

IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

CA No. 01/621A/HDB/2016

In the matter of:

1. Deccan Chronicle Holdings Limited,(DCHL)  
36, Sarojini Devi Road,  
Secunderabad – 500 003,  
Telangana.
2. Mr. Tikkavarapu Venkatram Reddy,  
Chairman,(DCHL)  
Plot No.54, H.No.8-2-703/A-6/C  
Road No.12, Banjara Hills,  
Hyderabad – 500 034  
Telangana.
3. Mr. Tikkavarapu Vinayak Ravi Reddy,  
Vice Chairman and Managing Director, (DCHL)  
Plot No.53, H.No.8-2-703/A-6/C,  
Road No.12, Banjara Hills,  
Hyderabad – 500 034,  
Telangana.
4. Mr. Karthik Iyer Parasuram,  
Vice Chairman,(DCHL)  
H.No.8-2-283/B/5, Plot No.2,  
Road No.3, Banjara Hills,  
Hyderabad – 500 034.  
Telangana

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

... Applicants.

Versus

Registrar of Companies, Hyderabad  
For Andhra Pradesh & Telangana

... Respondent

Judgement delivered on: 5 .07.2017.

**CORAM:**

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

Counsel for the Applicants:

Ms. Varsha Banerjee  
Mr. A.S. Prashanth,  
Mr. Amir Bavani  
(Dhir & Dhir Associates)



**Per: Ravikumar Duraisamy, Member (Technical)**

**JUDGEMENT**

1. National Company law Tribunal, Hyderabad Bench vide Order dated 21.10.2016 dismissed the compounding application No .1/621A/HDB/2016 filed by the Applicants in view of the facts that the reliefs as sought by the Applicants is premature and directed the Applicants to approach the Central Government for approval of the Related Party Transactions. Against the orders of this Tribunal , the Applicants have preferred an appeal to the Hon'ble National Company Law Appellate Tribunal (NCLAT). The Hon'ble Appellate Tribunal vide Order dated: 28.02.2017 directed this Tribunal to examine the case in terms of Section 621 A of the Companies Act, 1956. Accordingly, the Applicants submitted their written submissions dated 31.03.2017.
2. The brief facts of the case are as follows:
  - a) The Applicants in the instant case have filed the instant Application seeking compounding of an offence allegedly committed under Section 297 of the Companies Act, 1956. Section 297 Prohibited Related Party Transaction except with the consent of the Board of Directors and in case the Company was having a paid up share capital not less than Rs. 1 Crore, previous approval of Central Government was required.
  - b) That the Applicants Company is a listed Company incorporated on 16.12.2002 under the provisions of Companies Act, 1956 and was duly registered with the Registrar of Companies, Hyderabad with CIN no. L22122AP2002PLC040110 and Applicant Nos.2, and 3 are the Directors of the Applicants Company, having DIN Nos. 00287518 and 00287639 respectively.
  - c) That in the instant case there was an offence allegedly being committed on part of the Applicants qua various transactions carried out with one M/s. Flyington Freighters Pvt. Ltd., (FFPL). The Applicants had sought compounding of the alleged offence on the premise that the amount given by the Applicant Company to FFPL was duly repaid by FFPL to the Applicant Company, pursuant to which, the offence was made good and thus could be appropriately compounded in terms of Section 621A of the





Companies Act, 1956. It was further submitted that the Commission of the alleged offence on part of the Applicants herein was without any malafide intention and the Applicants have bonafidely approached for the purpose of compounding of the offence in terms of Section 621A of the Companies Act, 1956.

d) That however, this Hon'ble Tribunal vide its order dated 21.10.2016 dismissed the instant application in view of the fact that the reliefs as sought by the Applicants is premature and directed the Applicants to approach the Central Government for approval of the related party transaction.

3. The Applicants have preferred an Appeal against the order dated 21.10.2016 passed by this Hon'ble Tribunal, being Appeal No.41 of 2016. The said Appeal of the Applicants was allowed by the Hon'ble Appellate Tribunal vide its order dated 28.02.2017. The Hon'ble Appellate Tribunal while allowing the Appeal of the Applicants herein had clearly recorded that there is no question of obtaining post facto approval in terms of the provisions of Section 297 of the Companies Act, 1956 and thus this Hon'ble Tribunal may decide the instant Application in terms of Section 621A of the Companies Act, 1956.



4. That pursuant to the order dated 28.02.2017 passed by the Hon'ble Appellate Tribunal, the Applicants herein have filed the instant written submissions dated 31-3-2017 to seek due consideration of this Hon'ble Tribunal for compounding of the offence as allegedly committed by the Applicants in the instant case.

