

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

C.A. No. 22/CB OF 2015

(TP No. 139/HDB/2016)

Date of Order: 14.09.2016

Between:

1. Lewek Altair Shipping Pvt. Ltd.
D. No. 3-16-193/1, Sri Vidya Colony,
Suryaraopeta, Kakinada,
Andhra Pradesh-533003
 2. Mr. Kian Soo Lee, Director
238, Orchard Boulevard #09-05
Singapore – 237973
 3. Mr. Adarash Kumar A/L Chiranjilal Amarnath, Director
No.5555-C, Klebang Besar
Melaka, Malaysia
- Applicants.

AND

The Registrar of Companies,
Andhra Pradesh and Telangana
2nd Floor, Corporate Bhawan
GSI Post, Tattiannaram Village
Nagole, Bandlaguda
Hyderabad- 500068

..... Respondent



Counsel for the Applicant:

..... Mr. Ajay S. Shrivastava
Practising Company Secretary

CORAM:

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

The Hon'ble Mr. RAVIKUMAR DURAISAMY, MEMBER (TECH)

ORDER

(AS PER Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDL))

1. The Application was initially filed before the Hon'ble Company Law Board, Chennai Bench, Chennai. Since the National Company Law Tribunal (NCLT), Hyderabad Bench, has been constituted for the cases pertaining to the states of Andhra Pradesh and Telangana, the case is transferred to the Hyderabad Bench of NCLT. Hence, we have taken the case on records of NCLT, Hyderabad Bench and deciding the case.
2. The present Application has been filed by the Lewik Altair Shipping Private Limited and two of its Directors namely Mr. Kian Soo Lee and Adarash Kumar A/L Chiranji Lal Amarnath under Section 621A read with Sec. 159 and Section 162 of the Companies Act, 1956 and Regulation 14 of the Company Law Board Regulations, 1991 by seeking to absolve the Company from penalties under section 162 of Companies Act, 1956 by condoning the delay of 273 days in filing the annual returns with Registrar of Companies, Hyderabad (RoC).



3. The Company was incorporated with the name "Lewek Altair Shipping Pvt. Ltd on 21.03.2011 with the RoC bearing the Registration No. 073418.
4. The Authorized share capital of the Company is Rs. 105,00,00,000/- (Rupees One Hundred and Five Crores Only) divided into 10,50,00,000 (Ten Crores Fifty Lakhs) Equity shares of Rs. 10/- (Rupees Ten) each. The Paid-up Capital of the Company is Rs. 3,87,21,170/- (Rupees Three Crores Eighty Seven Lakhs Twenty One Thousand One Hundred and Seventy only) divided into 38,72,117 (Thirty Eight Lakhs Seventy Two Thousand One Hundred and Seventeen only) Equity shares of Rs. 10/- (Rupees Ten) each on the date of default.
5. The main objects of the Company is to develop, establish, create, manage centres in India or abroad to carry on business of providing support services for the offshore drilling rigs, supplying materials, tools, machine maintenance and repair, etc and presently the Company is in the business of establishing, maintaining and operating offshore shipping facilities for the purpose of supporting Indian offshore industry by providing specialized supply vessels to assist in drilling and exploration on high seas or deep waters. The company is now operating with two Directors, who are residing outside India.
6. As per Sec. 166 of the Companies Act, 1956, the first Annual General Meeting should be held within the period of not more than 18 months from the date of incorporation i.e. on or before 20.09.2012. However, the Applicant Company conducted its first Annual General Meeting only on 12.08.2013.
7. As per Sec. 159 of the Companies Act, 1956, the annual returns of the Applicant Company should be filed with the RoC within 60 days of



holding of Annual General Meeting or due date. Accordingly, the said Company ought to submit the same on or before 19.11.2012. However, the Applicant Company closed its annual accounts for 1st Financial Year on 31.03.2012 and filed its annual return in FORM-20B only on 20.08.2013.

8. It is stated in the Application that the delay in filing the Annual returns with RoC was due to taking the necessary approvals for the operations with the Directorate of Shipping, Government of India. Since the Company from the very existence was under the threat which involved lengthy procedural requirements and several glitches and the issue of Accounts finalization was relegated to the non-priority category. It is also stated that the Company is only wholly owned subsidiary of foreign holding company namely M/s Tunis Oil PTE Ltd which is situated in Singapore. The Company is required to follow the system of accounting of its parent company where they follow Singapore financial reporting system and also use an ERP for maintenance of all accounts, etc. In these circumstances, a substantial delay was caused in finalization of accounts and filing of annual returns with the RoC.
9. It is contended that there was no malafide intention in complying with the provisions of Section 159 & 166 of Companies Act, 1956 and the delay was only circumstantial and unintentional. Thus, prayed the Tribunal to permit them to compound the offence committed by them.
10. We have heard Mr. Ajay S. Srivastava, Learned Counsel for the Applicant, perused the application and also the report of RoC forwarded vide Proceedings No. RAP/Legal/621A/073418/2014/1845 dated 18.11.2014.

11. The RoC has submitted a report, while confirming the contentions of the Applicants in present Application, stated that the actual delay is 265 days in filing the Annual returns with the ROC. But whereas, 273 days was mentioned in present application. He further stated that the present offence is first of such offence committed by the Company. For the violation of said offence, the Company and every officer of Company, who is in default shall be punishable with fine which may extend to Rs. 500/- for every day during which the default continues. It is ultimately stated that the Application can be considered for compounding the offences under Section 159 & S.162 of the Act on merits and pass suitable orders.
12. It is not in dispute that the Petitioners have admitted the violations of Sec. 159 & 162 of the Companies Act, 1956. We are justified with the reasons given in the application to condone the delay in filing the annual return under Section 159 of the Companies Act, 1956 since the Directors of the Company are required to travel frequently due to various business schedule across the world. The due date of filing Annual returns is on or before 19.11.2012 but the Applicants filed it on 20.08.2013. Since there is a delay of 273 days in complying with the said provisions, we are inclined to condone the delay by imposing a fine of Rs. 200 for each defaulting day starting from 19.11.2012 to 20.08.2013.
13. In the aforesaid facts and circumstances of the case and in the interest of justice, we condone the delay of 273 days in filing annual returns. Accordingly, we allow the Applicants for compounding of offences under Section 621A of Companies Act, 1956 by imposing the fine of Rs.54,600/- for each Applicant i.e. the Company and its two Directors, which is to be paid within 3 weeks from the date of receipt of copy of order and also direct them to report the compliance to the concerned authorities.



The applicants are warned to be careful in the future and if such conduct is ever repeated, then appropriate proceedings shall be initiated and a serious view shall be taken. In terms of above, the Company Application is disposed off.

Sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECH)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDL)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

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

