

IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

CP/35/59/HDB/2017

U/s 59 of the Companies Act, 2013  
R/w Rule 70 of NCLT Rules, 2016

**In the matter of:**

M/s. Relisys Medical Devices Limited  
Registered Office: Sy No. 312, Pocharam Road,  
Mangalapally Village, Ibrahimpatnam,  
Andhra Pradesh-501510.

...Petitioner

**Versus**

Dr. Raju Reddy,  
Registered Office: 45711, Vineyard Ave,  
Fremont, CA 94536, USA.

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

....Respondent

Order delivered on: 05th October, 2017

**CORAM:**

Hon'ble Mr.Rajeswara Rao Vittanala, Member (Judicial)

**Parties/Counsels Present:**

For the Petitioner:

Shri.Y.Suryanarayana

A. Nagaraj Kumar, Advocates

Per: Rajeswara Rao Vittanala, Member (J)



ORDER

1. The Company petition bearing No. CP/35/59/HDB/2017 is filed by Relisys Medical Devices Limited, under section 59 of the Companies Act, 2013 R/w 70 of NCLT Rules, 2016 by seeking the following reliefs:
  - 1) To pass order(s) for rectification of register of members of the Applicant /Petitioner Company in particular reference to the cancellation of 219,658 equity shares of Rs. 10 each excess allotted to Dr. Raju Reddy on 06.08.2013.
  - 2) To direct the Register of Companies of Telangana to effect the cancellation of 219,658 equity shares of Rs. 10 each excess allotted to Dr. Raju Reddy on 06.08.2013
  
2. Brief facts of the case , which are relevant to the issue in question, as stated in the petition and discerned from the documents filed along with it, are as follows :
  - 1) Relisys Medical Devices Limited, (herein after referred to as Company ) was incorporated as a private limited company on 13.10.1997; having Authorised Share Capital of Rs. 28,60,00,000 (rupees twenty eight crores sixty lakhs only) of 2,86,00,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up capital is Rs. 27,56,61,450 (rupees two crores nineteen lakhs and sixty two thousand) of 2,75,66,145 equity shares of Rs. 10 each.
  - 2) The main objects of the petitioner company, in brief, are as follows;
    - i. To establish, engage, in carry on and run or to carry on business as provide in India or elsewhere diagnostic centres, hospitals, nursing homes, convalescent homes, blood banks, medicinal and allied training research centres, laboratories, mobile diagnostics centres and dispensaries, run libraries hold health centres and such other facilities that may be required for the purpose of providing Medical services of all kinds and also provide relief to the poor and needy by free/ professional services.



ii. To carry on and undertake the business of all kinds of manufactures, importers, exporters, wholesales and/ or retail dealers in medical equipment, appliances models, artificial limbs, prosthetics or any other machinery, equipment, vehicles & other services for medical care, training and research including the business of consultation or setting up of and running hospitals, diagnostics centres, teaching and training centres for all categories including undertaking to provide to other institutions services of its employees for any or all the above functions.

- 3) It is stated that on 01.12.2011, the Company issued 192,441 Compulsory Convertible Debentures(CCD) of Rs. 10 each at a premium of Rs. 60 each (CCDS) to Dr. Raju Reddy( (Trustee of 1007 Reddy Family Trust) Non-Resident individual, having permanent Address at 45711, Vineyard Ave, Foremont, CA 94536, USA. And fair valued of the shares of the Company as the above date was Rs. 64.22/- per share.
- 4) Subsequently, the said CCD were converted to equity shares on 06.08.2013, thus the Company has allotted 429,419 equity shares at a price at a price of Rs. 31.37/ lower than fair value of equity shares (Rs. 64.22) determined upfront .The fair value of shares of the Company as on 6<sup>th</sup> June,2013 is Rs. 31.37 per share. As the Company has contravened the provisions FEMA, 1999 while issuing said shares, it is stated to have submitted a Compounding application vide its letter dated 9<sup>th</sup> September,2016 for contravening para 9(1)B of Schedule 1 to Notification No. FEMA 20/2000-RB dated Mary,3, 2000 as amended from time to time.
- 5) In pursuance to the said letter of Company , the Reserve Bank of India has replied to the Company vide reference No HY.FE.FID/1755/14.04.542/2016-17 dated First March, 2017 by interalia advising the Company as follows:



