

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

C.A. No.39/621A/HDB2016

In the Matter of

- 1, Mr. Venumbaka Vijaya Sai Reddy,
S/o Mr. Venumbaka Sundarami Reddy,
Former Director, Jagati Publications Limited,
Resident of H.No.8-2-293/82/HE,
Plot No.41, Road No.70, Huda Enclave,
P.O. Film Nagar, Jubilee Hills,
Hyderabad – 500 033
Former Director.
- 2 Mr. Jella Jagan Mohan Reddy,
S/o Jella Nagamalla Reddy,
Former Director, Jagati Publications Limited,
Flat No.17LH, 902,
Lanco Hills, Manikoda,
Hyderabad – 500 089.
- 3 Mr. Harish C. Kamarthy,
S/o Mr. Channa Verrapa Kamarthy,
Former Director, Jagati Publications Limited,
333, 8-2-603/2/M, Road No.10,
Banjara Hills,
Hyderabad – 500 034.
- 4 Mr. Sajjala Ramakrishna Reddy,
S/o Mr. Sajjala Subba Reddy,
Former Whole Time Director,
Jagati Publications Limited,
Resident of H.No.7-56/322 to 324,
Prashanti Hills, Raidurg Navkhalsa,
Serlingampally,
Hyderabad – 500 034.
5. Yeduguri Sandinti Jagan Mohan Reddy,
Mr. Yeduguri Sandinti Raja Sekhar Reddy,
Former Director, Jagati Publications Limited,
Plot No.3, 4 and 5, Lotus Pond Residency,
Road No.12, Banjara Hills,
Hyderabad – 500 034.
6. Mr. Yerramreddy Eswara Prasada Reddy,
S/o Mr. Yerramreddy Chinna Chenna Reddy,
Whole Time Director, Jagati Publications Limited,
Plot No.424, Road No.78, Jubilee Hills,
Hyderabad – 500 033.

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- 7 Mr. Kalva Raja Prasad Reddy,
Mr. Kalva Ramachandra Reddy,
Whole Time Director, Jagati Publications Ltd.,
Resident of 1-1503, Aparna Sarovar,
Kanche Gatchibowli,
Goppanpally, Ranga Reddy,
8. Mr Paladugu Venkata Krishna Prasad,
S/o Mr. Paladugu Madhava Rao,
Whole Time Director, Jagati Publications Limited,
#94, Eshwar Vilas, Nizampet,
Quthbullapur, Ranga Reddy

...Applicants

Judgement delivered on: 28 .06.2017.

CORAM:

Hon'ble Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDICIAL)
Hon'ble Mr. RAVIKUMAR DURAISAMY, MEMBER (TECHNICAL)

Counsel for the Applicants: :Shri K. Dushyantha Kumar,
PCS.

Per: Mr. RAVIKUMAR DURAISAMY, MEMBER (TECHNICAL)

JUDGEMENT



1. The Application was initially filed before the 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. The present Application has been filed by (1) Mr. Venubaka Vijaya Sai Reddy, Former Director; (2) Mr. Jella Jagan Mohan Reddy, Former Director; (3) Mr. Harish C. Kamarthy, former Director; (4) Mr. Sajjala Ramakrishna Reddy, Former Whole Time Director; (5) Mr. Yeduguri Sandinti Jagan Mohan Reddy, Former Director; (6) Mr. Yerramreddy Eswara Prasada Reddy, whole Time Director, (7) Mr. Kalva Raja Prasad Reddy, Whole Time Director; and (8) Mr. Paladugu Venkata Krishna Prasad, Whole Time Director, under Section 621A, for compounding the offences under Section 217(2AA) (i) of the Companies Act, 1956. Form GNL 1 had also

been filed by Chityala Prabhu Narasimha Karthik, bearing SRN C79576765, praying the Board for compounding the offence.

3. The brief facts of the case as mentioned in the Application are that :
- a) The Applicant Company, Jagati Publications Limited, a Limited Company incorporated under the Companies Act, 1956 vide CIN U22212TG2006PLC051651, dated 14.11.2006, having its Registered Office at 6-3-249/1, Sakshi Towers, Banjara Hills, Road No.1, Hyderabad, Telangana – 500 034.
 - b) The present Authorised Share Capital of the Applicant Company is Rs.1,20,00,00,000/- (Rupees One Twenty Crores Only) divided into 12,00,00,000 (Twelve Crores) equity shares of Rs.10/- each and paid up capital is Rs.1,06,55,84,810/- (Rupees One Hundred Six Crores Fifty Five Lakhs Eighty Four Thousand Eight Hundred Ten only) divided into 10,65,58,481 (Ten Crores Sixty Five Lakhs, Fifty Eighty Thousand Four Hundred Eighty One) equity shares of Rs.10/- each.
3. The main objects of the Applicant Company are to carry on business as a publisher of daily, weekly, monthly, magazines, newspapers on topic of public interest, Social Cultural, art and musical production, general commercial, colour, craft, and process printers, lithographers, photographers, engravers, die makers, plan and chart printers press and advertising agents, contractors etc.,
4. The Office of the Regional Director, South East Region, Hyderabad, during the inspection of books of accounts of the Company's Balance Sheet for the years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13, it has been observed that the Company has violated the provisions of Section 217(2AA) (i) of the Companies Act 1956, for the Accounting Year 2007-08.
5. The Registrar of Companies further observed that the Company has not complied with the Accounting Standard 3 (Annexure of Cash Flow to the Balance Sheet/Profit & Loss Account while filing the Balance Sheet before RoC) as the same has not attached along with Balance Sheet and Profit and Loss Account before RoC for 2007-08). The Directors have failed to give proper explanation and reasons for noncompliance in Directors report attached to Balance Sheet for the year 2007-08 regarding



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Noncompliance of AS-3 as stated above, and hence this has resulted in violation of Section 217 (2AA) (i) of Companies Act, 1956.