**TRANSACTION WITH M/S. FLYINGTON FREIGHTERS PVT. LTD.**

5. That the Applicant Company during the period 16.10.2007 to 31.03.2011 carried out various transactions viz. services/ payments from / to one M/s. Flyington Freighters Pvt. Ltd. Eventually, the Respondent vide its letter dated 17.05.2013 issued a Notice to the Applicant Company, thereby stating that the Applicant Company has transferred funds to FFPL towards maintenance charges of aircraft as well as on account of fund transfers totalling to Rs. 99,45,98,392.03/- during the period 16.10.2007 to 31.03.2011.

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6. The Applicant Company vide its reply dated 04.06.2013, duly submitted that the transactions between the Applicant Company and FFPL does not fall under any categories as provided under Section 297 of the Companies Act 1956. The Applicant No. 1 Company reiterated the above submissions again vide its letter dated 04.07.2013, further the Applicant company submitted that because for some reasons the Applicant company called its money back and the entire amount paid to FFPL was repaid by the said company to the Applicant Company, hence any consequential proceedings against the Applicant Company may be dropped.
7. Subsequently, a Show Cause Notice RAP/209A/DROC (SRD)/CK/DCHL /Sec297/ 2014/ 1148/ 15 dated 05.08.2014 was issued by the Respondent, wherein Applicants were asked to show-cause as to why action should not be taken for prosecution for contravention of Section 297 of the Act.
8. It is pertinent to mention herein that the Show Cause Notice dated 05.08.2014 was issued under Section 297 of the Act. However on and from 01.04.2014 as per the notification dated 26.03.2014, Section 297 of the Act ceased to be applicable, as Section 188 of the Companies Act, 2013 came into force. Copy of the Notification dated 26.03.2014 issued by the Ministry of Corporate Affairs is submitted .
9. It is stated that in view of the above Notification dated 26.03.2014 Section 297 of the Companies Act 1956 was replaced by Section 188 of the Companies Act, 2013 w.e.f. 01.04.2014 and therefore, the Show Cause Notice issued by the Respondent is non-est in the eyes of the law.



**DEFAULT HAS BEEN MADE GOOD**

10. It is submitted that there is no subsisting contract between the Applicant Company and M/s. Flyington Freighters Pvt Ltd . and the entire amount was realized back by the Applicant Company and duly accounted for in its books of accounts. The Applicants ensured that the entire amount being paid by the Company to M/s. Flyington Freighters Pvt. Ltd. came back into the Company. It is submitted that the above fact may be corroborated from the accounts of M/s. Flyington Freighters Pvt. Ltd. in the Books of the Applicant Company, which clearly reflects that the entire



amount of Rs. 99,45,98,392.03/- was repaid back to the Applicant Company. Copy of Ledger Account of the Applicant Company reflecting the transactions with M/s. Flyington Freighters Pvt. Ltd. is submitted

11. It is respectfully submitted that the transaction which the Applicants entered into with M/s. Flyington Freighters Pvt. Ltd. stands duly concluded as on date. The Applicants have made good the transaction as on date and there is no continuance of the alleged offence as on date. The entire amount being paid by the Applicant Company to M/s. Flyington Freighters Pvt. Ltd. has been duly received by the Applicant Company and thus the present case can be favourably considered for compounding in accordance with the provisions of the Companies Act, 1956.

**OFFENCE IS COMPOUNDABLE IN NATURE**

12. The offence under Section 297 of the Act, alleged to have been committed by the Applicants herein are compoundable in nature. It may appropriately be said that the penalty for violation / default of the said Section is provided under Section 629A of the Act, which is reproduced herein below for ready reference of this Hon'ble Tribunal:-

***“629A. Penalty where no specific penalty is provided elsewhere in the Act.***

*If a Company or any other person contravenes any provision of this Act for which no punishment- is provided elsewhere in this Act or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to five thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.”*

That on reading of the above Section with Section 621A of the Act, it is clear that the contravention of Section 297 of the Companies Act, 1956 it is most humbly submitted that this Hon'ble Tribunal may duly compound the offence as allegedly committed by the Applicants.



