

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD

C.A. No. 02/621A/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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... 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 DURAISAMY, MEMBER (TECHNICAL)

Parties Present

Counsels for the Applicants:

Ms. Varsha Banerjee

Mr. A.S. Prashanth,

Mr. Amir Bavani

(Dhir & Dhir Associates)

Per: Mr. RAVIKUMAR DURAISAMY, MEMBER (TECHNICAL)

JUDGEMENT

1. National Company Law Tribunal, Hyderabad Bench vide order dated 21.10.2016 dismissed the Compounding application No.2/621A/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 621A of the Companies Act 1956. Accordingly the Applicants submitted their written submissions dt.31.03.2017.

2. The brief facts of the case are as follows:

- a) The Applicants in the instant case have filed the 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) 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 are



the Directors of the Applicant Company, having DIN Nos. 00287518 and 00287639 respectively.

- c) That in the instant case an amount of Rs.15 Lakhs as being given by M/s. Flamingo Enterprises to the Applicant Company on 06.05.2009 was opined to be violation of provisions of Section 297 of the Companies Act, 1956 by the Respondent. It is submitted that in the instant case, no contract was entered into for sale, purchase or supply of any goods, materials or services to any of the related party. The present case is a case wherein funds were received by the Applicant Company and the same were duly returned by the Applicant Company without any interest. Thus in the instant case there has been no violation of the provisions of Section 297 of the Companies Act, 1956 as the transaction has not caused loss of any nature whatsoever to the Applicant Company. That 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.
3. That however, this Hon'ble Tribunal vide its order dated 26.10.2016 dismissed the instant application in view of the fact that the relief as sought by the Applicants is premature and directed the Applicants to approach the Central Government for approval of the related party transaction.
4. That the Applicants have preferred an Appeal against the order dated 26.10.2016 passed by this Hon'ble Tribunal, being Appeal No. 39 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 dated 31.03.2017 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. FLAMINGO ENTERPRISES

6. That the Applicants Company in the instant case had received an amount of Rs. 15 Lakhs from M/s. Flamingo Enterprises (Flamingo) on 05.03.2009. Subsequently, the said amount was duly returned to M/s. Flamingo Enterprises by the Applicant Company on 06.05.2009. However, the Respondent vide its letter dated 17.05.2013 issued a Notice to the Applicant Company, thereby stating that the Applicant Company has transferred fund to M/s. Flamingo Enterprises, which is a partnership firm in which Applicant No. 2 and 3 are partners of the firm holding 33.33% capital each and are deemed to be interested in the transaction which requires compliance under Section 297 of the Act. Further, it was also stated that the Applicant Company has not complied with the requirement under Section 297(1) of the Act as the same has neither been reflected in the Minutes Book nor in the Audited Balance Sheet as at 31.03.2010 under the related party discloser under Accounting Standard - 18.
7. The Applicant Company vide its reply dated 04.06.2013, duly submitted that the transaction between the Applicant Company and M/s Flamingo Enterprises does not fall under any categories as provided under Section 297 of the Act. It was categorically submitted by the Applicant Company that the Applicant Company had received a loan of Rs. 15 Lakhs from M/s. Flamingo Enterprises on 05.03.2009 and the payment of Rs. 15 Lakhs made to M/s. Flamingo Enterprises on 06.05.2009 was merely a repayment of the said loan. It was categorically submitted by the Applicants herein that the Company had not made any transaction whatsoever with M/s. Flamingo Enterprises since 06.05.2009. Applicant No. 1 Company submitted Copy of the letter dated 04.07.2013 and marked as **EXHIBIT 'A'**. It is pertinent to mention here that in view of the submissions made in the above stated replies, the Applicant No. 1 Company requested the Respondent not to proceed with the matter any further and drop the proceedings forthwith.
8. However, a Show Cause Notice RAP/209A/DROC (SRD)/CK/ DCHL /Sec297/ 2014/ 1148/ 14 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. Therefore, the Show Cause Notice issued by the Respondent is non-est in the eyes of the law. Copy of the Notification dated 26.03.2014 issued by the Ministry of Corporate Affairs is submitted.

DEFAULT HAS BEEN MADE GOOD

10. It is submitted that the Applicant Company had received a loan of Rs.15 Lakhs from M/s. Flamingo Enterprises on 05.03.2009 and the payment of Rs.15 Lakhs was made to M/s. Flamingo Enterprises on 06.05.2009 was merely a repayment of the said loan. It was categorically submitted by the Applicants herein that the Company had not made any transaction whatsoever with M/s. Flamingo Enterprises since 06.05.2009. The said fact may be corroborated from the Bank Account Statement of the Applicant Company, which reflects the transfer of Rs. 15 Lakhs from M/s. Flamingo Enterprises to the Company on 05.03.2009 and subsequently, a transfer of Rs. 15 Lakhs from the Applicant Company to M/s. Flamingo Enterprises on 06.05.2009. Copy of Bank Account Statement of the Applicant Company is submitted.
11. It is respectfully submitted that the transaction which the Applicants entered with M/s. Flamingo Enterprises stands duly concluded as on date. The Applicants have accordingly made good the transaction as on date and there is no continuance of the alleged offence as on date and thus the present case can be favorably considered in view of the fact that there is no offence of Section 297 of the Companies Act, 1956 in the instant case.

OFFENCE IS COMPOUNDABLE IN NATURE

12. 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.

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 petition 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. That 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 entered between the Applicant Company and M/s. Flamingo Enterprises does not fall within the ambit of Section 297, and 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.
16. 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 the penalty clause U/s 629A of the Companies Act 1956.
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 non-est in the Eyes of law.is not acceptable / legally tenable.
18. Careful scrutiny of the documents also reveal that 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.



19. The Applicants submitted that the loan taken from M/s Flemingo Enterprises on 05.03.2009 and the same was repaid on 06.05.2009 by the applicant company with a gap of just two months. Further, the Applicants categorically submitted that the Applicant Company has not made any transaction what-so-ever with Flemingo Enterprises since 06.05.2009. In view of the same the applicants submitted that the transactions was made good as on date and there is no continuance of the alleged offence. The applicants also submitted that ICICI Bank Statements evidencing the payment of Rs.15 Lakhs on 6th May, 2009. Based on the documents, submissions, confirmations that no transaction was carried out with Flemingo Enterprises after 06/05/2009 and we are satisfied that the Applicants have made good the alleged offence.
20. We are inclined to compound the offence with the following directions:
- All the Applicants are directed to pay a sum of Rs.35,000/- (Rupees Thirty Five Thousand only) each towards compounding fee.
 - All the Applicants are also 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.
 - 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.
 - In terms of the above directions, the C.A. No.2/621A/HDB/2016 is disposed off.



Sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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