- i. Unwind the excess shares allotted; or
  - ii. Bring in additional funds equivalent to the shares allotted and thereafter apply for compounding for the contraventions stated.
- 6) In pursuance to the said RBI letter, the Company has obtained no objection from said Dr. Raju Reddy for rectification of Register in the form of cancellation of 219, 658 equity shares of Rs. 10 each excess allotted to him vide his letter dated 3<sup>rd</sup> March, 2017.
- 7) In the above circumstances, the present petition is filed by seeking the relief as extracted above, by contending that violation in question has, taken place due to the circumstances beyond the control of the Company; there is no mala-fide intention on its part and approaching the Tribunal voluntarily.
3. I have heard, Shri. Y. Suryanarayana with A. Nagaraj Kumar, learned Counsels for counsel for petitioner, and have carefully perused the pleadings with supported documents along with extant rules of Companies Act, 2013 and regulations framed under FEMA, 1999. .
4. The case was listed for admission on various dates viz: 31.03.2017, 19.04.2017, 07.06.2017, 06.07.2017, 24.07.2017 and 26.07.2017. The learned counsel for the petitioner has taken adjournments on those dates due to various reasons like counsel is not available, to get further instructions etc. And after reserving matter for orders, the learned counsel has also filed written arguments.
5. The issue to be considered in the case is whether the Company is justified in filing the present petition U/s 59 of the Companies Act, 2013, that too, without complying with conditions prescribed under the RBI letter dated First March, 2017.
6. Since, the Company has not filed all relevant documents to the issue, and filed it in a very casual manner, it is necessary to extract the RBI's letter No.HY.FE.FID/1755/14.04.542/2016-17, dated 1<sup>st</sup> March, 2017 ( filed as Annexure P6, page 118 of material papers) and same is extracted below for ready reference:



“Compounding of contravention of provisions under FEMA, 1999-  
M/s Relisys Medical Devices Ltd.’

Please refer to your letter dated September, 2016, submitting  
Compounding application for contravening para 9(1) A and para  
9(1)B of Schedule 1 to Notification No. FEMA 20/2000-RB dated  
May 3, 2000 as amended from time to time.

2. It is observed that the Company has issued 1,92,441 CCDs to  
non-resident viz Raju Reddy (Trustee of 1997 Reddy Family  
Trust) on 01.12.2011 and the fair value of equity shares as on the  
date of issue of CCDs was Rs.64.22/- per share. However, the  
CCDs were converted by the Company in to 4,29,419 equity  
shares at the price of Rs.31.37/- lower than the fair value of equity  
shares (Rs.64.22/-) determined upfront and has thereby  
contravened the provisions contained in at paragraph 5 of  
schedule 1 to FEMA (Transfer or issue of security by a person  
resident outside India) Regulations, 2000 as amended from time  
to time. We advise you to either
  - i. Unwind the excess shares allotted or
  - ii. Bring in additional funds equivalent to the shares allotted  
and thereafter apply for compounding for the contraventions  
stated.

3. It is to be noted that the contravention would be deemed as  
continuing till the aforesaid process is complete.”

**6A** The Company has not filed documents with regard to the initial allotment of  
CCDs (Compulsory Convertible Debentures) totalling 1, 92,441, to Non-  
Resident of Indian (Raju Reddy) Trustee of 1997 Reddy Family Trust on  
01.12.2011: allotment of 4,29,419 equity shares; the letter dated 9<sup>th</sup>  
September, 2016 as referred to in the said RBI’s letter , so as to analyse  
the issue in proper manner ,in accordance with law. It has simply filed the  
present petition by casually contending that the violation in question is  
neither interventional nor deliberate, and they have also obtained no  
objection from Dr. Raju Reddy for rectification in question. It is not in  
dispute that the Company original name Care Polymed Private Limited  
changed its name to present name vide certificate dated 27<sup>th</sup> Ma y, 2003

issued by the Registrar of Company , is governed by the provisions of Companies

Acts, 1956/2013. So in addition to the Company's Memorandum of Association and Articles of Association, it is mandatory to follow all extant provisions of Companies Act, 1956/2013. So, it is necessary to advert to relevant paras/Articles in Company's Memorandum of Association and Articles of Association and section 59 of the Companies Act, 2013.

7. Since the Company petition is filed under Section 59 of the Companies Act, 2013 and section 59(1) is extracted below for ready reference:

*"59. (1) If the name of any person is, without sufficient cause, entered in the register of members of a Company, or after having been entered in the register, is, without sufficient cause, omitted there from, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the Company, or the Company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register."*

8. It is also relevant to examine relevant provisions FEMA (Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000, Notification No.FEMA 20/200-RB dated 3<sup>rd</sup> March 2000, which are referred to in the said RBI letter dated 1<sup>st</sup> March, 2017 as extracted above, So Regulations 5 & 9 are extracted below for ready reference:.

