

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

CA No. 48/621A/CB/2016

(T.P No. 145/HDB/2016)



Date of Order: 07.10.2016

Between:

1. Pharmazell (Vizag) Private Limited,
(Represented by its Managing Director Mr. Anant Dattaray Barbadikar)
Plot No. 115, Ramky Pharma City (I) Ltd SEZ
Parawada,
Visakhapatnam, Andhra Pradesh

1. Mr. Anant Dattatray Barbadikar
Managing Director
Flat No. 5, Siddarth Manohar
Sector-4, MVP Colony, Double Road
Visakhapatnam – 530017, Andhra Pradesh

..... Applicants

AND

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

.....Respondent

Counsel for the Applicants

..... Mr. N.K. Bhansali

Practising Company Secretary

CORAM:

HON'BLE Mr. RAVIKUMAR DURAISAMY, MEMBER (TECH)

HON'BLE Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDGE)



ORDER

(As per Ravikumar Duraisamy, Member (Tech))

1. The Application was initially filed before Hon'ble Company Law Board, Chennai Bench, Chennai. Since, NCLT, Hyderabad Bench has been constituted 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 the case.
2. The present application is filed under Section 621A of the Companies Act, 1956 for compounding the offences under Section 297 of the Companies Act, 1956 by the Applicant Company and also on behalf of the Director, Mr. Anant Dattatray Barbadikar by praying the Tribunal to take a lenient view in compounding the offences committed under the Companies Act, 1956 and impose minimum consolidated compounding fee.
3. The brief facts of the case as averred in the Application is as follows:
 - a. The Applicant Company was registered in the state of Andhra Pradesh on 28.12.2006.



- b. The Authorized Share Capital of the Applicant Company is Rs. 600,000,000 and the paid-up capital is Rs. 534,508,200/-.
- c. The main objects of the Applicant Company are to refine, process, formulate, buy, sell, export, import or otherwise deal in all types of Bulk Drugs, active pharma ingredients, Formulations, heat and light chemicals, chemical elements and compounds, in chemical products, amino acids and fine chemicals, organic chemicals, fine chemicals and mineral based chemical and their/other substances in all their various forms and derivatives and their products, by-products and ancillary products and to carry on all or any of the business of distilleries, refinery operators, compounders, synthetic, analysts, physicists, reactor operators, etc
- d. The Applicant Company had entered into contract/transactions from time to time with two companies viz PHARMAZELL INDIA PRIVATE LIMITED (interested Director being Mr. Govindaraj, Mr. Anant Dattatray Barbadikar and Mr. Oliver Bolzern) and M/S PHARMAZELL R&D (INDIA) PVT LTD (interested directors being Mr. Govindaraj and Mr. Anant Dattatray Barbadikar), Directors of the Company for purchase and sale of materials and providing other services. The Applicant Company had entered into contract/transactions with these firms from the period 12/01/2007 to 31/03/2014 and 01/03/2011 to 31/08/2011 respectively i.e. the defaulting period.



e. The Company was required to obtain prior approval of the Central Government in accordance with the provision of Section 297(1) of the Companies Act, 1956 for entering into this contract.

f. As per Section 297(1) of the Companies Act, 1956,

Except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company-

- i. for the sale, purchase or supply of any goods, materials or services; or*
- ii. after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company.*

(Provided that in the case of a company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government).

g. The Applicants stated that the aforesaid contraventions give rise to penalty under Section 629A of the Companies Act, 1956 which is applicable where no specific penalty is provided elsewhere in the Act. The provision states that if a Company or any other person contravenes any provision in this Act or any condition, limitation or restriction subject to which any approval sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been



accorded, given or granted, the Company and every officer of the Company who is in default or such other person shall be punishable with fine which may extend to five thousand rupees, and where the contravention is continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

Section 5 of the Act explains the term "Officer in default" - *For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:-*

- (a) the Managing Director or Managing Directors;*
- (b) the Whole- Time Director or Whole- Time Directors;*
- (c) the Manager;*
- (d) the Secretary;*
- (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;*
- (f) any person charged by the Board with the responsibility of complying with that provision: Provided that the person so charged has given his consent in this behalf to the Board;*
- (g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors.*



Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

- h. The Applicants submitted that the default/offence committed under Section 297(1) of the Companies Act, 1956 was due to oversight which occurred inadvertently without any malafide intentions of the Applicant Company's part.
 - i. The Applicants further submitted that the terms and condition of the contract/transactions are reasonable and in the interest of the Applicant Company and that the interested director has not tried to take undue advantage of the situation or undue financial benefit out of the said contract/ transactions. It was also submitted that no detriment has been caused to the public as a result of the contravention and the said transaction will not prejudicially affect the interest of the Company, its members, Creditors, Banks and/or Financial Institutions.
4. Heard Mr.N.K.Bhansali (PCS) for the Applicants and perused the pleadings and also the report of Registrar of Companies (RoC) furnished Vide Letter No. RAP/ Legal/621A/Pharmazell/ Sec297/ 2015/2207, dated 29.12.2015.
5. The RoC, while affirming the facts of the present case, stated that the Applicant Company has submitted an application under Section 621A of the Companies Act, 1956, for compounding the offence under Section 297



of the Companies Act, 1956 for various financial years vide SRN C05671235.

6. The RoC has stated that the Applicant Company had entered into contract/transactions with Pharmazell India Private Limited and Pharmazell R&D (INDIA) Private Limited from the period 12.01.2007 to 31.03.2014 and 01.03.2011 to 31.08.2011 respectively i.e. the defaulting period, without prior approval of the Central Government. Hence, the Applicants have violated Section 297 of the Companies Act, 1956.
7. From the above facts and perusal of the provisions of the Companies Act, 1956, we are of the view that prior approval sought to be obtained from the Central Government as per the Companies Act, 1956 is interalia with an object to safeguard the interest of various stakeholders viz shareholders, creditors, suppliers, etc and also to bring in transparency in the corporate dealings with respect to related party transactions.
8. In the present Application, the Applicants have not obtained prior approval of the Central Government for any of the related party transactions for a long period from 12/01/2007 to 31/03/2014 and 01/03/2011 to 31/08/2011 which is mandatorily required as per the law. Further the application does not have material facts with regard to the number of transactions carried out in a year and the amount involved within the meaning of related party



transaction as per Section 297 of the Companies Act, 1956.

9. In the light of aforesaid facts and circumstances of the case and in the interest of justice, the prayer as sought by the applicants is premature and we are not inclined to consider the same at this stage. Therefore, the applicants are directed to approach the Central Government for approval of each of the related party transactions entered into in accordance with section 297(1) of the Companies Act, 1956 and they are at liberty to approach this Tribunal subsequently in accordance with law. In terms of above, the present Company Application is disposed off accordingly.

Sd/-

RAVIKUMAR DURAISAMY
MEMBER (TECH)

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

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (JUDL)

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