

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, AT HYDERABAD

C.A. No. 15/621A/HDB/2016

Date of Order: 04.10.2016 ✓

Between:

1. Navayuga Dichpally Tollway Private Limited
H. No. 8-2-293/82/A/379 & 379/A, 2nd Floor
Plot No. 379, Road No. 10, Jubilee Hills
Hyderabad – 500033, Telangana ✓
2. Mr. Chinta Sasidhar
Plot No. 550, A/1, Road No. 92
Jubilee Hills, Phase-III,
Hyderabad – 500034, Telangana ✓
3. Mr. Chinta Sridhar
7-5-107/1, Opp. Iscon Temple, Panduranga Puram
Visakhapatnam – 530003, Andhra Pradesh
Presently at Plot No. 379, Road No. 10, Jubilee Hills
Hyderabad- 500033, Telangana ✓ Applicants

Counsel for the Applicants

.. Ms. Sonakshi Jain, CS of the Company

Mr. D.V.M Gopal, PCS ✓

CORAM:

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

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



ORDER

(AS PER Mr. RAVIKUMAR DURAISAMY, MEMBER (TECH))

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 Navayuga Dichpally Tollway Private Limited and two of its Directors namely Mr. Chinta Sasidhar and Mr. Chinta Sridhar for compounding the offences under Section 269(1) of the Companies Act, 1956 and Section 203(1)(i) of Companies Act, 2013 vide SRN C82606898 praying the Tribunal to take lenient view for the non-compliance. ✓
3. The brief facts of the case as mentioned in the Application are as follows: ✓
 - a. The Applicant Company, Navayuga Dichpally Tollway Private Limited, was incorporated on 19th June, 2009 vide Corporate Identity Number (CIN) U45203TG2009PTC064061. ✓

- b. The present Authorized Share Capital of the Applicant Company is Rs. 98,80,00,000 (Rupees Ninety Eight Crores Eighty Lakhs Only) divided into 9,88,00,000 (Nine Crore Eighty Eight Lakhs) Equity shares of Rs.10/- (Rupees Ten) each and the Issued/Subscribed and Paid-up share Capital is Rs. 98,79,00,000 (Rupees Ninety Eight Crores Seventy Nine Lakhs only) divided into 9,87,90,000 (Nine Crores Eighty Seven Lakhs Ninety Thousand) Equity shares of Rs. 10/- (Rupees Ten) each. ✓
- c. The main objects of the Applicant Company are to design, build, finance, operate and transfer road from km 308.000 (Armur) to km 367.000 (Adloor Yellareddy) of Nagpur-Hyderabad section on NH-7 in the state of Andhra Pradesh (the Project) through public-private/Public Sector Partnership (PPP) under NHDP Phase-II and other related activities. ✓
- d. As per Section 269 of the Companies Act, 1956, every Public Company, or a Private Company which is a subsidiary of Public Company, having Paid-Up share Capital of five crores rupees or more, shall have a Managing or Whole-Time Director or a Manager. ✓
- e. The Applicant Company being the subsidiary of Public Company, Navayuga Engineering Company Limited, the above mentioned provision is applicable to the Applicant Company upon increase of its Paid-Up Capital from Rs. 1,00,000/- to Rs. 66,01,00,000/- by way of allotment on 15th February, 2010. Even though the said provision ✓

became applicable since 15th February, 2010, the Petitioner Company had appointed the Whole Time Director on 4th March, 2013 who resigned on 10th July, 2013. ✓

- f. Hence during 15th February, 2010 till 3rd March, 2013 and also from 11th July, 2013 till 31st March, 2014 the provisions of Section 269 (1) of the Companies Act, 1956 were not complied by the Petitioner Company. ✓
- g. Subsequent to the introduction of Companies Act, 2013 effective from 1st April, 2014, Section 203 of the Companies Act, 2013 and the applicable rules, made applicable to the Applicant Company and accordingly every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have the Managing Director, or Chief Executive Officer or Manager and in their absence, a Whole-Time Director as Whole-Time Key Managerial Personnel (KMP) – The relevant extracts of Section 203(1) of the Act are reproduced herein below: ✓

Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel: ✓

(i) Managing Director, or Chief Executive Officer or manager and in their absence, a whole-time director;

(ii) Company Secretary; and ✓

(iii) Chief Financial Officer:

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,-- ✓

(a) The articles of such a company provide otherwise; or

(b) The company does not carry multiple businesses:

Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government. ✓

- h. The Applicant Company has appointed Mr. C. Madhav as the Chief Executive Officer with effect from 27th March, 2015, who has resigned as Chief Executive Officer of the Company with effect from 15th June, 2015. In his place, Mr. R. L. Srinivas was appointed as Chief Executive Officer with effect from 2nd December, 2015 ✓
- i. As per the provisions of Section 203 of the Companies Act, 2013, if any KMP position is vacant, the same shall be filled within a period of 6 months from the date of vacancy. As the company has filled vacancy caused by resignation of Mr. C. Madhav within six months,

the Applicant Company has complied with the said provisions effective from 27th March, 2015 to till date. ✓

j. Hence the Company do not have a Whole-Time Key Managerial Personnel as specified under Section 203(1)(i) of the Companies Act, 2013 during 1st April, 2014 till 26th March, 2015 and accordingly the Applicant Company had not complied with the said provisions during the referred period. ✓

k. The details of default under Section 269 of the Companies Act, 1956 and also under Section 203 of the Companies Act 2013 is as follows: ✓

