

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

CP No.06 of 2016

(TP No.86/HDB/2016)

Date of Order: 30.01.2017.

Between:

Dr. T. Kiran Kumar,
S/o T. Venkataiah,
Flat No.103,
Siddhartha Ramakrishna Apartments,
H.No.8-3-319-1-7, Yella Reddy Guda,
(Opposite to State Home),
Hyderabad – 500 073.

...Petitioner

And

1. Positive Life Sciences Private Limited,
Flat No.102,
Sri Sai Ram's Swarnalatha Estate,
Besides DTDC Lane,
Saradhi Studio, Ameerpet,
Hyderabad – Telangana State
2. Dr. A.M. Reddy (Dr. Ambati Maheswara Reddy),
S/o Shri A. Suryanarayana Reddy,
43-101-A3, N.R. Peta, Karnool – 518 004
Also at,
252,Phase-13, Indu fortune fields,
Near Hightech City Railway Station,
Hyderabad.
3. Shri Ajay Singh,
S/o Shri Indradeo Singh,
6-1-14, Church Masjid Street,
Allagadda,
Karnool – 518 543.
4. Shri B. Yugendhara Reddy
S/o Shri B. Ranga Reddy,



58, First Floor, Manjunatha Nilaya,
6th Cross, Jai Bhuvanewari Layout,
Near Cambridge Engineering College,
K.R. Puram, Bengaluru North,
Bengaluru – 560 036.

5. Shri Nanganai Mohan,
S/o Shri N. Venkata Swamy,
214-20-677/315, Parvath Nagar,
Sri Saihaithanya School,
Allapur Borabanda, Bala Nagar,
Moosapet, Pangareddi,
Hyderabad – 500 018.
6. Shri Chinnakuntla Srinivasa Reddy,
S/o Shri C. Ramakrishna Reddy,
2-5-69, Satram Street, Allagadda,
Karnool – 518 543.
7. Shri Ambati Ramasanjeeva Reddy,
S/o Shri A. Chinna Sanjeeva Reddy,
2/73, Chinta Gunta Post, Devarayapuram,
Pedda Chinta Gunta,
Karnool – 518 543.
8. Shri Venkata Konda Reddy Banka,
S/o Shri B. Timma Reddy,
Flat No.201, Plot No.197 & 198,
S.P. Nagar, Kukatpally,
Hyderabad – 5000 072
9. Shri Ambati Muralidhara Reddy,
S/o Shri A. Ramasanjeeva Reddy,
2/73, Chinta Gunta Post,
Devarayapuram,
Pedda Chinta Gunta,
Karnool – 518 543.
10. Smt. P. Srujana,
W/o A.M. Reddy
43-101-A3, N.R. Peta,
Karnool – 518 004.
11. Shri M. Krishna Reddy,
EWS – 941, KPHB Colony-3rd Phase,
Kukatpally,



Hyderabad – 500 072.

12. Shri C.S. Lebakka Dhanamjaya Reddy,
Practicing Company Secretary,
R/o Flat No.504, Afzal Commercial Complex,
Besides MMTS Railway Station (South),
Lakdikapool, Hyderabad -500 004.

13. Shri CS. Badida Sudhindra Kumar,
Practicing Company Secretary,
R/o Plot No.453, # 12-11-1519/1,
Boudha Nagar, Secunderabad – 500 061

14. Positive Homeopathy Private Limited,
Regd. Office at 6-3-654/13,
A1-First Floor, Suriya Teja Apartments,
Hindi Nagar, Panjagutta,
Hyderabad – 500 034.
(Represented by its Director Mr. Ajay Singh)

15. The Branch Manager,
Andhra Bank, Jubilee Hills Branch,
Hyderabad.

16. Registrar of Companies,
Telangana State,
Hyderabad.



... Respondents

Counsel for the Petitioner:

Sri R.V. Reddy

Counsel for the Respondent Nos. 2 to 9:

Sri Y. Suryanarayana

CORAM:

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

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

ORDER

(AS PER RAJESWARA RAO VITTANALA, MEMBER (J))

1. The Company Petition bearing No.06 of 2016 was filed before the then Hon'ble Company Law Board, Chennai (CLB) by Dr. T. Kiran Kumar on 07.01.2016 under section 58, 59 of the Companies Act, 2013 read with Sections 397, 398, 402 read with Schedule XI of the Companies Act, 1956.
2. The Company Petition was taken up by the CLB from time to time and adjourned the matter on several occasions. Subsequently, the case was transferred to National Company Law Tribunal, Hyderabad Bench in the month of July, 2016, since the case relates to the States of Andhra Pradesh and Telangana. Accordingly, the case was taken on the records of NCLT, Hyderabad Bench to decide the case.
3. Heard Sri R.V. Reddy, Practicing Company Secretary for the Petitioner along with Dr. T. Kiran Kumar, Petitioner (party in person) and Sri Y.Suryanarayana, learned counsel for R2 to R9 along with Dr. A.M. Reddy, Respondent No.2 (party in person) are also present in the Court. The Company Petition was filed u/s 58, 59 of the Companies Act, 2013 read with Sections 397, 398, 402 read with Schedule XI of the Companies Act, 1956, by Inter alia seeking following directions:



- 1) to declare the Form DIR-12 filed by the 2nd respondent was fabricated and filed with 14th respondent and declare it as illegal and null and void;
- 2) to declare that the PAS-3 filed along with the attachments are fabricated and filed by the 2nd respondent with the 14th respondent as illegal and null and void;
- 3) to declare that there was no shareholders meeting held on 30.09.2015 and consequently hold that the extract of the minutes attached with the PAS-3 is illegal and null and void;
- 4) to hold the respondents 2 to 13 are responsible for all the acts complained in this company petition and consequently hold that they are responsible for all the monetary loss to the 1st respondent company

including any fee, additional fee, penalty, violation under various provisions of the Companies Act 1956 and 2013;

- 5) to declare the DIR-12, for appointing the 2nd respondent as Managing Director, and PAS-3 forms filed with connivance of the 2nd respondent without the knowledge and authority of the petitioner as illegal and null and void;
 - 6) consequently declare the filing of the above forms as illegal and null and void and direct the 14th respondent to remove the same from MCA-21 portal and further permit the petitioner to file the appropriate suitable revised return;
 - 7) to transfer the shares held by the 2nd respondent to the petitioner upon the valuation decided by this Honourable Bench; and
 - 8) to remove the second respondent as the director of the 1st respondent and ;
 - 9) to pass such further order or other orders may be made affording necessary relief as in the premises the Hon'ble Company Law Board may deem fit and proper
- *It is noted that there is a typographical error with respect to the Reliefs stated above and that 14th Respondent should be read as 16th Respondent.*

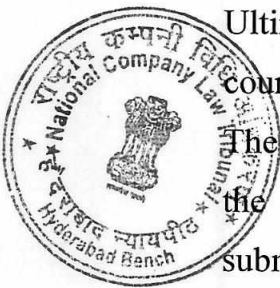
4. Subsequently, the case was heard several times, and it was adjourned at the request of the parties that a settlement was likely to be made.

Ultimately, the case is listed today i.e., 30.01.2017. Both the learned

counsel submitted a Memorandum of Compromise, dated 27.01.2017. The Petitioner and Respondent No.2 are also present and confirmed that the memorandum of compromise made between the parties and submitted that they are bound by the terms and conditions made therein.

Memo is taken on record. The main points of compromise made by the parties are mentioned below:

- a) The party of the Second Part shall take over the Company by acquiring the entire shareholding held by the party of the First Part, i.e., 12,50,000 equity shares of Rs.10/- each at par, by virtue of which



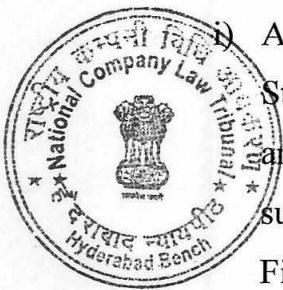
the party of the Second part will acquire 100% of the shareholding of the Company;

- b) Upon execution of this MOC and effective from the date of recording of the same by the National Company Law Tribunal, Hyderabad Bench, the party of the Second part shall by virtue of the acquisition of the entire shareholding of the party of the First Part take over the entire control and business of the Company along with all its assets and liabilities and the party of the First Part shall resign from the Board of Directors of the Company. The party of the First Part has already handed over the resignation letter from the Board of Directors of the company to the mediators.
- c) The party of the First part has already handed over the signed share transfer forms in Form SH4 to the mediators to effect the transfer of shares in favour of the party of the Second part and/or his nominees.
- d) It is hereby agreed unconditionally by both the parties that the party of the First Part shall alone be entitled to carry on the business of Homeopathy Diagnostic and Consultancy Services in the States of Telangana and Tamilnadu (hereinafter refer to as the assigned areas of the party of the First Part) under the brand name Positive Homeopathy and likewise the party of the Second Part alone shall be entitled to carry on the said business in the States of Andhra Pradesh and Karnataka (hereinafter refer to as the assigned areas of the party of the Second Part) under the brand name of Positive Homoeopathy. Both the parties hereby unequivocally and unconditionally undertake and agree that neither party shall at any time carry on any business in relation to Homoeopathy and Diagnostic Consultancy Services in the assigned areas of the other party by using the brand name having the word "POSITIVE" in any manner with regard to the Homeopathy and related services.
- e) The party of the Second part shall substitute the collateral securities and personal guarantees offered by the party of the First part to the Andhra Bank upon the settlement of the amounts agreed between both the parties as per the statement of assets and liabilities prepared



