

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

C.A. No.13/621A/HDB/2016

Date of CAV : 31.08. 2016

Date of order : 05 09.2016

Between

1. Jalpower Corporation Limited,
Road No.07, Flat No.B2, Film Nagar,
Jubilee Hills, Hyderabad – 500 081,
Telangana State, India
2. Ms. Monil Kumar Sharma (DIN 02171253),
Managing Director,
Residing at 45/CF/Block-III,
Charmwood village, Faridabad,
Haryana – 121 009
3. Mr. Dharam Paul Verma, (D1NO1893824),
Whole Time Director,
Residing at H.No.1147, Sector-28
Faridabad, Haryana – 121008,

... Applicants

Vs

The Registrar of Companies,
Andhra Pradesh & Telangana,
2nd Floor, Corporate Bhawan,
GSI Post, Tattiannaram,
Nagolde, Bandlaguda,
Hyderabad – 500 068.

....Respondent

Counsel for Applicants

..Sri G. Bhupesh for Sri S.Nageswara Reddy

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Hon'ble Mr. RAJESWARA RAO VITTANALA, Member (JUDL)

Hon'ble Mr. RAVIKUMAR DURASAMY, Member (TECH)

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. This application has been filed U/s 149 of the Companies Act, 2013 R/w Rule 3 of the Companies (Appointment and Qualification of Directors) Rules 2014 & Section 621 (A) of the Companies Act 1956, by praying the Tribunal to consider and, to pass suitable orders for compounding the offence committed under the said provision.
3. We have heard Sri G. Bhupesh for Sri S.Nageswara Reddy, the learned Counsel for the applicant, perused the application, and also the report of the Registrar of Companies (RoC), Hyderabad for states of Telangana and Andhra Pradesh, forwarded vide letter No.ROCH/Legal/Sec.149A/JPCL/STACK/2016/650 dated 6.05.2016.
4. It was submitted that the Company, Jalpower Corporation Limited was incorporated as a limited company on 25.08.2004 under the Companies Act 1956 with Registration No.U40109TG2004PLC043985 at Hyderabad. The authorised capital of the company as on 31.03.2015 is Rs.200,00,00,000/- (Rupees two hundred crores divided into 20,00,00,000/- (Rupees twenty crores only) Equity shares of Rs.10/- (Rupees ten only) each., and the paid up capital of the company as on the said date is 18,88,88,000: equity shares of Rs.10



each amounting to a total issued capital of Rs.188,88,80,000/- (Rupees one hundred eighty eight crores eighty eight lakhs eighty thousand only).

5. The main objects of the Company is to carry on business of establishing and generating electrical power by conventional and, non-conventional methods, to promote, erect, construct etc. Power houses, transmission distribution of system for generation; to initiate, organize, and to carry on the function, operating business of power plants, electrical engineers, manufacturing, import or export of all kinds of products etc.
6. It is stated that the Board of the Directors of the Company are 1, Mr.Sabbineni Surendra, Non Executive Director 2. Mr. Dharma Pal Verma, Executive Director 3. Mr. Sana Venkateswarlu Subba Reddy, Independent Director 4. Mr.Monil Kumar Sharma, Executive Director 5. Mr.Veerabhadraiah Mudigonda, Independent Director 6. Mr. Mohan Lal, Nominee Director 7.Ms. Karnati Vasantha Lakshmi, Women Director 8. Mr.Sridhar Chandrasekaran Nivarthi, Non-Executive Director.
7. It is further stated that as per Section 149 of the Companies Act 2013, which came into force wef 01.04.2014, that every company shall have Board of Directors as prescribed in the Act like minimum three (3) Directors in the case of Public Company and two(2) Directors in the case of Private Company and One(1) Director in the case of one person company with a maximum of 15 Directors.
The Central Government, vide Notification No.GSR 259(E), dated 31.03.2014, promogulated the Companies (Appointment and Qualification of Directors) Rules, 2014. As per Rule 3, every listed company and every other public company, which are incorporated under the Companies Act 2013, having a paid up share capital of 100 crore rupees or more, or turn over of 300 crore or more, shall appoint at least one Woman Director . It is also provided therein, such appointment of Woman Director shall be made within a period of six months from date of its incorporation.
8. The applicants stated that the company has appointed a woman Director namely Ms Karnati Vasantha Lakshmi on 01.04.2015 and, also filed DIR-12



with Registrar of Companies. However, as per the said provision, a woman director has to be appointed by 01.10.2014. So, there was a delay of six months (180 days approximately) in complying with the said provision.

