

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

C.A.NO. 25/621A/HDB/2016

Date of Order: 24 .11.2016

In the matter of:

1. Nizam Deccan Sugars Limited (represented by Mr. Ganga Raju
Gokaraju, Managing Director of the Company)
40-15-14, Brindavan Colony,
Labbipet, Vijayawada – 520010
Andhra Pradesh

2. Mr. Ganga Raju Gokaraju,
Managing Director
40-15-14/B, Brindavan Colony
Labbipet, Venkateswarapuram
Krishnalanka, Vijayawada – 520010
Andhra Pradesh

..Applicants

Vs

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

... Respondent

Counsel for the Applicants

...Mr. G.SeshadriVasan



CORAM

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

Hon'ble Mr. RAVIKUMAR DURAISAMY, MEMBER (TECHNICAL)

ORDER

(As per Hon'ble Ravikumar Duraisamy, Member (T))

1. The present Company Application was initially filed before the Hon'ble Company Law Board, Chennai Bench, Chennai. Upon the constitution of NCLT Bench at Hyderabad for the cases pertaining to the States of Andhra Pradesh and Telangana, the case is transferred to Hyderabad Bench of NCLT. Hence, we have taken the case on records of NCLT, Hyderabad Bench and deciding it.
2. The application is filed by the applicants under Section 621A of the Companies Act, 1956 R/w Section 149 (1) of the Companies Act, 2013, Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014, by praying to compound the alleged offence committed in not appointing at least a woman in the Board of Directors of the Company.
3. The brief facts of the case as averred in the application and, are material to decide the issue in question are as follows:
 - a. The Company was incorporated in State of Andhra Pradesh on 17th June, 2002 with Corporate Identification Number (CIN)



U15421AP2002PLC039135. The Authorised Capital of the Company is Rs. 201,15,00,000/- (Rupees Two Hundred and One Crore Fifteen Lakhs Only) and the paid-up capital is Rs. 201,15, 00,000/- (Rupees Two Hundred and One Crore Fifteen Lakhs Only).

- b. As per Section 149 of the Companies Act, 2013 and Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 (which came into force with effect from 1.04.2014), every company shall have a Board of Directors consisting of individuals as directors and shall have—(a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and (b) a maximum of fifteen directors:

Provided that a company may appoint more than fifteen directors after passing a special resolution.

Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.

Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 specifies that the following class of companies shall appoint at least one woman director-

- i. every listed company
- ii. Every other public company having - (a) paid-up share capital of one hundred crore rupees or more; or (b) turnover of three hundred crore rupees or more:

Provided that a company, which has been incorporated under the Act and is covered under provisions of second proviso to sub-Section (1) of section 149



shall comply with such provisions within a period of six months from the date of its incorporation.

- c) As per the said provision, the Company is required to appoint atleast one Woman Director in its Board of Directors. However, it could not appoint a Woman Director from First April, 2015 to 29th March, 2016. But the Company appointed Woman Director namely Mrs. Vani Gokaraju at the 63rd Board meeting held on 30th March, 2016. And also filed DIR -12 with ROC.
- d) Since the Company has failed to comply with the above provision within stipulated time, show causes notice vide Ref No. RAP & TG/TBR/039135/2015/SCN/1419, dated 18.09.2015, under Section 149 of the Companies Act, 2013 read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014, was issued by the Registrar of Companies, to the Company and its 5 MD, Directors Nominee Directors, the applicants herein, by seeking them to show cause as to why the penal action, shall not be initiated against them for not appointing a woman director on the Board of Directors of Company. And ROC has also filed a Complaint before the Honble Court of Special Judge for Economic Offence-cum-VIII, AMSJ Court , Nampally, Hyderabad and the case was stated to be pending before the Court for examination of accused U/s 313 of Cr.PC.
- e) The Applicant Company has filed the instant application seeking to compound the said offence. It is contended that the Company is a Joint Venture Company with the participation of Private Promoters 51% and Nizam Sugars Limited (NSL)/ Government of Telangana having 49% share. And then the Government of United Andhra Pradesh Cabinet has approved to limit all the Board of Directors to the level of five consisting of three

members from the Promoters and two members from the Government officers on behalf of the NSL. Hence they failed to appoint at least one Woman Director among the Board of Directors of Company from April 1, 2015 to March 29, 2016. The delay in appointing Woman Director is unintentional and it causes no prejudice to any individual or public at large. It is also stated that the Applicants have to take the permission from the Government of Telangana State to alter the composition of Board of Directors.

