

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

CA No.46/441/HDB/2017

Date of order: 07/06/2017

Between

1. Krishna Institute of Medical Sciences Limited
D. No.1-8-31/1, Minister's Road
Secunderabad –500003
2. Mr. Krishnaiah Bollineni
D.No.8-2-546/2, Road No.7, Banjara Hills
Hyderabad – 500034
3. Dr. Bhaskara Rao Bollineni
300A, Road No.12 MLA Colony
Banjara Hills, Hyderabad-500034

...Applicants

And

Registrar of Companies, Andhra Pradesh
& Telangana
2nd Floor, Corporate Bhawan, GSI Post
Tattiannaram, Nagole, Bandlaguda
Hyderabad – 500068

....Respondent

Parties present:

Shri S. Chidambaram, PCS for the Applicants

CORAM:

HON'BLE MR. RAJESWARA RAO VITTANALA, MEMBER (JUDL)

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



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OF THE ORIGINAL**

ORDER

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

1. The present Company Application bearing CA. No.46/441/HDB/2017 is filed by M/s Krishna Institute of Medical Sciences Limited and two others, under section 621A of the Companies Act, 1956, Section 441 of the Companies Act, 2013 r/w Section 383A of Companies Act, 1956 and Section 203 of the Companies Act, 2013 to condone and compound violation of Section 383A of Companies Act, 1956 and Section 203 of the Companies Act, 2013 with consequential reliefs.
2. The brief facts, as mentioned in the Company application are as follows:-
 - (a) The Krishna Institute of Medical Sciences Limited (CIN: U55101TG1973PLC040558) was incorporated under the provisions of the Companies Act, 1956 on 26/07/1973. The Registered Office of the Company is situated at D.No.1-8-31/1, Minister's Road, Secunderabad – 500003, Telangana.
 - (b) The main objects of the Company, in brief, are to establish, construct, erect, maintain, run, develop, acquire, organise, hospitals, operation theatres, chemist shops, physiotherapy centres, investigation and other similar establishments for providing treatment & medical relief in all its branches by all available means to public at large on suitable / concessional fees; to buy, sell, export and to act as purchasing and selling agents for the aforesaid business for any educational and research institutions, medical colleges etc; to conduct and to carry on experiments and to provide or receive funds for research works; to carry on the business in India or elsewhere to manufacture, produce, export, buy, sell distribute or otherwise to deal in all sorts of medicines, chemicals,



injections etc.; to encourage and develop biological and pharmacological standardization of indigenous medical plants etc; to establish promote, subsidies, encourage, develop, recondition, conduct and to run in India or abroad educational Institutions like schools, colleges and higher education in the fields of science, medical, pharmacy and allied activities connected therewith.

- (c) The 2nd Applicant, is a whole time Director and the 3rd Applicant is the Managing Director of the Applicant No.1 Company when violation of Section 383A of Companies Act, 1956 took place on 02.05.2008 and 27.06.2013.
- (d) It is stated, that as per Section 383A of the Companies Act, 1956 read with Companies (Appointment and Qualifications of Secretary) Rules, 1988, every Company which has paid up capital of Rs. 50,00,000/- or more is required to appoint a whole time Company Secretary. Subsequently, the threshold limit of paid up capital for appointing whole time Company Secretary was increased from Rs. 50,00,000/- to Rs.2,00,00,000/- (vide GSR 419 (E) dated 11.06.2002). Ms.Padmasri Appanna who was appointed as Company Secretary of the Company on 02.05.2005 had resigned as whole-time Company Secretary on 01.05.2008. On that date of cessation of said Company Secretary, the paid up capital of the Company was Rs.2,32,31,800/-, the Company was required to have a whole time Company Secretary. However, they could not appoint a whole time Company Secretary till 14/08/2009. Mr Krishna Rao Inturi was appointed as whole time Company Secretary on 14/08/2009. It is contented that there is no requirement of appointing whole time Company Secretary from 15/03/2009 to 13/08/2009 as the Company's paid up capital was less than Rs.5,00,00,000/-. Thus, from 02/05/2008 till the date of



amendment i.e. 15/03/2009, there was a total delay of 317 days in appointing a Company Secretary by the Company.

- (e) The paid up capital of the Company was increased on 27/06/2013 from Rs. 3,82,54,840/- to Rs. 5,10,07,840/-, thereby the Company was required to appoint a Company Secretary with effect from 27/06/2013 under Section 383A read with rules made thereunder till 01.04.2014. However, the Company did not find a suitable candidate for the position of Company Secretary and thus, it has violated the above Section i.e. 383A of the Companies Act, 1956, for a period of 277 days (i.e. from 27/06/2013 to 31/03/2014).
- (f) It is stated that Section 203 of the Companies Act, 2013 and the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, was notified on 01/04/2014. As per this Section, the Company having paid up capital of Rs.10,00,00,000/- or more shall appoint whole time Company Secretary. As the paid up capital of the Company is less than Rs.10,00,00,000/-, there was no requirement to appoint a whole-time Company Secretary from 01.04.2014. The Ministry of Corporate Affairs vide its notification dated 09.06.2014 has amended Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, and inserted a new Rule 8A. As per the said Rule 8A, every company having a paid up capital of Rs. 5,00,00,000/- is required to appoint a whole-time Company Secretary. This Rule gives a cushion time of 6 months to fill the vacancy. So, as per the said Rule, Company is required to appoint a whole time Company Secretary on or before 08/12/2014. However, the Company could not appoint whole-time Company Secretary till 30/06/2015 which resulted in the violation of Section 203 of the Companies Act, 2013, for a period of commencing from 08.12.2014 to 30.06.2015 (i.e. for a total period 204 days).