While admitting the said offence, it is stated that it was committed under unavoidable circumstances and, the same was not deliberate. And also contended that it was not of such a nature to prejudice the interest of any member or creditors of the Company or others dealing with the company. They have also declared that the said offence could not affect public interest in any way and has not caused any harm to the public interest.

9. The RoC submitted a report dated 06.05.2016, wherein, while, conforming the details/contents of the application, he has stated that it is the first such offence committed by the company under the said provisions. It is further stated that as per section 172 of the Companies Act 2013, the company and every officer of the company, who is in default, shall be punishable with fine, which is not less than Rs 50,000 but which may extend to 5 lakh rupees.
10. It is further stated that the Registrar of Companies issued show cause notice vide Ref RAP & TG/TBR/043985/2015/SCN/1326 to 1331 dated 25.08.2015 to the Company and its 4 Directors for non appointment of woman director as per the said section. Since the applicant failed to comply the said provision within the time prescribed, prosecution complaint was also filed before EO Court, Hyderabad and, the case was posted for examination of the accused under Section 251 of Cr PC and, the next date of hearing was 23.05.2016. The Company has filed only form GNL 2 but Form GNL1 is required to be filed and thus requested the Tribunal to direct the Company to file the same.
11. "Officer" and "Officer who is in default" are defined under Section 2(59) (60) of the Companies Act 2013. According to Sec 2(59), Officer includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions, the Board of directors or any one or more of the directors is or are accustomed to Act. According to S 2(60), the following officers of the company are named as defaulting officers of the purpose of application of provisions of Companies Act, 2013:
 - i) whole-time director;
 - ii) key managerial personnel;

- iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board of such specification, or all the directors, if no director is so specified;
- iv) Any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises actively participatres in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
- v) Any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
- vi) Every director, in respect of a contravention lof any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board of participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- vii) In respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;


12. In the instant case, appointment of woman director is the responsibility of the company and its Board of Directors. So the Registrar of Companies has rightly issued show cause dated 25.08.15 to the Company and, all its 4 directors. However, the present Company application has been filed by the Company and only two of its directors. As per the above definition, the Company and all its directors are officers in default, are liable for violation of the provisions as mentioned above.

13. It is not in dispute that the violation in question was made good by appointing a woman director however with a delay. The company was registered on 25.08.2004. The appointment of woman director was introduced in the Companies Act 2013 and, relevant provision came into affect from 01.04.2014. So the delay of 180 days in complying with the said provision is justified on the part of the company. We also accept the delay in appointing the woman director did not cause any prejudice to any creditors of the company or public at large. Moreover, it could not benefit the company in any way. It is also not in dispute

that the company has also informed the Registrar of Companies by filing Form GNL-2 though the Form required is GNL1.

14. Since the offence in question is one committed by the company and all its 4 directors and, we are permitting composition of the offence, we thought fit and proper, to permit compound of offence in respect of other two directors also i.e. Sri Sridhar Chandrasekaran Nivarthi and Sri Sabbineni Surendra. The Tribunal can direct applicants to implead other directors also to the present application but in order to avoid delay in rendering speedy justice and, applicants, too are praying the Tribunal to decide the issue at an early date as they are facing criminal case, we thought it fit to direct other two directors as named above for purpose of composition of offence. We are dispensing with the formal impleading of the other directors to the present application, in the interest of justice.
15. In aforesaid facts and circumstances of the case, we are of the considered view that the instant case is a fit case to allow. Hence, we have considered the delay of 180 days approximately with direction to all the applicants of the present application and, also other 2 directors, who are not impleaded to the present application, namely M/s Sri Sridhar Chandrasekaran Nivarthi and Sri Sabbineni Surendra to pay Rs. 50,000/- each of them within a period of three weeks from the date of receipt copy of the present order. It is further directed that the company should file form GNL1 immediately. After the receipt of compounding fee, the Registrar of Companies is directed to bring about the compounding of offence to the notice of the Learned Special Judge for Economic offences-cum-VIII AMSJ Court, Hyderabad for passing appropriate orders.

RAVIKUMAR DURAISAMY
Member (T)


RAJESWARA RAO VITTANALA
Member (J)