

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

C.A.NO. 311/CB/2015

(T.P. No.144/HDB/2016)

Date of Order: 19.09.2016

In the matter of

1. Sreepathi Pharmaceuticals Limited
Plot No. 22B, H. No. 8-2-293/82/A/22B
Road No.2, Jubilee Hills,
Hyderabad – 500033, Telangana
2. Mr. Srinivas Isola (DIN: 00413104)
Managing Director
Plot No. 5, Road No. 76,
Jubilee Hills,
Hyderabad – 500033, Telangana
3. Mr. Satya Akhil Isola (DIN: 02791231)
Director
Plot No. 5, Road No. 76,
Jubilee Hills,
Hyderabad – 500033, Telangana
4. Smt. Shyamala Isola,
Whole Time Director
Plot No. 5, Road No. 76,
Jubilee Hills,
Hyderabad – 500033, Telangana

..... Applicants



Vs

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

..... Respondent

Counsel for the Applicants

.....Ms. Shilpi Gupta
Practising Company Secretary

CORAM

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

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

ORDER

(As per Shri. Ravikumar Duraisamy, Member (Tech))

1. The Application was initially filed before 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. This is an Application filed under Section 297 read with Section 621A of the Companies Act, 1956 by seeking a direction to permit the



Applicants to compound the offence committed under the said Act and also praying to take a lenient view of the technical contravention occurred by them.

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. Sreepathi Pharmaceuticals Limited was incorporated on 29.12.1983 vide CIN: U24239AP1983PLC004356 as a private limited company under the Companies Act, 1956 and later converted into limited company on 13th May, 1992.
 - b. The registered office of the Applicant Company is situated at Plot No. 22B, H.No. 8-2-293/82/A/22/B, Road No. 2, Jubilee Hills, Hyderabad – 500033, Telangana.
 - c. The Authorized Share Capital of the Applicant Company as on 31st March, 2015 is Rs. 4,20,00,000/- (Rupees Four Crores Twenty Lakhs Only) divided into 4,20,000 (Four Lakhs Twenty Thousand) Equity shares of Rs.100/- (Rupees Hundred) each. The Paid Up Capital of the Applicant Company as on 31st March, 2015 is Rs. 3,69,63,900/- (Rupees Three Crores Sixty Nine Lakhs Sixty Three Thousand Nine Hundred Only) divided into 3,69,639 (Three Lakhs Sixty Nine Thousand Six Hundred Thirty Nine only) Equity shares of Rs. 100/- (Rupees Hundred) each.
 - d. The main objects of the Company are to carry on the manufacture, research, design and dealership of organic and inorganic chemicals, intermediaries, pharmaceuticals, drugs, dye stuff and other intermediaries, etc.
 - e. On scrutiny of the Balance Sheet of the Applicant Company for its Financial Years 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14, it was observed that the Applicant Company entered into related party transactions which are as follows:



Sl. No	Financial Year	Transaction Details	Transaction Amount (INR)	Name of Related Party	Nature of Related Party
1	2009-10	Purchases of material	5,86,942	White Star Industries	Common Management
2	2009-10	Interest on unsecured Loans	73,253	White Star Alums Pvt Ltd	Parent Company
3	2010-11	Purchases	4,41,072	White Star Industries	Common Management
4	2011-12	Purchases	5,68,772	White Star Industries	Common Management
5	2011-12	Commission	2,47,82,576	Sreepathi Life Sciences	Common Management
6	2012-13	Purchases	5,69,825	White Star Industries	Common Management
7	2012-13	Commission	2,61,59,242	Sreepathi Life Sciences	Common Management
8	2012-13	Interest on unsecured loans	17,65,534	Loan from Directors	Srinivas Isola
9	2013-14	Purchases	5,94,600	White Star Industries	Common Management



10	2013-14	Commission	1,73,80,839	Sreepathi Life Sciences	Common Management
11	2013-14	Interest on unsecured loans	25,36,785	Loan from Director	Srinivas Isola

f. As per Section 297 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-

- a. for the sale, purchase or supply of any goods, materials or services; or
- b. 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).

2. Nothing contained in clause (a) of sub-section (1) shall affect-
 - a. the purchase of goods and materials from the company or the sale of goods and materials to the company, by any director, relative, firm, partner or private company as aforesaid for cash at prevailing market prices; or
 - b. any contract or contracts between the company on one side and any such director, relative, firm, partner or private company on the other for sale, purchase or supply of any goods, materials and services in which either the company, or the director, relative, firm, partner or private company, as the case may be, regularly trades or does business: Provided that such contract or contracts do not relate to goods and materials the value of which, or services the cost which, exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract or contracts;



