

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

C.A. No.37/621A/HDB/2016.

In the Matter of

1. Mr. Venumbaka Vijaya Sai Reddy,
S/o Mr. Venumbaka Sundrarami 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.
2. Mr. Jella Jagan Mohan Reddy,
S/o 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.
4. Mr. Sajjala Ramakrishna Reddy,
S/o Mr. Sajjala Subba Reddy,
Former Whole Time Director,
Jagati Publications Limited,
H.No.7-56/322 to 324, Prashanti Hills,
Raidurg Navkhalsa, Serilingampally,
Hyderabad – 500 008.
5. Mr. Yeduguri Sandinti Jagan Mohan Reddy,
S/o Mr. Yeduguri Sandinti Raja Sekhar,
Former Director, Jagati Publications Limited,
Plot Nos. 3, 4 and 5, Lotus Pond Residency,
Road No.12, Banjara Hills,
Hyderabad – 500 034.

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6. Mr. Yerramreddy Eswara Prasad 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.
7. Mr. Kalva Raja Prasad Reddy,
S/o Mr. Kalva Ramachandra Reddy,
Whole Time Director, Jagati Publications Limited,
Resident of 1-1503, Aparna Sarovar,
Kanche Gatchibowli,
Gopanna Pally, Ranga Reddy,
Hyderabad – 500 046.
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,
Hyderabad – 500 072.
9. Mrs. Nanduri Rajyalakshmi,
D/o Mr. Nanduri Sri Rama Rao,
Former Company Secretary,
Jagati Publications Limited,
Resident of 3-4-174/12/13,
Kanta Reddy Nagar, Attapur,
Hyderabad – 500 048.



.... Applicants

Judgement delivered on: 28.06.2017.

CORAM:

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

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, 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; (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; (8) Mr. Paladugu Venkata Krishna Prasad, Whole Time Director and (9) Mrs. Nanduri Rajyalakshmi, Former Company Secretary, under Section 621A, for compounding the offences under Section 211 (3B) of the Companies Act, 1956 vide SRN:C79583837. GNL.1 had also been filed by Mr. Chityala Prabhu Narasimha Karthik, praying the Board for compounding the offence.
3. The brief facts of the case as mentioned in the Application are;
 - 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 Hundred Twenty Crores) 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) equity shares of Rs.10/- each.
4. 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.,
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(3B) of the Companies Act, 1956. The Registrar of Companies pointed out that during the year 2007-08, the Company has not prepared Cash Flow Statement as per Accounting Standard-3. Further, the Company has not made any disclosure about non-presentation of Cash Flow Statement for 2007-08 and reasons for noncompliance in the above said balance sheet and Profit & Loss Account, which has resulted in violation of Section 211(3B) of the Companies Act, 1956 prescribed vide Companies (Accounting Standards) Rules, 2006 for the year 2007-08.

6. 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 amounts 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 an 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".
7. The Applicants submit that the default is neither intentional nor wilful and is not of such nature as would prejudice the interests of the members of 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.
8. 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 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 hearing "Notes" at the end of the part.



9. The Registrar of Companies, in their report dated 25.05.2016 has pointed out that during the year 2007-08 the Company has not prepared cash flow statement as per AS-3 and failed to produce at the time of Inspection and has not enclosed the same along with Balance Sheet and Profit and Loss Account filed before RoC for 2007-08 and has not made any disclosure about non-presentation of Cash Flow Statement for 2007-08 and reasons thereof in the said Balance Sheet and P&L Account, and hence resulted in violation of Section 211(3B) of the Companies Act, 1956.
10. The Registrar of Companies, Hyderabad, furnished vide Report No.RAP&TG/Jagati/621A/STA/2016/Sec.211 (3B)/945, 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 and requested this Bench to pass appropriate orders as deem fit and proper on merits, in the interest of justice and equity.
11. The Auditors in their report dated 23.04.2008 have stated that "we have also audited the Cash Flow Statement annexed to the Balance Sheet for the year ended". The Auditor further reported that the Balance Sheet, Profit & Loss Account and Cash Flow Statement dealt with by this report are in agreement with the books of account. The Auditors further reported that "in our opinion the Balance Sheet, Profit and Loss Account and Cash Flow Statement dealt with this report comply with the accounting standards referred in sub-section (3C) of Section 211 of the Companies Act, 1956". Further, the Auditors have also referred to the Cash Flow Statement in other places in his report.
12. To the Observations of the Inspection Team, the Applicants replied stating that while filing e-form 23AC and ACA for the year 2007-08, the Cash Flow Statement was inadvertently not enclosed whereas the same was mentioned in Auditors Report. The above submission / claim of the Applicants are factually incorrect and are not supported with the evidence. A perusal of the Annual Report 2007-08 revealed that no Cash Flow Statement was forming part of Balance Sheet, Profit & Loss Account for the Financial Year 2007-08, though the Income for the year was Rs.10,51,42,809/-.



13. The Company has further not complied with the Accounting Standard-3 by nondisclosure of Related Pay Transactions (RPT) as follows:

- a) The deviation from the accounting standards;
- b) The reasons for such deviation and
- c) The financial effect, if any, arising due to such deviation.

This has resulted in violation of Section 211(3B) of the Companies Act, 1956, read with Accounting Standard-3, for the year 2007-08.

14. 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 211 (3B) 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© cash flow statement is also referred to. Though the inspecting team pointed out the noncompliance / violation of AS-3 & Section 211 (3B) 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 and a Senior Official of the Company have made wrong submissions to the CLB/NCLT.

15. 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 211(7) 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 211(7) of Companies Act, 1956.

With the above direction, C.A. No.37/621A/HDB/2016 is dismissed.

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Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

V. Annapoorna
V. ANNAPOORNA
Asst. DIRECTOR

Sd/-
RAVIKUMAR DURASAMY