**" 5. Issue price:**

*Price of shares issued to persons resident outside India under the Schedule, shall not be less than*

- a. *the price worked out in accordance with the SEBI guidelines, where the issuing Company is listed on any recognised stock exchange in India, and*



b. fair valuation of shares done by a chartered accountant as per the guidelines issued by the erstwhile Controller of Capital Issues, in all other cases.

**9. Report by the Indian Company:**

(1) An Indian Company issuing shares or convertible debentures in accordance with these Regulations shall submit to Reserve Bank,

A) not later than 30 days from the date of receipt of the amount of consideration, a report indicating:

- i. Name and address of the foreign investors
- ii. Date of receipt of funds and their rupee equivalent
- iii. Name and address of the authorised dealer through whom the funds have been received, and
- iv. Details of the Government approval, if any.

B) not later than 30 days from the date of issue of shares, a report in form FC-GPR together with,

i) a certificate from the Company Secretary of the Company accepting investment from persons resident outside India certifying that

- a) all the requirements of the Companies Act, 1956 have been complied with;
- b) terms and conditions of the Government approval, if any, have been complied with;
- c) the Company is eligible to issue shares under these Regulations; and
- d) the Company has all original certificates issued by authorized dealers in India evidencing receipt of amount of consideration in accordance with paragraph 9;

ii) a certificate from Statutory Auditors or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India. "

9.. There is clear procedure prescribed under said rules 5 & 9 as to price and procedure to be followed for the issue in question. Admittedly, the



Company failed to follow the prescribed procedure. However, as stated supra, that default in question is not intentional or deliberate. As pointed out by the RBI as stated supra, the Company, in the first instance, has to comply the objections raised by it, duly following the relevant articles of Association of the Company, then it can apply for compounding of contravention in question. While admitting violation of FEMA Regulations, the Company has not taken action in consonance with the Memorandum and Articles of Association of the Company and the Companies Act, 2013 except obtaining a letter dated 3<sup>rd</sup> March, 2000 from the Dr.Raju Reddy stating that he has no-objection for rectification of register of members.Ultimtelly, it is law that should prevail on the issue in question.

10. The other documents filed along with the petition is, Memorandum and Articles of Association of the Company. The issue of Authorised capital is dealt with under para -V of Memorandum of Association. All the details of the authorised /increased share capital of the Company are furnished. The original authorised share capital of the Company is Rs.28,60,00,000/- (Rupees Twenty Eight Crores Sixty Lakhs Only) consisting of Rs. 28,60,00,000/- (Rupees Twenty Eight Crores Sixty Lakhs Only) equity share capital divided into 2,86,00,000 (Two Crore Eighty Six Lakhs) equity shares. The Company has increased its Authorised Share Capital from time to time by way of passing an ordinary/extra ordinary/special resolution has mentioned below:

*"The Company has increased its Authorised Capital from Rs.24,00,00,000/- to Rs.25,00,00,000/- by vide passing an ordinary resolution in the Annual General Meeting held on 8<sup>th</sup> July, 2013.*

*The Company has Re-classified the un-issued authorized equity share capital of Rs.4,40,00,000/- out of Rs. 25,00,00,000/- into Compulsorily Convertible Preference shares by vide passing an special resolution in the extraordinary General Meeting held on 4<sup>th</sup> August, 2014.*

*The Company has increased its Authorised Capital from Rs. 25,00,00,000/- to Rs. 27,60,00,000/- by vide passing an special resolution in the extraordinary General Meeting held on 4<sup>th</sup> August, 2014.*



*The Company has increased its Authorised Capital from Rs. 27,60,00,000/- to Rs. 28,60,00,000/- by vide passing an special resolution in the extraordinary General Meeting held on 18<sup>th</sup> July, 2015.*

*The Company has Re-classified the authorized preference share capital of Rs.7,00,000/- out of 70,00,000/- equity shares by vide passing an special resolution in the extraordinary General Meeting held on 30<sup>th</sup> April, 2015.*