Details of default :

Particulars	Due Date for Appointment as per the Act	Actual Date of Appointment	Period of Delay
Appointment of Managing Director/Whole Time Director/ Manager as per Section 269 of Companies Act, 1956	15.02.2010	04.03.2013	3 years 17 days
Appointment of Managing Director/Whole Time Director/ Manager as per Section 269 of	10.07.2013	31.03.2014	8 months 22 days

Companies Act, 1956			
Appointment of Chief Executive Officer or Manager and in their absence, a Whole- Time Director as per Section 203 of Companies Act, 2013	1.04.2014	26.03.2015	11 months 26 days

Period of Default by each Applicant:

Particulars	Navayuga Dichpally Tollway Pvt Ltd	Chinta Sasidhar	Chinta Sridhar
Appointment of Managing Director/Whole Time Director/ Manager as per Section 269 of Companies Act, 1956	3 years 17 days	3 years 17 days	5 months 1 day
Appointment of Managing Director/Whole Time Director/ Manager as per Section 269 of Companies Act, 1956	8 months 22 days	8 months 22 days	NIL



Appointment of Chief Executive Officer or Manager and in their absence, a whole-time director as per Section 203 of Companies Act, 2013	11 months 26 days	11 months 26 days	NIL
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1. It is further submitted that during the defaulting period, the Company was under its construction of its 1st BOT Road Project and the income started generating from the business operations effective from April 2013. Till the last Audited Balance Sheet, i.e. 31st March, 2014, the Company was continuously incurring heavy losses and started making negligible profits from the Financial Year ending 31st March, 2015.
- m. The Applicants have approached this Tribunal suo-motu under Section 621A of the Act for the composition of default committed under Section 269 of the Companies Act, 1956 and Section 203(1)(i) of the Companies Act 2013.
4. We have heard Ms Sonakshi Jain, Learned Counsel for the Applicants and also perused the RoC report and other connected case records.

5. The RoC, while affirming the facts of the instant case, has stated that on 24.03.2016, the Company and its Directors Mr. Chinta Sasidar and Mr. Chinta Sridhar have submitted an application under Section 621A of the Companies Act, 1956 for compounding the offence under Section 269(1) of the Companies Act, 1956 and Section 203 (1)(i) of the Companies Act, 2013, during 15.02.2010 - 03.03.2013 and 11.07.2013- 31.03.2014 and 01.04.2014- 27.03.2015 and Form GNL-1, vide SRN C82606898. ✓
6. RoC has also mentioned that the Maximum fine leviable for non-compliance of Section 269 (1) of the Companies Act, 1956 to the Company and every officer of the company in default or such other person is to an extent of Rs.5000 and where the contravention is continuing one, with the further fine which may extend to five hundred rupees for every day after the first during which the contravention continues. The Maximum fine leviable for non-compliance of Section 203(1)(i) of the Companies Act, 2013 as per Section 203 (5) is not less than Rs.1,00,000 but which may extend to Rs.5,00,000 to the Company and every director and key managerial personnel of the Company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is continuing one, ✓

with the further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

7. In view of the above facts and circumstances of the case and in the interest of justice, we are imposing a compounding fee to the Company and its Directors as below:

Particulars	Company/Director	Period of Delay	Fine (in Rs)
Appointment of Managing Director/Whole Time Director/Manager as per Section 269 of Companies Act, 1956	Navayuga Dichpally Tollway Pvt Ltd	3 years 17 days	1 lakh
	Chinta Sasidhar	3 years 17 days	1 lakh
	Chinta Sridhar	5 months 1 day	25,000
Appointment of Managing Director/Whole Time Director/Manager as per Section 269 of Companies Act, 1956	Navayuga Dichpally Tollway Pvt Ltd	8 months 22 days	75,000
	Chinta Sasidhar	8 months 22 days	50,000
Appointment of Chief Executive	Navayuga Dichpally Tollway Pvt Ltd	11 months 26 days	1 lakh

Officer or Manager and in their absence, a Whole-Time Director as per Section 203 of Companies Act, 2013	Chinta Sasidhar	11 months 26 days	50,000/-
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8. The applicants are directed to pay the compounding fee within 3 weeks from the date of receipt of the copy of the Order and report compliance of the same. The applicants are warned to be careful in the future and if such conduct is ever repeated, then appropriate proceedings shall be initiated and serious view will be taken. In terms of above, the present Company Application is disposed off.

Sd/-

Sd/-