

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

C.A. No.34/621A/HDB/2016.

In the matter of

1. Mr. Venumbaka Vijaya Sai Reddy,
S/o Mr. Venumbaka Sundrarami Reddy,
Former Director,
Jagati Publications Limited,
H.No.8-2-293/82/HE, Plot No.41,
Road No.70, Huda Enclave,
P.O. Film Nagar, Jubilee Hills,
Hyderabad – 500 033.
2. Mr. Jella Jagan Mohan Reddy,
S/o Mr. Jella Nagamalla Reddy,
Former Director,
Jagati Publications Limited,
Flat No.17LH,
902 Lanco Hills, Manikonda,
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.

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

...Applicants

CORAM:

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

Judgement delivered on 28.06.2017.

Parties present

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, and 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.



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2. The present Application has been filed by (1) Mr. Venumbaka Vijaya Sai Reddy, Former Director; (2) Mr. Jella Jagan Mohan Reddy, Former Director and (3) Mr. Harish C Kamarthy, Former Director, under Section 621A, for compounding the offence under Section 211(3A) of the Companies Act, 1956 and Regulations 14 of the Company Law Board Regulations 1991, vide SRN C79586962.
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 Eight Thousand Four Hundred Eighty One only) equity shares of Rs.10/- each.
 - c) 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, pan and chart printers press and advertising agents, contractors etc;
4. As per the provisions of Section 211(1) of the Companies Act, 1956 every Balance Sheet of a Company shall give a true and fair view of the state of affairs of the company as at the end of the Financial Year and shall subject to the provisions of this section be in the form set out in Part-I of Sch.VI, or as near there as circumstances admit or in such other form as may be approved by the Central Government either generally or in particular case, and



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in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance sheet under heading "Notes" at the end of the part.

5. 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 211(3A) of the Companies Act, 1956. During the year 2006-07:

- i) The Company has not prepared Cash Flow Statement as per AS-03;
- ii) The Company has not disclosed related party transactions with Janani Infrastructure Pvt Ltd as per AS-18; M/s Carmel Asia Holdings Pvt Ltd as per AS-18;
- iii) The Company has not disclosed related party transactions with M/s Carmel Asia Holdings Pvt Ltd as per AS-18; and
- iv) The Company has not disclosed related party transactions with Mr. Y.S. Jagan Mohan Reddy as per AS-18.

This has resulted in violation of Section 211(3A) of the Companies Act, 1956 for the year 2006-07.



6. The Registrar of Companies, Hyderabad, furnished vide Report No.RAP&TG/Jagati/621A/STA/2016/Sec.211/(3A)/946, 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. The Applicants submit that they have maintained book of accounts in line with the provisions of Section 211 read with Part-1 and Part-2 of Schedule VI to the Companies Act, 1956 and they were of the opinion that they are exempted for disclosure under Accounting Standard-3 and 18, as it falls under Small and Medium Enterprises category as notified by the Ministry of Corporate Affairs vide its notification No.GSR 739(e), dated 07.12.2006 and the accounting period of the company commenced on 14.11.2006, being the date of prior to issue of GSR notification.

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7. The Company is yet to commence its commercial operations and the same was also stated in the Auditor's report dated.02.08.2007. The Auditor has also stated that in their opinion the Balance Sheet, Profit and Loss Account and the statements of pre-operative expenses dealt with by its report, comply with the mandatory accounting standards referred to in Section 3(c) of Section 211 of the Companies Act, 1956
8. The Balance Sheet for 2006-07 was the first annual report for the applicant company as the company was incorporated on 14.11.2006.
9. 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.
10. The Applicants admit that there was contravention of Section 211 (3A) of the Companies Act, 1956 and there was no intention of violating the provisions of the Act, However, inadvertently, the company could not be complied with and there was no mala fide intention of the contravention of the provisions of the Act.
11. As per Section 211(7) of the Companies Act, 1956 fine prescribed by the Act "if any such person as is referred to in sub-section (6) of the Section 209 of the Companies Act, 1956 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, 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 ten thousand rupees, or with both" 'Provided that in any proceedings against a person in respect of any offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section and the other requirements aforesaid were complied with and was in a position to discharge that duty provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully"



12. Considering the facts, the submissions of the Applicants and the Auditors' report it may be acceptable regarding alleged violation of non-preparation of Cash Flow Statement as per the Accounting Standards (AS)-3, for the Financial Year 2006-07. However, we are not inclined to accept the contentions of the Applicants regarding non-disclosure of related party transactions entered into with three entities as stated in the Inspection report of Regional Director. Perusal of the Inspection Report, it revealed that Janani Infrastructure Pvt Ltd is a related party having fellow subsidiary relations and was under common control and common holding with Carmel Asia Holding Private Limited and Jagati Publications Ltd.

13. Jagati Publications Limited entered into 19 transactions of lease agreement with Janani Infrastructure Pvt Ltd for taking lease of land owned by Janani Infrastructure Pvt Ltd. Therefore, as per para No.23 read with Para No.3 (A) of AS-18 name of such related party and nature of such relationship should have been disclosed along with the details of such 19 lease transaction agreements entered into during 2006-07.

14. Since the details were not disclosed in "Notes to Accounts" forming part of Balance Sheet and Profit and Loss Account for 2006-07 it resulted in violation of Para No.23 read with Para No.3A of AS-18.

15. Inspection further revealed that Carmel Asia Holdings Private Limited a related party having holding company relationship along with control and had transactions as well during 2006-07. Accordingly, as per Para Nos. 21 and 23 of AS-18 name of such related party and nature of relationship should have been disclosed along with the details of three transactions totalling an amount of Rs.40.03 Crores. This non-disclosure in Notes to Accounts forming part of Balance Sheet and Profit and Loss Account resulted in violation of AS-18.

16. The non-disclosure of related party transactions with Mr. Y.S. Jagan Mohan Reddy was only to an amount of Rs.40,230/- and the same is not viewed seriously.



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17. Accordingly, we hold that Cash Flow Statement not prepared in compliance with Accounting Standard-3 and the related party transaction with Mr.Y.S. Jagan Mohan Reddy are not viewed seriously in view of the facts as discussed above, However, the non-disclosure of related party transactions in accordance with Accounting Standards-18 with Janani Infrastructure Pvt Ltd on 19 counts (the lease payment for rent/amenities for all the 19 locations works out to approximately Rs.11 Lakhs per month) and non-disclosure of related party transactions with Carmel Asia Pvt Ltd on 3 counts amounting to Rs.40.03 Crores are only considered for compounding the offences.

18. Considering the above facts and circumstances and submissions made by the applicants we are inclined to compound the offences with the following Directions:

- a) All the Applicants are directed to pay a sum of Rs.1,00,000/- (Rupees One Lakh only) each towards the compounding fee. (Rs.10,000 X 10 Years).
- b) The Applicants required to pay the compounding fee within a period of three weeks from the date of receipt of the copy of the order and report compliance of the same to the Registry of NCLT.
- c) The Applicants are warned to be careful in future and not to repeat any violation of the provisions of the Companies Act or else serious view will be taken by the Tribunal.
- d) In terms of the above directions the C.A. No.34/621A/HDB/2016 is disposed off.



**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

Sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

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