and signed by both the parties witnessed by the mediators (herein after referred to as settlement of assets and liabilities) and on and from the date of execution this MOC the party of the Second part alone shall be liable and responsible for all the liabilities whether statutory or contractual existing on the date of signing of this MOC, as detailed on in the settlement of assets and liabilities and the party of the First Part shall in no way be liable for any liability that arises after the date of execution of this MOC. However the party of the First part shall be liable along with the party of the Second part with regard to the liabilities not mentioned in the settlement of assets and liabilities as mentioned above, which have contracted or incurred before the date of this MOC.

- f) Each party shall be entitled to use the trade mark of “Positive Homoeopathy” in their respective assigned areas of operation and both the parties agree and
- g) undertake not to use the trade mark for their business purpose in the assigned areas of the other party.
- h) Both the parties shall have unfettered right to carry on and expand their business operations in the respective assigned areas. However, both the parties shall be entitled to carry on business operations in each other assigned areas under a different trade mark.
- i) All the existing lease agreements entered by the Company in the States of Telangana and Tamil Nadu in relation to the Head Office and the Branch office shall be cancelled and the same shall be substituted by fresh lease agreements to be entered by the party of the First Part with the respective land lords and the party of the Second Part shall have no objection for the same and shall extend full co-operation in this regard.
- j) All the employees working on the roles of the Company in the States of Telangana and Tamil Nadu shall be retained or be dealt in such manner as the party of the First part may in his sole discretion deem fit and proper and the party of the Second part conveys his no objection for the same.



- k) Both the Parties have voluntarily agreed to make a prayer before the Hon'ble National Company Law Tribunal, Hyderabad Bench, for cancellation of the disputed allotment of 25,00,000 equity shares to the party of the first part and his relatives and friends and also make a prayer before the Hon'ble National Company Law Tribunal, Hyderabad Bench, by the said allottees that they have no claim against the company upon the cancellation of the said allotment of shares and also rectification of the Register of the Members of the company to that effect as per the provisions of Sec.59 of the Companies Act, 2013.
- l) Both the parties have also voluntarily agreed that to make a prayer before the Hon'ble National Company Law Tribunal, Hyderabad Bench, for the passing of necessary orders for striking off the name of the company, i.e., M/s Positive Homoeopathy Private Limited, from the Registrar of Companies, Telangana as per the provisions of Sec.7 of the Companies Act, 2013.
- m) Both the parties agree that all the differences and disputes have been settled once and for all and put to rest and buried forever and the Settlement made hereby is the full and final settlement and supersedes all the previous Agreements, Understandings, communications, letters, emails, etc.
- n) Both the parties hereby undertake that upon execution of this MOC, none of the parties hereto shall initiate, file, take up or commence any proceedings, litigation, complaints etc. whether civil, criminal or by whatever name called against any of the parties hereto including the Company in connection with any matter forming subject matter of this MOC related thereto, including but not limited to appointment/resignation of Directors, allotment of Shares etc. unless if any party violates any of the terms mentioned or any undertakings made by the parties through this MOC.



5. The points mentioned in the compromise is that both the parties undertake and confirmed that they have no further claim against each other, and they want to execute the terms and conditions of the above memo in letter and spirit. It is also agreed that none of the parties to the present CP, shall initiate, violate take up any litigation, complaint etc, whether by way of civil or criminal proceedings unless they violate the terms and conditions of the memorandum of compromise.

6. We have considered the Memorandum of Compromise, in the light of the litigation raised in the Company Petition, and we are satisfied that the parties have voluntarily agreed for the said Memorandum of Compromise, and also confirmed by Dr. T. Kiran Kumar Reddy and Dr. A.M. Reddy in the Tribunal. The second respondent submit that he has also signed the said memorandum of compromise on behalf of other Respondents No.3 to 14.

7. In the light of the above memorandum of compromise and the commitment made by both the Petitioner and Respondent, we dispose of the CP No.06 of 2016, by directing both the parties to strictly adhere to the terms and conditions of the Memorandum of Compromise dated 27.01.2017. We further make it clear that if anybody violates/attempts to violate the terms of Compromise, the Tribunal will take serious view of the matter and we initiate suo moto contempt proceedings.



CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

Sd/-

RAVIKUMAR DURAISAMY
MEMBER (TECH)

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (JUDL)

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