

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

CA NO. 05/621A/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

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

... Applicants



Versus

Registrar of Companies, Hyderabad.
For Andhra Pradesh & Telangana.

... Respondent

Judgement delivered on: 10.07.2017.

CORAM:

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

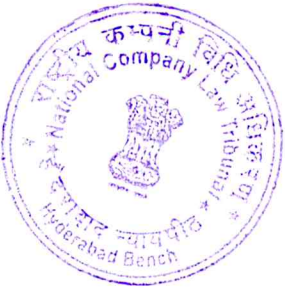
Counsels for the Applicants:

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

Per: RAVIKUMAR DURAISAMY, MEMBER (TECHNICAL)

JUDGEMENT

1. The National Company Law Tribunal, Hyderabad Bench vide Order dated 21.10.2016 dismissed the compounding application No.5/621A/HDB/2016, filed by the Applicants in view of the facts that the reliefs as sought by the Applicants are premature and directed the applicants to approach the Central Government for approval of the Related Party Transactions. Against the Order 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 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) 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. Section 297 of the Companies Act, 1956 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,

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Hyderabad with CIN no. L22122AP2002PLC040110 and Applicant Nos.2 and 3 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 services obtained / payment made to one M/s. Bhaggyam Builders during the period 01.04.2005 to 31.03.2010.

3) 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 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. BHAGGYAM BUILDERS:

5. That in the instant case the Respondent vide its letter dated 17.05.2013 issued a Notice to the Applicant Company has obtained services / made payment to M/s. Bhaggyam Builders. The Audited Balance Sheet as at 31.03.2007 for the period 01.04.2006 to 31.03.2007 reveals Bhaggyam Builders as an



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associate concern. The Books of Account shows that the following quantum of value

Sl. No.	Name of the Party	Financial Year	Amount involved (in Rs.)
1.	Bhaggyam Builders	01.04.2005 to 31.03.2006	48,31,751
2.	-do-	01.04.2006 to 31.03.2007	114,42,779
3.	-do-	01.04.2007 to 31.03.2008	3,02,86,243
4.	-do-	01.04.2008 to 31.03.2009	(25,09,053.)
5.	-do-	01.04.2009 to 31.03.2010	1,50,00,000.

The said notice further stated that M/s. Bhaggyam Builders is an Associate concern of the Applicant Company and the above transactions between the Applicant Company and Bhaggyam Builders falls under the purview of Section 297/ 299/ 301 of the Companies Act, 1956 ('Act'), as the Applicant Company did not comply with the requirement of the said sections. That the Applicant Company vide its reply dated 04.06.2013, duly stated that none of the Partners of M/s. Bhaggyam Builders were Directors in the Applicant Company.



6. Subsequently, a Show Cause Notice RAP/209A/DROC (SRD)/CK/ DCHL /Sec297/ 2014/ 1148/ 12 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.
7. 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

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Companies Act, 2013 came into force. Therefore, the Show Cause Notice issued by the Respondent is nonest in the eyes of law. Copy of the Notification dated 26.03.2014 issued by the Ministry of Corporate Affairs is submitted and marked as EXHIBIT 'A'.

DEFAULT HAS BEEN MADE GOOD

8. It is submitted that one Mr. S. Balasubramaniyan was appointed as a Director of the Applicant Company on 24.03.2005. The said Director had submitted his resignation on 25.04.2006 and thus ceased to be a Director of the Applicant Company i.e. 27.04.2006. Copy of the relevant Form for appointment of Mr. S. Balasubramaniyan as the Director in the Applicant Company and his cessation is submitted and marked as EXHIBIT 'B'.

9. It is submitted that the above stated Director of the Applicant Company, is relative of the Partners of M/s. Bhaggyam Builders.

M/s. Bhaggyam Builders has the following partners:



S. No.	Name of the Partner	Relationship
1.	Mrs. B. Shakunthala	Wife of Mr. S. Balasubramaniyan
2.	Mr. B. Balamurugan	Son of Mr. S. Balasubramaniyan
3.	Ms. B. Bhaggyalakshmi	Daughter of Mr. S. Balasubramaniyan

10. In the said background, the Applicant Company had appropriately disclosed M/s. Bhaggyam Builders as an associate concern in its Balance Sheet for the period 01.04.2006 to 31.03.2007 in view of the fact that Mr. S. Balasubramaniyan continued to be a Director of the Applicant Company pursuant to 01.04.2006 till 27.04.2006.

11. However, the Applicants in the instant case inadvertently failed to comply with the provisions of Section 297 of the Companies Act,

1956 for the financial year 01.04.2005 to 31.03.2006 when Mr. S. Balasubramaniyan was a Director in the Applicant Company. Thus the Applicant at best can be alleged to have committed violation of the provisions of Section 297 of the Companies Act, 1956 for the transactions entered with M/s. Bhaggyam Builders between the period 24.03.2005 till 31.03.2006.

12. The alleged offence under Section 297 of the Companies Act, 1956 ceased to exist w.e.f. 27.04.2006 pursuant to the resignation of Mr. S. Balasubramaniyan. In the said background, no offence of any nature whatsoever in terms of Section 297 can be alleged to be committed by the Applicants herein w.e.f. 27.04.2006 till 31.03.2010. The observation and finding of the Respondents qua the commission of offence for the period w.e.f. 27.04.2006 till 31.03.2010 is legally untenable and warrants due consideration from this Hon'ble Tribunal.



13. That without prejudice to the above, the Applicants in the instant case had suo moto filed the instant Application seeking compounding of the alleged violation of Section 297 of the Companies Act, 1956. The alleged offence has been made good pursuant to cessation of offence of Mr. S. Balasubramaniyan as one of the Directors of the Applicant Company.

OFFENCE IS COMPOUNDABLE IN NATURE

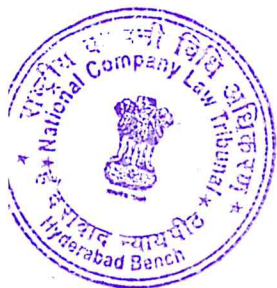
14. That the offence under Section 297 of the Act, alleged to have been committed by the Applicants herein are compoundable in nature. It may appropriately be said that the penalty for violation / default of the said Section is provided under Section 629A of the Act, which is reproduced herein below 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 Act is compoundable in nature.

15. 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.
16. 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.
17. 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.



18. The Applicants have admitted that in the instant case inadvertently failed to comply with the provisions of Section 297 of the Companies Act, 1956 for the Financial Year 01.04.2005 to 31.03.2006. Further they also submitted that the alleged offence seized to exist w.e.f. 27.04.2006. Therefore they have approached that noncompliance under Section 297 is only for the period from 01.4.2005 to 31.3.2006. Accordingly prayed the Tribunal to take a lenient view since the noncompliance was also made good and approached the Tribunal of Suo moto.

19. We have perused all the records and it is noted that the transactions / violation pertains to the year 2005 & 2006. 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.

20. Upon perusal of the documents, submissions of the Applicants and as per the provisions of Section 629 of the Companies Act, 1956, we are inclined to compound the noncompliance with the following directions.

- a) All the Applicants are directed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) 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 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 Companies Act or else serious view will be taken by the Tribunal.
- d) In terms of the above directions, the C.A. No.5/621A/HDB/2016 is disposed off.



Sd/-
RAVIKUMR DURAISAMY
MEMBER (TECHNICAL)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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OF THE ORIGINAL

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