11. They are several contentions prescribed under the Articles of Association for increasing and reduction of share capital. In any case, the Memorandum and Articles of Association clearly shows that the issue of share capital, its increase, re-classification is done by way of ordinary/special resolutions etc as stated supra. In the instant case, the Company, has admittedly has not taken any decision with regard to the subject issue and also not followed FEMA guidelines as pointed by RBI in its letter dated 1<sup>st</sup> March 2017, as extracted above.
12. Shri. Y.Suryanarayana, learned counsel for the petitioner has strenuously contended that once there is no objection from the allottee (Dr.Raju Reddy) for rectification of the excess shares issued to him, the Tribunal should allow the petition as prayed for. He has also submitted that the Company can very well be aggrieved party so as to seek for rectification of its register as mentioned in section 59(1) of the Company Act, 2013. It is not correct to contend that ' or Company ; as referred to in section 59 is the very same Company against which, a direction is sought for rectification of register of members. There are situations that Company itself may invest in other Company/Companies by way of purchase of shares and such Company may file an application/petition for rectification of Register of members of such a particular Company, if it is aggrieved by action of such Company. As pointed by the RBI its letter cited above, the Company should take appropriate action in accordance with law as discussed supra.

The learned Counsel further relied upon judgement of CLB, Southern Bench, Madras, rendered in Kothari Industrial Corporation Ltd. Vs. Lazor Detergents(P) Ltd and others( 1994) 13 CLA 157(CLB). The case was filed by Kothari Industrial Corporation Ltd. U/s 111(4) of Companies Act,



1956 praying for rectification of register of members with respect to shares registered on transfer, as share transfer documents in question were improperly stamped etc. In this case, there is no issue of transfer of shares and its subsequent registration leading to rectification. .

13. In the instant case, as detailed supra, there is no issue of transfer of shares and subsequent registration or cancellation of it. It is violation of FEMA Regulations as mentioned supra, which is in question. As such, the Company cannot invoke Section 59 of the Companies Act, 2013, and it cannot be called as aggrieved party. Moreover, as stated supra, the recipient namely Dr. Raju Reddy, admittedly has no grievance as he has given no objection to the Company on the issue in question. And he is not aggrieved by the impugned excess allotment of shares, and the question is only violation of FEMA Regulations, that is to be compounded by duly complying with all provisions of law. Therefore, the present petition filed U/s 59 of Companies, 2013 is mis-conceived, apart from lack of merits as discussed supra.

The ratio decided in the above case is not applicable to the facts and circumstance of the present case.

While, the case is pending adjudication before the Tribunal, the Registrar of Companies at Hyderabad for the State of Andhra Pradesh and Telangana, is directed to furnish his comments on the subject issue vide letter No.NCLT-Hyd/CP/35/59/HDB/2017/2301 dated 25/07/2017. Accordingly, the ROC has filed his report vide Reference No. ROCH/Lgal/sec59/28153/Rellisys/Stack/2017 dated 25.07.2017 by inter-alia stating that the petitioner Company has allotted 429419 equity shares on 06.08.2013 and subsequently filed its Balance Sheet for the years 2014 to 2016, which reflects the paid up capital including the allotment of shares in question. Therefore, he submitted that rectification of register of members by cancelling the excess allotment of shares leads to reduction of paid up capital. And there is a prescribed procedure for reduction of share capital in Memorandum of Association and Articles of Association of the Company and the Companies Act, 2013



15. The above facts clearly shows that the petitioner Company has failed to follow its Memorandum and Articles of Association of the Company, the relevant provisions of Companies Act, 2013 and FEMA Regulations, 2000 so as to make good violations of FEMA Regulations as mentioned supra. Therefore, the present petition filed under section 59 of the Companies Act is not maintainable, and it is liable to be rejected for the grounds mentioned supra. In fact, the concerned authorities have to initiate appropriate action by this time against the Company, for violation of FERA regulations.
16. In view of the above facts and circumstances of the case, the company petition bearing No.CP/35/59/HDB/2017 is hereby dismissed. However, the dismissal of this petition, will not come in the way of filing fresh appropriate petition by the Company, duly following extant provisions of law. No order as to costs.



*Sd/-*  
RAJESWARA RAO VITTANALA  
MEMBER (JUDICIAL)

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

*Sd/-*  
Dy. Regr./Asst. Regr./Court Officer/  
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति  
CERTIFIED TRUE COPY  
केस संख्या  
CASE NUMBER...CP/35/59/HDB/2017  
निर्णय का तारीख  
DATE OF JUDGEMENT...5-10-2017  
प्रति तैयार किया गया तारीख  
COPY MADE READY ON...9-10-2017