

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

COMPOUNDING APPLICATION NO. 05/441/HDB/2017

Date of Order: 03.05.2017.

IN THE MATTER OF SECTION 441 OF THE COMPANIES ACT, 2013

READ WITH SECTION 134 OF THE COMPANIES ACT 2013

AND

IN THE MATTER OF M/s. BSCPL GODHRA TOLLWAYS LIMITED AND
ITS DIRECTORS

1. M/s BSPL GODHRA TOLLYWAYS LIMITED,
Represented by Mr. Bollineni Seenaiah,
Director (DIN 00496623),
Registered Office of the Company situated
at M.No.8-2-502/1/A, JIVI Towers,
Road No.7, Banjara Hills,
Hyderabad. – 500 034,
Telangana.

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2. Mr. Uthandam Pillai Jayakodi,
S/o Muthukrishna Uthandam Pillai,
Director, - DIN 00025341,
6-3-1218/2, 101, Jana Priya Apts, Umanagar,
Kundan Bagh, Begumpet,
Hyderabad – 500 016.
3. Mr. Bollineni Seenaiah,
S/o Bollineni Ramanaiah,
Director – DIN 00496623,
21-26C, Golden Enclave,
Beside KLR Farm House,
Fort Grand Road, Rallagadda,
Shamshabad,
Hyderabad -501 218
4. Mr. Talluru Dayakar,
S/o Talluru Chinnappa Naidu,
Whole Time Director – DIN: 00545124,
101, Vishnu Mansion,
Srinagar Colony
Hyderabad – 500 004.

5. Mr. Kodali Kesava Rao,
S/o Kodali Venkateswara Rao,
Director, DIN: 00601539,
Flat No.B1, Road No.3,
Trendset Valley, Banjara Hills,
Hyderabad – 500 0034.

6. Mr. Mavilla Subba Rao,
S/o Mavilla Pitchaiah,
Director, DIN:03293633,
105 Sasi Apartments,
G-100, Madhuranagar,
Hyderabad – 500 038.

: Applicants

Counsel for the Applicants:

Sri Tapasvilal Deora

CORAM:

The Hon'ble RAJESWARA RAO VITTANALA, MEMBER (JUDICIAL)



ORDER

(As per Sri Rajeswara Rao Vittanala, Member (Judicial))

1. The present Petition bearing C.P. No.05/441/HDB/2017 is filed by M/s BSCPL GODHRA TOLLWAYS LIMITED and 5 others. (herein after referred to as applicants) under section 134/441 of Companies Act, 2013 by inter alia seeking to compound contravention of section 134(3)(f) of Companies Act, 2013 and impose a minimum penalty as prescribed under relevant provisions etc.,
2. The brief facts of the case are:
 - a) M/s. **BSCPL GODHRA TOLLWAYS LIMITED** (hereinafter referred to as "**Applicant 1**", "**Applicant Company**", "**Company**") being represented by Mr. Bollineni Seenaiah, Director (DIN 00496623), is a public limited company limited by shares incorporated under the provisions of Companies Act, 1956 bearing CIN: U45209TG2010PLC066757. The registered office of the

Company is situated at M. No. 8-2-502/1/A, JIVI Towers, Road No. 7, Banjara Hills Hyderabad – 500034, Telangana.

- b) The following are the directors of the Company, who are referred to as officers-in-default, as on the date of this application

| S. No | Name & Fathers Name | Address | Applicant No. |
|-------|------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|---------------|
| 1 | Mr. Uthandam Pillai Jayakodi S/o Muthukrishna Uthandam Pillai Director DIN 00025341 | 6-3-1218/2, 101, Jana Priya Apts, Umanagar, Kundan Bagh, Begumpet Hyderabad 500016 | Applicant 2 |
| 2 | Mr. Bollineni Seenaiah S/o Bollineni Ramanaiah Director DIN 00496623 | 21-26C, Golden Enclave, Beside KLR Farm House, Fort Grand Road, Rallagadda, Shamshabad, Hyderabad 501218 | Applicant 3 |
| 3 | Mr. Talluru Dayakar S/o Talluru Chinnappa Naidu Whole Time Director DIN: 00545124 | 101, Vishnu Mansion Srinagar Colony Hyderabad 500004 | Applicant 4 |
| 4 | Mr. Kodali Kesava Rao S/o Kodali Venkateswara Rao Director DIN: 00601539 | Flat No.B1, Road No.3. Trendset Valley, Banjara Hills Hyderabad 500034 | Applicant 5 |
| 5 | Mr. Mavilla Subbarao S/o Mavilla Pitchaiah Director DIN: 03293633 | 105 Sasi Apartments G-100, Madhuranagar Hyderabad - 500038 | Applicant 6 |



