalty as per Section 629A of the Act, for violation for provisions of Section 297 of the Act is that the company and every Officer of the Company who is in default shall be punishable with fine which may extend to Rs. 5000/- and with a further fine of Rs. 500/- for every day if the offence continues. Ultimately, RoC did not oppose the present application and left to the Tribunal to decide the case as per merits in accordance with law.



6. It is not in dispute that the Applicants, after admitting the offence of the violation in question, has filed the present company application suo-motu seeking lenient view of the issue in view of the nature of the violation involved.
7. As stated above, the company also submitted an undertaking dated 12th October, 2016. The violation in question would not prejudice the interest of the company or any persons/companies dealing with the Company. In order to ease the business, we are inclined to permit the Applicant for composition of the offence in question subject to following terms and conditions.

We allow CA No. 43/621A/HDB/2016 permitting the Applicants to compound the offence committed under S. 297 of the Companies Act, 1956 and thus, we impose a penalty of Rs. 1,79,400/- [Rs.5000 + (Rs. 100 x 1744 days)] on each of the Applicant and the Applicants are directed to pay the amount to concerned authorities within 3 weeks from the date of receipt of copy of the Order and report the compliance of the same. No order as to costs.

Sd/-

RAVIKUMAR DURASAMY
MEMBER (T)

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (J)



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

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