6. The Institute of Chartered Accountants of India has prescribed the Accounting Standards vide Companies (Accounting Standards) Rule 2006 notified vide Notification No.GSR.739, dated 7th December 2006 and Vide Rule 3(2), ibid the same are applicable for the accounting period(s) commencing on or after 7th December, 2006.
7. In view of the above, the Company was required to prepare a Cash Flow Statement for 2007-08 in compliance with AS-3 prescribed vide Rules ibid. However, during the Inspection it was revealed that, it has not prepared the Cash Flow Statement for 2007-08 as the same could not be produced by the Company during inspection and has not attached the same along with Balance Sheet and profit and loss account filed before RoC for 2007-08. This has resulted in violation of Section 217 2(AA) (i) of Companies Act, 1956.
8. As per Section 217(5) any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of subsections (1) to (3), or being the chairman, signs the Board's report otherwise than in conformity with the provisions of sub-section (4), he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Rs.20,000/- or with both.
9. It was admitted that they have prepared Cash Flow Statement for the Year 2007-2008, while filing e-Form-23AC & ACA afor the years 2007-08, the cash flow statement (CFS) was inadvertently not enclosed, whereas same was mentioned in Auditor's Report.
10. For the first time, when e-filing was introduced in 2006-07, in the transaction period, the documents were uploaded by the authorised e-filing centres (PFO). The attachment was omitted unintentionally while uploading by the e-filing centre.



11. It was stated in Annual Report under the Directors' Responsibility Statement that;

- a) That in preparation of the Annual Accounts, the applicable Accounting Standards had been followed along with proper explanation relating to material departures.
- b) That the Directors had selected such accounting policies and applied them consistently and made judgements and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the Company as at March 31st 2008.
- c) That the Directors had taken proper and sufficient care for the Maintenance of adequate accounting records in accordance with the provisions of the Act for the company and for preventing and detecting fraud and other irregularities.

12. However, as discussed above, as pointed out by the Inspecting Team and perusal of the Annual Report for the Year 2007-08 Cash Flow Statements do not form part of balance sheet, profit and loss which is in violation / noncompliance of Accounting Standards-3. We also agree with the observations of the Inspection Team of Regional Director that the Directors' Responsibility Statement dated 23.04.2008 falsely stated that the applicable accounting standards have been followed along with proper explanation regarding the material departure while preparing Annual accounts for the Financial Year 2007-08.

13. The Applicants submit that the default is not intentional and is not of such nature as would prejudice the interests of the members or creditors or others dealing with the applicants company. The Applicants unequivocally declare that the said default is such as not to affect the public interest in any way, and no harm is caused to the public interest.

14. The Registrar of Companies, Hyderabad, furnished vide Report No.RAP&TG/Jagati/621A/STA/2016/Sec.217(2AA)/947, dated 25.05.2016 stating that the applicants have not clearly mentioned how the offence was made good. Hence, the applicants may be put to strict proof of the same. In view of the above the Hon'ble Bench was requested to pass appropriate orders as deem fit and proper on merits, in the interest of justice and equity.



15. The Applicants submission in pre-paras 9, 10 & 11 is also factually not correct as while perusing the Balance Sheet for the year 2007-08, the Balance Sheet did not contain Cash Flow statement. But whereas in some other Financial Year Cash Flow Statements was prepared and the same is available for example in Balance sheet for the year 2011-12. In view of the above observation the submission of the applicants in pre-para-10 above is also questionable especially a default is not intentional.

16. Cash Flow Statement is important to various stake-holders and is used for various purposes viz potential lenders / creditors who want a clear the picture of a company's ability to pay, potential investors judge whether the company is financially sound. Provides information of Firms liquidity and solvency and its ability to change the Cash Flows in future circumstances. Cash Flow Statement is used as analytical tool determining the short term liability of the Company particularly its ability to pay bills.



17. The above facts clearly establish that applicants have not prepared Balance sheet in accordance with AS-3 vide Companies (Accounting Standards) Rules 2006 and Section 217 (2AA)(i) of the Companies Act, 1956. In the Annual Report for 2007-08 under the heading Directors' Responsibility Statement it is stated that in preparation of the annual accounts, the applicable Accounting Standards had been followed. Further the Auditors of the Company also stated that we have also audited the Cash Flow Statement annexed to the Balance Sheet. Further, in the Auditors' Report in Para 4 (iii), (iv) & vi(c) cash flow statement is also referred to. Though the inspecting team pointed out the noncompliance /violation of AS-3 & Section 217 (2AA)(i) of Companies Act, 1956, while filing compounding application, applicants made wrong submissions before the CLB inspite of submitting individual Affidavits. Making false submissions through Affidavit to any authority is a serious lapse / offence which needs to be viewed seriously. In the instant case 8 Former Directors/Whole Time Directors of the Company have made wrong submissions to the Hon'ble CLB/NCLT.

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18. Considering the facts and circumstances of the case, the observations as made above, We are of the considered view that the instant case is not a fit case for compounding the offence especially considering the penal provisions as provided in Section 217(5) of the Companies Act. 1956, Therefore, we are not inclined to compound the offence as prayed for and we direct Regional Director, to initiate appropriate action as per Section 217(5) of Companies Act, 1956.



With the above direction C.A. No.39/621A/HDB/2016 is dismissed.

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Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

Sd/-
RAVIKUMAR DURASAMY
MEMBER (TECHNICAL)

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