13. The Applicants in the instant case have approached this Hon'ble Tribunal bonafidely and no prejudice will be caused to any party in an eventuality the application of the Applicants seeking compounding of offence allegedly committed under Section 297 of the Act is allowed by this Hon'ble Tribunal.
14. That the Applicant Company has filed the instant Application on 23.09.2014, immediately after issuance of the Show Cause Notice dated 05.08.2014 and no proceedings in pursuance to the said Show Cause Notice have been initiated, nor any prosecution has been filed. Hence, the Application has been filed on suo moto basis.
15. In view of the above facts and circumstances, the alleged violation of the provisions of Section 297 of the Companies Act, 1956 for the transaction as entered between the Applicants and FFPL for the period 16.10.2007 to 31.03.2011 have been duly made good, are compoundable in nature and thus the same may be considered favourably by this Hon'ble Tribunal and compounded.
16. The Applicants submitted that Section 297 of the Companies Act 1956 it is not applicable as Section 188 of the Companies Act 2013 came into force from 01.04.2014 and therefore show cause notice issued by the Respondent is nonest in the eyes of law.
17. We have perused all the records and it is noted that the transaction/violation pertains to the year 2007-2011. Therefore, the Applicants submission that the show cause notice issued under section 297 of the Companies Act 1956 is nonest in the Eyes of law is not acceptable/legally tenable.
18. However, they have submitted the application and prayed for compounding the alleged offence under Section 621A of the Companies Act 1956 for contravention of Section 297 of the Companies Act and they have also prayed for penalty only U/s 629A of the Companies Act 1956.
19. Transfer Petition 188 Sub-Section 5: Any director or any other employee of a company, who had entered into or authorized the contract or arrangement in violation of the provisions of this section shall, --
- (i) In case of listed company, be punishable with imprisonment for a term which may extent to one year or with fine which shall not be less than twenty-five thousand rupees but which may be extended to five lakh rupees or with both; and





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- (ii) In case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

20. The above contention was not raised by the Applicants in the previous Company Application filed before the Hon'ble Company Law Board on 25. 04. 2016
21. Though the applicants claim that the offence was made good as they have received the entire amount of Rs.99.45 crores from FFPL, however no interest was received by the applicant company towards the advance amount given to FFPL. The Applicant Company being a listed company is responsible to all its shareholders (approx. 37,900 shareholders as on 31-3-2011). However, in the instant case company by receiving the entire money back without receiving any interest from FFPL has caused enormous /substantial loss to its shareholders.
22. We are of the considered view that just receiving back the advances (principle) given at various points of times for almost 3.5 years without charging any interest to a related party entity is not a prudent way of running a business especially being a listed Company . Because of non-charging of interest, the Company lost crores of rupees as interest income which has caused Substantial prejudice especially , to the Applicant Company, and ultimately to its shareholders. Transparency in operations is one of the Key elements of Listed Company and appropriate disclosures of Related Party Transactions are very essential to various stakeholders and as such, the same is the duty of the Company/ Board of Directors to give true and fair picture of the functioning of the Company to its shareholders especially any decision having adverse financial impact / loss on the Company which in turn will have an impact / loss on the shareholders directly or indirectly. As generally known, Related Party Transactions are gaining importance/prominence since a couple of decades. Related Party Transactions may create potential conflict of interest which can result in benefit to the other party than the Company itself or its shareholders and thus which needs to be regulated.
23. The Applicants have submitted only a true copy of the ledger statement for the period from 1<sup>st</sup> April, 2008 to 31<sup>st</sup> March, 2012. and no bank statement has been submitted to substantiate their claim of receipt of advances granted to FFPL amount to 99.45 crores. Upon perusal of the ledger statement it is observed that substantial amount of approx. Rs .75

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crores out of Rs. 99.45 crores advanced was received only in the month of March, 2011.

24. With regards to the averments made in the Application that it is not likely to cause any prejudice to the Applicant Company, its members or creditors is totally not acceptable in view of the above discussions in paras, Applicant Company being a listed company having 37,991 shareholders .

25. In view of the above background, we are of the considered view that since the violation pertains to year 2007-2011 therefore the applicable provisions will be under the Companies Act 1956 and accordingly we are inclined to compound the violation under Section 297 in terms of provisions of Section 621A of the Companies Act, 1956 with the following directions.

- a) All the Applicants are directed to pay a sum of Rs.6,20,000/- (Rupees Six Lakhs Twenty Thousand only) each towards Compounding Fee. The first transaction of the Company under the provisions of Section 297 of the Companies Act 1956 was on 16.10.2007 and the same was made good on 31.03.2011. (approx 1230 days X Rs.500 = Rs 6,15,000 +5000=6,20,000)
- b) All the Applicants are also required to pay the Compounding fee within a period of three weeks from the date of receipt of copy of the order and report compliance of the same to the Registry,
- c) All 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.1/621A/HDB/2016 is disposed off.



*Sd/-*  
RAVIKUMAR DURAISAMY  
MEMBER (TECHNICAL)

*Sd/-*  
RAJESWARA RAO VITTANALA  
MEMBER (JUDICIAL)

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OF THE ORIGINAL

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