- c. in the case of a banking or insurance company any transaction in the ordinary course of business of such company with any director, relative, firm, partner or private company as aforesaid.
3. Notwithstanding anything contained in sub- sections (1) and (2), a director, relative, firm, partner or private company as aforesaid may, in circumstances of urgent necessity, enter, without obtaining the consent of the Board, into any contract with the company for the sale, purchase or supply of any goods, materials or services even if the value of such goods or cost of such services exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract; but in, such a case, the consent of the Board shall be obtained at a meeting within three months of the date on which the contract was entered into.
4. Every consent of the Board required under this section shall be accorded by a resolution passed at a meeting of the Board and not otherwise; and the consent of the Board required under sub- section (1) shall not be deemed to have been given within the meaning of that sub- section unless the consent is accorded before the contract is entered into within three months of the date on which it was entered into.
5. If consent is not accorded to any contract under this section, anything done in pursuance of the contract shall be voidable at the option of the Board.
6. Nothing in this section shall apply to any case where the consent has been accorded to the contract before the commencement of the Companies Amendment Act 1960.
- g. It is stated that the Applicant Company did not obtain the necessary prior approval of the Central Government for carrying out the above-mentioned transactions with the related parties, which is in contravention to Section 297 of the Companies Act, 1956 in respect of such transactions.



- h. It is submitted that though the Directors were interested in the transactions carried out between the Applicant Company and the Related Parties; but the transactions have been made at prevailing market prices and they are not prejudicial to the interest of the Applicant Company or its members.
 - i. It is further submitted that though it is a public limited Company but majority shareholding are with the promoters of the Company, therefore such act of the Company have not caused any harm neither to the members nor to the public at large.
 - j. The Applicant Company submits that the Application is filed suo-motu under Section 621 A of the Act for the compounding of default committed under Section 297 of the Companies Act, 1956.
4. When the case was first called for hearing on 04.08.2016, none appeared for the Applicants. The Tribunal served a notice to Applicants to appear on the next listed date, i.e. 18.08.2016. On 18.08.2016, we have heard Ms. Shilpi Gupta, learned Counsel for Applicants and also perused the report of RoC submitted vide proceeding No. RAP/Legal/621A/Sec 297/2015/1798 dated on 30.10.2015 and also the connected case record.
5. A copy of Board resolution dated 09.08.2016 was submitted to the Tribunal and it states that the Application is filed in connection with the show cause notice issued by the RoC for violation of provisions of the Companies Act, 1956 which is contrary to the statements submitted by Applicants that the Application is filed suo-motu.
6. The RoC, while reiterating the contentions made in the Application has stated that on 18.09.2015, Sreepathi Pharmaceuticals Limited, Mr. Srinivas Isola (Managing Director), Mr. Satya Akhil Isola (Director) and Mrs. Shyamala Isola (Whole-Time Director) have submitted an application under Section 621 A of the Companies Act, 1956 for



compounding the offence under Section 297 of the Companies Act, 1956 for the Financial Years ending on 31.03.10, 31.03.2011, 31.03.2012, 31.03.2013 and 31.03.2014 vide SRN C64295959.

7. The Applicants have violated Section 297 of the Companies Act, 1956 and the maximum amount of fine levied to the Company and every officer in default as per Section 297(1) is to an extend of five thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.
8. In the light of the above facts of the case, it is not in dispute that there is a continuous violation of Section 297 of the Companies Act, 1956 by the Applicants from financial years 2009-2014. Upon perusal of the related party transactions as provided in the Application from the Financial Years 2009 to 2014, we have identified certain transactions having huge financial implications. The total amount of Purchases made through the Financial Years 2009-14 is approximately Rs. 27.61 lakhs while the total Commission paid amounts approximately to Rupees 6.8 Crores and the Interest on Unsecured loans is approximately Rupees 43.75 lakhs. From the above, it can be clearly understood that the total amount of Commission paid is multiple times higher than the actual purchase value.
9. We are of the view that prior approval sought to be obtained at various stages or authorities 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. Section 297 of the Companies Act, 1956 embodies the principles of good faith and fiduciary relationship of a director and



enjoins upon him certain statutory obligations.

It was held in *Vinod Kumar Jain v Registrar of Companies* (1987) 2 Comp LJ 188 (Del) that the object of this section is that the Board of Directors should be made aware of all contracts and arrangements in which any director has an interest, whether direct or indirect, so that the Board may be in a position to satisfy itself as to the fairness and reasonableness of the contract from the point of view of the company and then accord its consent to it.

As per the said provisions, prior approval of the Board is required for every related- party transaction exceeding Rs. 5000 in a year but in the circumstances of urgent necessity arises for contracts where a director may be deemed to be interested, may be entered, even for value exceeding Rs. 5000 in a year, without taking prior consent of the Board but such consent shall be obtained within three months of entering into the contract.

10. In the present Application, the Applicants have not taken approval of the Board either prior to any of the related party transactions or within three months of entering into such contracts as per Section 297 of the Companies Act, 1956. There is also no approval obtained from the Central Government for any of the related party transactions during the Financial Years 2009 – 14 which is mandatorily required as per the law. Further the application does not have any facts on number of transactions carried out in a year within the meaning of related party transaction as per Section 297 of the Companies Act, 1956.

11. 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 cannot be considered at this stage. Therefore, the applicants are directed



to approach the Board and the Central Government for approval of each of the related party transaction, which took place through the Financial Years 2009 to 2014 in accordance with section 297 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 (TECHNICAL)

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

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