- (g) It is stated that the Applicant No.1 Company has violated provisions of Section 383A of the Companies Act, 1956 and Section 203 of the Companies Act, 2013. The details of the same are detailed below:-

Sl. No	Period of violation		No of days	Persons who are responsible for compounding	Remarks
	From	To			
1.	02.05.2008	15.03.2009	317	1.Company 2.Mr. B. Krishnaiah 3.Dr B. Bhaskara Rao	The Company has taken all reasonable efforts to appoint whole-time Secretary however could not find a suitable candidate and hence may be exempted under Second proviso to sub-section (1) of Section 383A of the Companies Act, 1956.
2.	27.06.2013	31.03.2014	277	1.Company 2.Mr. B. Krishnaiah 3.Dr B. Bhaskara Rao	The Company has taken all reasonable efforts to appoint whole-time secretary, however could not find a suitable candidate and hence may be exempted under Second Proviso to Sub-section (1) of Section 383A of the Companies Act, 1956
3.	08.12.2014	30.06.2015	204	1.Company 2. Dr. B. Bhaskara Rao	Nil

- (h) The Applicants plead that the said violations were neither intentional nor deliberate and also is not with any malafide intention. This happened due to circumstances beyond the reach of the Applicants.



3. Heard Shri S. Chidambaram, PCS for the Applicants and have carefully perused all material papers filed in support of application. The Learned PCS pleaded that the Applicants will not repeat similar violations in future, and request to take a lenient view in imposing penalty for the violations and further submits that it would not result to prejudice against any of the shareholders or any outsiders.
4. The Registrar of Companies, has filed a report on the issue vide letter No. ROCH/LEGAL.SEC 383A/441/KIMS/STACK/2017/191 dated 05/05/2017, by, inter-alia stating that the material facts as mentioned in the Company Application are more or less affirmed. It is further stated that, as per Section 383A (1A), if a Company fails to comply with the provisions of sub-section (1), the Company and every Officer of the Company who is in default shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

As per Section 203 (5), if a Company contravenes the provisions of this section, the Company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every Director and key managerial personnel of the Company who is in default shall be punishable with fine which may extend to Rs.50,000/- and where the contravention is a continuing one, with a further fine which may extend to Rs.1000/- for every day after the first during which the contravention continues.



5. It is not in dispute that the present violations in question are first of its nature in the history of the Company and the Applicants have approached this Tribunal suo moto by seeking indulgence of this Tribunal in order to ease business without any hitch in running the Company before initiating any proceedings in this matter by the Registrar of Companies. Moreover, the nature of offences mentioned above are not of serious nature and as such, they will not have any effect on the public and shareholders of the Company.

6. The Learned Counsel for the Applicants submitted that a lenient view may be taken in imposing a bare minimum penalty on the Company especially in respect of Applicant No.2, who is currently not a whole time Director of the Company.

7. In view of the above facts and circumstances of the case and in the interest of justice, the Company Application bearing CA No. 46/441/HDB/2017 is allowed with the following directions:-

(a) We hereby condoned the violation of Section 383A of the Companies Act, 1956 and Section 203 of the Companies Act, 2013 and impose the penalty as follows:

Violation.1	Period from 02.05.2008 to 15.03.2009. Total 317 days	Compounding fee of Rs. 79,250/- each	Total Rs. 2,37,750.00
Violation.2	Period from 27.06.2013 to 31.03.2014 Total 277 days	Compounding fee of Rs. 69,250/- each	Total Rs. 2,07,750.00
Violation.3	Period from 08.12.2014 to 30.06.2015 Total 204 days	Compounding fee of Rs. 1,00,000/- on the Company and Rs. 76,000/- on Dr. Bhaskara Rao, Director	Total Rs. 1,76,000.00
The total compounding fee :			Rs. 6,21,500.00

(b) We direct all the Applicants to pay the Compounding fees within a period of 3 (Three) weeks from the date of receipt of the copy of the order and submit report of compliance of the same to the Registry of NCLT.



- (c) The Applicants are also warned to be careful and not to repeat any violations in future, else serious view will be taken.

8. In the result, CA No.46/441/HDB/2017 is disposed of.



Sd/-
RAVIKUMAR DURAISAMY
MEMBER (T)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (J)

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OF THE ORIGINAL**

V. Annapoorna
V. ANNAPOORNA
Asst. DIRECTOR
NCLT, HYDERABAD.