4. We have heard Mr. G. Seshadri Vasani, learned Counsel for Applicants and carefully perused various averments made in the application and the connected case records.
5. During the course of hearing, when the Bench pointed out that all 'Officers in Default' as mentioned in the show cause notice have not filed the present application, the Learned counsel filed amendment application by adding all the Directors who were issued show cause notice. However, the learned Counsel claimed immunity for nominee Directors Mr. Rajat Kumar IAS, Mr. Pradeep Chandra Kathi IAS, from the said violation as they are only nominee directors and they don't have any role to play in the day to day affairs of the company and also does not fall under the purview of the definition of 'Officers in Default'.



The Learned counsel, in support of his case, relied upon a master Circular No.1/2011 and also a judgement given by Hon'ble Kerala High court. The Govt of India, Ministry of Corporate Affairs has issued a Master Circular No. 1/2011 dated 29th July, 2011, in the issue of prosecution of Directors. After referring various earlier circular on the issue, it is clarified that where penal provisions provide for "punishment of officers in default", prosecutions should be filed primarily against managing director(s)/whole time director(s)/manager(s) and company secretary if any and further clarified that where the above managerial personnel is not available, prosecutions should be against ordinary directors. While discussing various violations by Directors/Nominee Directors etc, it is suggested that there should be proper application of mind on the part of the Registrar of Companies in each case, while deciding whether a person to be implicated is an 'officer in default' by examining relevant records like Annual return, Form 32(S) etc. Several guidelines are issued for taking necessary action to decide who are officer -in- default.

As stated supra, the said Sri Rajat Kumar and Pradeep Chandra Kathi, are only nominee Directors and they have hardly any role in the delay to appoint Woman Director in the Company.

It is clarified by the learned Counsel that only the Applicant Company i.e, Nizam Deccan Sugars Limited and second Applicant, Mr. Ganga Raju Gokaraju, Managing Director of Applicant Company are arrayed as accused



in CC No. 80 of 2016 filed by RoC in the Hon'ble Court of the Special Judge for Economic Offences.

6. In the case of K. Subramony, Kerala Financial V. The Official Liquidator (Co. Appeal No. 4 of 2004), the Hon'ble High court of Kerala , while considering the role of nominee Directors appointed by Kerala Financial Corporation Ltd. And Kerala State Industrial Development Corporation Ltd, to the Board of Directors in the Liquidation, held that those directors could not held responsible for violation of the provisions of Company Act, 1956. And if any misconduct committed by those nominee directors, their employers can take appropriate action. However, these facts are not similar to the present case. However, each case has to be examined with reference to alleged offence/violations as per the said master circular.

7. The RoC has not opposed the prayer of the applicants in his report vide ROCH/Legal/Sec 149/621A/NDSL/STACK/2016/1007. He has further stated Section 172 of the Companies Act, 2013 is applicable herein and the Company and every Officer in default shall be punishable with fine not less than fifty thousand rupees but which may extend to five lakh rupees.



8. By taking into consideration that violation has been made good by the Company by appointing a Woman Director and it is also first offence committed by the Company and no prejudice would cause to anybody if

composition of offence in question is allowed, we are inclined to allow this application subject to the following terms and conditions:

1. We direct the Applicant Company to pay a compounding fee of Rs. 75,000/- and Rs. 50,000/- by the Applicant No.2, who is the Managing Director of the Applicant Company.
2. The fine to be paid within a period of 3 weeks from the date of receipt of copy of the order and report compliance of the same.
3. After the receipt of compounding fine, the RoC 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.

In terms of above, the Company Application is disposed off.

Sd/-

RAVIKUMAR DURASAMY

MEMBER (T)

Sd/-

RAJESWARA RAO VITTANALA

MEMBER (J)

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

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

