

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD

CA NO. 04/621A/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
Rod 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

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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)

Counsels for the Applicants:

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

JUDGEMENT

1. National Company Law Tribunal, Hyderabad Bench vide Order dated 21.10.2016 dismissed the compounding application no. 4/621A/HDB/2016 filed by 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 its Order dated: 28.02.2017 directed this to Tribunal examine the case in terms of Section 621A 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, 3 and 4 are the Directors of the Applicant Company, having DIN Nos. 00287518 and 00287639 respectively.



c) That in the instant case, the Applicants sought compounding of offence allegedly committed qua purchase and sale of a Bentley Car.

3. That this Hon'ble Tribunal vide its order dated 26.10.2016 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.
4. The Applicants have preferred an Appeal against the order dated 26.10.2016 passed by this Hon'ble Tribunal, being Appeal No. 40 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.
5. 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 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 INVOLVING PURCHASE OF BENTLEY CAR

6. That the Respondent vide its letter dated 17.05.2013 issued a Notice to the Applicant Company, thereby stating that the Applicant Company has purchased a Bentley Car from Applicant No. 3 on 21.08.2009 for Rs. 1,96,43,138/- and the said car was sold by the Applicant Company to one

Shri Srinivas on 29.08.2012 for Rs. 40,000/-. The said letter further stated that the purchase of the car out of the funds of the Company from Applicant No. 3 requires compliance of requirements under Section 297 of the Act and the Applicant Company has not complied with the requirement under Section 297 of the Act.

7. That the Applicant Company vide its reply dated 04.06.2013, duly submitted that the purchase of car by Applicant Company on 21.08.2009 was outside the purview of Section 297 of the Act. The Applicant Company also requested the Respondent to drop further proceedings in the matter. The Applicant Company reiterated the above submissions again vide its letter dated 04.07.2013. Copy of the letter dated 04.07.2013 issued by the Applicant Company is submitted and marked as **EXHIBIT 'B'**



Subsequently, a Show Cause Notice RAP/209A/DROC (SRD)/CK/ DCHL /Sec297/ 2014/ 1148/ 13 dated 05.08.2014 was issued by the Respondent, wherein the Applicants were asked to show-cause as to why action should not be taken for prosecution for contravention of Section 297 of the Act.

9. 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 exhibited is submitted.
10. It is stated that in view of the above Notification dated 26.03.2014 Section 297 of Act 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 is not acceptable/ legally tenable

TRANSACTION IS OUTSIDE THE PURVIEW OF SECTION 297 AND THE ALLEGATIONS ARE FALSE AND BASELESS

11. It is submitted that purchase and selling of car is outside the purview of Section 297 of the Companies Act, 1956 and further the allegations raised by the Respondent do not reflect the correct position.
12. It is alleged by the Respondent that the Applicant Company has purchased a Bentley Car from Applicant No. 3 on 21.08.2009 for Rs. 1,96,43,138/- and the said car was sold by the Applicant Company to one Shri Srinivas on 29.08.2012 for Rs. 40,000/-.



It is submitted that the Applicant No. 1 Company had acquired the Bentley Car from Applicant No. 3 bearing Registration No. AP-10-AQ-8888 and resold the same car to Mr. Narendra Chaudhary on 13.12.2012 for Rs. 50 Lakhs. The sale proceed was credited into the Bank Account of the Applicant No. 1 Company. Further, it was wrongly submitted by the Respondent that the car as purchased by the Applicant No. 1 Company from Applicant No. 3 was not transferred in the name of the Applicant No. 1 Company. The Bentley Car was duly transferred and registered in the name of Applicant No. 1 Company. The Applicant Company in the instant case after purchasing the car in 2009 had used the car for 3½ years for Company purposes and thereafter sold the car in December, 2012. Hence, the allegation raised by the Respondent is baseless and not based on correct facts. Copy of the Bank Account Statement of the Applicant Company reflecting the transaction is submitted and marked as **EXHIBIT 'C'**. Copy of the registration certificate of the Bentley Car in the name of the Applicant No. 1 Company is submitted and marked as **EXHIBIT 'D'**.

OFFENCE IS COMPOUNDABLE IN NATURE

14. That the offence under Section 297 of the Act, alleged to have been committed by the Applicant 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 Act is compoundable in nature.

15. That the alleged offence as committed by the Applicants herein has been made good.
16. 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 petition of the Applicants seeking compounding of offence allegedly committed under Section 297 of the Act is allowed by this Hon'ble Tribunal.

17. 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 is not acceptable/legally tenable .
18. 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. That in view of the above facts and circumstances, the alleged violation of the provisions of Section 297 of the Companies Act, 1956 does not fall within the ambit of Section 297, have been even otherwise made good, are Compoundable in nature and thus the same may be considered favorably by this Hon'ble Tribunal and compounded.
19. Though the Applicants have submitted that the Company had acquired the Bently Car bearing Registration No. P-10 AQ 8888 and resold the same car to Mr. Narender Chaudhary on 13.12.2012 for Rs.50 lakhs and the same was credited into the Bank Account of the Applicant Company, upon perusal of the Ledger statement submitted by the applicants it is also observed that in addition to Rs. 50 lakhs received from the above said Narender Chaudhary on 13.12.2012, an entry for an amount of Rs.40,000/- on 29.08.2012 also appears as amount received from Mr. Srinivas towards the sale of the Bently Car.
20. We have perused all the records and it is noted that the transactions / violation pertains to the year 2009-2012. Therefore, the Applicants submissions that the show cause notice issued under section 297 of the Companies Act 1956 is non- est in the eyes of law is not acceptable/ legally tenable.



21. Perusal of the entire records reveal that Rs.50 lakhs received from Mr. Narender Chaudhary was not part of the records submitted in their original CA.No. 04/621A/HDB/2016 submitted before the Hon'ble Company Law Board. Therefore, it gives an impression that the amount received from Mr. Narender Choudary is an afterthought and the applicants have not supported the receipt of Rs.50,00,000/- through their Bank Statement. Therefore, there is no conclusive proof to establish the actual amount received by the applicant company and to whom the car was actually sold. However, considering the above background, submissions and the alleged transactions have been made good as stated by the applicants, we are inclined to compound the offence with the following directions:

- a) All the Applicants are directed to pay Rs1,50,000/- each towards Compounding fee.
- b) All the Applicants are required to pay the Compounding fee within a period of three weeks from the date of receipt of the of the order and report compliance of the same to the Registry. NCLT.
- 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.4/621A/HDB/2016 is disposed off.




RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)


RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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OF THE ORIGINAL**


V. ANNAPOORNA
Asst. DIRECTOR
NCLT, HYDERABAD.