

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

CA No. 03/621A/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.

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



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

...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)

Per: Ravikumar Duraisamy, Member (Technical)

JUDGEMENT

1. National Company law Tribunal, Hyderabad Bench vide Order dated 21.10.2016 dismissed the compounding Application No.3/621A/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 its Order dated 28.02.2017 directed this Tribunal to examine the case in terms of Section 621A of the Companies Act, 1956. Accordingly, the Applicants submitted their written submissions dated 31.03.2017.

The Brief facts of the case are as follows:

2. That 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 which prohibited Related Party Transactions except with the consent of the Board of Directors and in case the Company was having a paid up Share Capital of not less than Rs.1 Crore, previous approval of Central Government was required under Companies Act, 1956.



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3. 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 Applicants Nos.2 and 3 are the Directors of the Applicant Company, having DIN Nos. 00287518 and 00287639 respectively.
4. That in the instant case, the Applicants sought compounding of offence allegedly committed during the period 01.04.2007 to 30.09.2012 as regards disclosure of transactions with related parties. It is the case of the Applicants that there has been no violation of the provisions of the Accounting Standards i.e. AS-18 as appropriate disclosures have been duly made by the Applicants. However, despite the said factual background, the Applicants with a bonafide intention had filed the instant application suo moto for the purpose of compounding of the alleged offence.
5. That 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.
6. The Applicants have preferred an Appeal against the order dated 21.10.2016 passed by this Hon'ble Tribunal, being Appeal No. 42 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.

7. 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.

NON-DISCLOSURE OF TRANSACTIONS WITH RELATED PARTIES

8. That the Respondent vide its letter dated 17.05.2013 issued a Notice to the Applicant Company, thereby stating that the Applicant Company had transacted with related parties during 01.04.2007 to 30.09.2012 as per Accounting Standard-18, the details of which are given as follows:-

Sl. No.	under Significant Accounting policies	Transaction during the year	Amount involved (Rs. in lakhs)
1.	2.6.1	01.04.2007 to 31.03.2008	9427.31
2.	2.5.1	01.04.2008 to 31.03.2009	2345.49
3.	2.4.1	01.04.2009 to 31.03.2010	2044.82
4.	2.3.2	01.04.2010 to 31.03.2011	745.00
5.	27.4	01.04.2011 to 30.09.2012	632.49



The said notice further stated that the Applicant Company has not provided the details of the parties under related party disclosure and only the consolidated amount of transactions involved in the financial year is provided. Further, the Applicant Company was directed to furnish the details of transactions, viz. party wise, date of transaction, amount involved, details of interested Directors, etc.

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9. That the Applicant No.1 Company vide its reply dated 04.06.2013, duly submitted that pursuant to Accounting Standard-18, the actual requirement is to furnish a list of the related parties and disclose the amount involved in the related party transactions without there being any requirement. Accounting Standard-18 permits to disclose the amount involved in the contract with the related parties to give category wise and this was exactly what was done by the Applicant Company. Vide the said reply dated 04.06.2013, Applicant Company assured that henceforth they will give party wise details as long as they are possible in each financial statement. The Applicant Company also requested Respondent to give them a chance to correct the things and comply with the requirements under Section 297 of the Act and Accounting Standard-18 strictly henceforth.
10. Subsequently, a Show Cause Notice being RAP/209A/DROC (SRD)/CK/ DCHL /Sec297/ 2014/ 1148/ 11 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.
11. 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 and marked as **ANNEXURE A-1**.
12. It is stated that in view of the above Notification Section 297 of the Companies 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.

APPLICANT COMPANY HAS MADE ALL DISCLOSURES AS REQUIRED UNDER ACCOUNTING STANDARD-18

13. It is submitted that as per Accounting Standard-18 the actual requirement on part of the Company is to list out the related parties and disclose the amount involved in the related party transaction without there being any requirement of party wise amount. The Applicant Company believes that the Accounting Standard-18 permits the Company to disclose the amount involved in the contract with the related parties to be given category-wise and the same was duly carried out by the Applicant Company.
14. It is submitted that the Applicant Company has made all the relevant disclosures as per Accounting Standard -18 in its annual report for the year 2007-08, 2008-09, 2009-10, 2010-11, 2011-12. Copy of the relevant extracts of the Annual Report of the Applicant Company for the year 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 is submitted and marked as **ANNEXURE A-2**. Copy of the Accounting Standard – 18 is submitted and marked as **ANNEXURE A-3**.
15. It is submitted that the Applicant Company has duly complied with the principles of Accounting Standard – 18 and has made all the disclosures as required under Accounting Standard – 18.
16. That the Applicants submit that the transactions in the instant case were transactions requiring urgent actions and on account of exigencies had to be given effect to. There was no malafide intent on the part of the Applicants for entering into the said transactions.



17. It is reiterated that the offence as allegedly committed by the Applicants herein was compoundable in nature and thus the same could have been appropriately compounded.

OFFENCE IS COMPOUNDABLE IN NATURE

18. 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.

19. The Applicants further submitted that in the instant case they 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.
20. We have perused all the records and it is noted that the transaction / violation pertains to the year 2007-2012. 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.
21. 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 favourably by this Hon'ble Tribunal and compounded.
22. In the Instant case the Applicants sought compounding of offence allegedly committed during the period from 01.04.2007 to 30.09.2012 as disclosure of transactions with the related parties as per Accounting Standards No.18,are not made. The quantum of amount involved is Rs.151.93 Crores. The breakup of the same is already given in pre paras.
- 22.The Applicant Company and other three applicants submitted that the Applicant Company has duly complied with the principles of Accounting Standard No.18 and has made all the disclosures as required under the accounting standards for all the Financial Years. They have also submitted that the transactions in the instant case were the transactions requiring urgent action on account of exigency and there was no malafide intention on the part of applicants for entering in those transactions. From the facts it is observed that the



Transactions Related to 01.04.2007 till 30.09.2012 i.e., 4 ½ years amounting to more than Rs.150 Crores. We are of the considered view that the urgent action can be utmost very few transactions or may be on rare occasion. But in any case it cannot continue for 4 ½ years, therefore, the Applicants submissions are not applicable.

23. We reiterate our observations made with regard to the importance of the related party transactions as in our Order as dated on 21-10-2016. 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 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 need to be regulated we have also considered the quantum of amount involved and the applicants company being a listed company having approx.37990 Shareholders.

24. Considering the facts and circumstances of the case and the submissions made by the Applicants, we are inclined to compound the offence with the following direction:

- a) All the Applicants are directed to pay a sum of Rs.9,30,000/- (Nine Lakhs Thirty Thousands only) each towards Compounding fee. (approx.. 3700 days X Rs.250 =9,25,000 + 5000 = Rs.9,30,000)



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- b) All the Applicants are 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, NCLT.
- c) All the Applicants are warned to be careful in future and not to repeat any violating 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.3/621A/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.