- c) The main object of the Company is to design, engineering, financing, construction, operation and maintenance of "Four laning of Godhra to Gujarat/Madhya Pradesh border Section of NH-59 from KM 129.300 to KM 215.900 in the State of Gujarat on Design, Build, Finance, Operate and Transfer (DBFOT) Basis under NHDP III"
- d) The authorized capital of the Company is Rs. 4,05,00,000/- (Rupees Four Crore and Five Lacs only) divided into 40,50,000 (Forty Lacs Fifty Thousand) equity shares of Rs. 10/- (Rupees Ten Only) each and the paid up capital of the Company is Rs. 4,04,75,060 (Rupees Four Crore Four Lakh Seventy Five Thousand and Sixty Only) divided into 40,47,506 (Forty Lakh Forty Seven Thousand Five Hundred and Six) equity shares of Rs. 10/- (Rupees Ten Only) each.
- e) The Boards' Report of the Company for financial year 2014-15 was approved by the Board of Directors of the Company in their meeting held on September 01, 2015. The same was also adopted by the shareholders in their annual general meeting held on September 29, 2015. That the preparation of Boards' Report is majorly governed by the provisions of Section 134 of the Companies Act, 2013 and rules made thereunder.
- f) That as per the provisions of the Section 134(3)(f) of the Companies Act, 2013, the Boards' Report of the Company should contain explanations/ comments given by the Board of Directors of the Company on every qualification, reservation or adverse remark or disclaimer made by the statutory auditors in their Audit Report. That M/s. MKPS & Associates, Chartered Accountants, the statutory auditors of the Company have given a qualified opinion and adverse remarks in their Audit Report for FY 2014-15. That the Board of Directors of the Company have inadvertently missed to mention their explanations/ comments in the Boards' Report on the qualified opinion and also on the adverse remarks made by the statutory auditors in Point No (vii) and (ix) of the CARO annexure to the Audit Report.



- g) That the aforesaid contravention came into the notice of the Board during the course of due diligence of legal records. The Board of Directors of the Company in their meeting held on February 02, 2017 have resolved to approach the concerned authority for compounding of this contravention
- h) That the said contravention of the provisions of Section 134(3)(f) of the Companies Act, 2013 is not continuing in nature and is compoundable as per the provisions of Section 441 of the Companies Act, 2013. The following is the extract of Section 134(8) of the Companies Act, 2013:

“If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.”



Therefore, the Applicants have filed the present petition suo-motto by seeking a direction to compound the said offence. The Applicants state that there was no action initiated by concerned authorities against the applicants/petitioners on the issue.

- i) The Applicants submit that Company was incorporated in 2010 and is in the business of construction, maintenance and operation of four laning of Godhra to Gujrat/Madhya Pradesh Border Section of NH-59 from KM 129,300 to KM 215,900. The Company is in losses since the very beginning. The following is the table which shows the details of turnover, finance cost and losses incurred by the Company during the preceding 3 years extracted from the Audited Balance sheets:

| S. No | Financial Year | Turnover | Finance Cost | Loss- |
|-------|----------------|----------|--------------|-----------|
| 1 | 2015-16 | 50.09 Cr | 74.73 Cr | 47.04 Crs |
| 2 | 2014-15 | 41.90 Cr | 74.23 Cr | 53.81 Crs |
| 3 | 2013-14 | 15.66 Cr | 29.78 Cr | 20.84 Crs |

- j) It is stated that the aforesaid contravention was purely unintentional, inadvertent and under good faith and belief and without any mala fide intention. And it is not of such nature as would prejudice the interests of the members or creditors or others, who have interest in the affairs of the Company. Therefore, they have prayed the Tribunal to take a lenient view about imposing a minimum quantum of penalty as prescribed. This is first offence of this nature during the last three years and none would be prejudiced by permitting the offence in question.



3. I have heard Tapasvilal Deora and have carefully perused all relevant documents filed in support of their contentions along with extant provisions of Companies Act, 2013.
4. Sri Tapasvilal Deora, learned counsel for the Applicant has strongly pleaded that the company is in loss for the last two years to an extent of Rs.27 crores every year and requested the Tribunal to take a lenient view in imposing the minimum penalty prescribed under the above provision. He has also pleaded to consider all the pleadings in the C.A.
5. It is to be noted that the material facts are not in dispute including the offence committed by the applicants. The Board of Directors of the Company have missed to mention their explanations/comments in the Boards 'Report on the qualified opinion and also on the adverse remarks made by the statutory Auditors in point No. (vii) and (ix) of the CARO annexure to the Audit Report for the year ended 31/03/2015. The Board of Directors of the Company have also passed a Resolution in their meeting held on 2nd February 2017 by resolving to approach the concerned statutory authorities for compounding of the contravention.

6. The Registrar of Companies, for Andhra Pradesh and Telangana, has filed a report vide his letter No.ROCH/legal/Sec.134/66757/BSCPL/STACK/2017/67 dated 18-04-2017 by Interalia confirming basic contentions raised in the Company petition and further stated that the Company has admitted offence in question and it is regular in filing statutory returns up to the year, 2016 and it is the first offence committed and thus case can be considered as per merits.
7. The above facts clearly show that the offence in question is not committed intentionally; they have filed present petition voluntarily before initiating any proceedings by concerned authorities; it is first offence; the Company is incurring losses as stated supra; it is regular in filing returns upto the year 2016. Hence, it is a fit case to consider favorably by imposing minimum penalty as prescribed under the said provisions.
8. In the result, of the Compounding Application bearing No.CP.05/441/HDB/2017 is allowed, in exercise of powers conferred under Section 441 of Companies Act, 2013 by permitting the applicants to compound the offence committed under Section 134 (3) (f) of the Companies Act, 2013, by imposing a penalty of Rs.50,000/- (Rupee fifty thousand) on this Company and also each of the Officers (Applicants) of the Company, and to pay the compounding fee within a period of three weeks from the date of receipt of the copy of the Order by the company and the applicants.



CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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