

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD**

**CA No. 23/621A/HDB/2016**

**Date of Order: 6 .06.2017**

**Between:**

1. Asian Institute of Gastroenterology Private Limited  
6-3-661, Somajiguda  
Hyderabad, Telangana – 500082
2. Dr. D. Nageshwar Reddy  
Managing Director  
A-27, Journalists Colony, Jubilee Hills  
Hyderabad, Telangana – 500033
3. Dr. Guduru Venkat Rao  
Whole-Time Director  
Flat No. F-3, Hidden Treasure Apartments  
5<sup>th</sup> Floor, 6-3-1102,  
Raj Bhavan Road, Somajiguda,  
Hyderabad, Telangana – 500082
4. Ms. Kusum Lata  
Company Secretary  
1-7-264, 7001, 7<sup>th</sup> Floor,  
Somajiguda, Sarojini Devi Road,  
Secunderabad – 500033, Telangana

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OF THE ORIGINAL**

... Applicants

AND



The Registrar of Companies, Hyderabad  
For the states of Telangana and Andhra Pradesh  
2<sup>nd</sup> Floor, Corporate Bhawan  
GSI Post, Thatti Annaram  
Nagole, Bandlaguda  
Hyderabad – 500068

..... Respondent

**Parties Present:**

Counsel for the Applicants:

Sh. T.V. Pandu Ranga, Advocate

**CORAM:**

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

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

**ORDER**

**(As per Ravikumar Duraisamy, Member (Tech))**

1. The present Company Application was initially filed before the Hon'ble Company Law Board, Chennai Bench, Chennai. Upon the constitution of National Company Law Tribunal Bench at Hyderabad (NCLT) for the cases pertaining to the States of Andhra Pradesh and Telangana, the case is transferred to NCLT. Hence, we have taken the case on records of NCLT, Hyderabad Bench and deciding the matter.
2. The present case was called for hearing for the first time on 10.08.2016 before this Bench but none appeared for the Applicants. The Bench directed the Registry to issue notice to the Applicants and accordingly a notice vide CA No.23/621A/HDB/2016/87 dated 12.08.2016 was issued to the Applicant Company and other three applicants. When the case was called for hearing on 31.08.2016, Mr. Pandu Ranga, learned counsel for the Applicants and also the authorized Power of Attorney wanted to submit some more information. Accordingly, it was posted to 06.09.2016. During the hearing on 06.09.2016, Mr. Pandu Ranga requested time to file an application by seeking to amend the pleadings of the application. The Bench granted permission for the same and posted the case on 15.09.2016. But on 15.09.2016, he has requested additional time for filing documents and accordingly, the case was further posted on 29.09.2016 whereby, the Bench allowed the present Company Application directing the Applicants to amend the prayer as sought in the CA. The case was listed before this Tribunal on 07.10.2016, 18.10.2016, 24.10.2016, 31.10.2016 and 8.11.2016, wherein none appeared for the Applicants and no amended application was filed before this Bench as requested by the Authorized representative. As a last and final opportunity, the case was finally listed on 19.01.2017 and was reserved for orders.
3. The CA No.23/621A/HDB/2016 is filed by the Applicant Company, its Directors and Company Secretary under Section 621A of the Companies Act, 1956 read with Section 96(1) of the Companies Act, 2013 and they pray that offence under Section 96(1) of the Companies Act, 2013 may be compounded as per Section 621A of the Companies Act, 1956 on such reasonable terms and conditions as the Hon'ble Authority may determine.



4. The brief facts of the case as averred in the application are as follows:

- a. Asian Institute of Gastroenterology Private Limited, the Applicant Company, was incorporated on 20<sup>th</sup> September, 1994 under the provisions of Companies Act, 1956 as a Company Limited by shares.
- b. The Authorized Share Capital of the Applicant Company is Rs.23,00,00,000/- (Rupees Twenty Three Crores) comprising of 2,28,55,000 (Two Crore Twenty Eight Lakhs and Fifty Five Thousand) Equity shares of Rs. 10/- (Rupees Ten) each, aggregating to Rs.22,85,50,000 (Rupees Twenty Two Crores Eighty Five Lakhs and Fifty Thousand only) and 1,45,000 (One Lakh and Forty Five Thousand) Compulsorily Convertible Preference Shares (CCPS) of Rs. 10/- (Rupees Ten) each aggregating to Rs.14,50,000 (Rupees Fourteen Lakhs Fifty Thousand only).
- c. The main objects of the company are to run, own, manage, administer Diagnostic-cum-Theraphic Unit for treating patients with Gastroenterology diseases mainly through endoscopic Techniques, etc.
- d. As per provisions of Section 96(1) of the Companies Act, 2013, every Company shall in each year hold in addition to any other meetings a general meeting as its Annual General Meeting (hereinafter referred as AGM) and not more than fifteen months shall elapse between the date of one AGM of the Company and that of next.
- e. It is submitted that the Applicant Company had conducted the AGM for the financial year ended 31<sup>st</sup> March, 2013 on 13<sup>th</sup> May, 2013. The AGM for the financial year ended 31<sup>st</sup> March, 2014 ought to have been convened on or before 12<sup>th</sup> August, 2014 (due date of holding AGM) but the same was conducted on 29<sup>th</sup> September, 2014 i.e. beyond the time gap of 15 months between two consecutive AGMs with a delay of 47 days without availing extension of time for holding AGM.
- f. It is further submitted that the Company by inadvertence could not comply with the provision therefore, it is making this Application for compounding of offence for non-compliance of the provision of Section 96(1) for holding AGM beyond the 15 months from the date of last AGM.
- g. In addition, the Applicants stated that the Registrar of Companies (ROC) has not issued any Show Cause Notice and in these circumstances the petitioners



are filing this petition to compound the offence committed under Section 96(1) of the Companies Act, 2013 on their own.

5. Registrar of Companies, Hyderabad (ROC) has submitted its report vide No. RAP/Legal/621A/Asian Institute/2016/167 dated 05.04.2016. The Registrar of Companies, while re-iterating the facts stated in the petition, submitted that the non-compliance of provisions of Section 96 gives rise to punishment under Section 99 of the Companies Act, 2013. Since Section 99 is not yet notified, the corresponding Section 168 of the Companies Act, 1956 states that the Company and every officer in default, who has not complied with the above said provision, shall be punishable with fine which may extend to fifty thousand rupees and in case of continuing default, with a further fine which may extend to two thousand five hundred rupees for every day after the first during which such default continues.
6. During the hearing of the case, the learned counsel for the Applicants submitted the following as to why all Directors are not made party to the Application for compounding of Offence under Section 621A by the Applicant Company:



As per the definition of “officer who is in default”, following persons qualify as officer who is in default for the contravention of section 96 of the Companies Act, 2013 in respect of the Company, Asian Institute of Gastroenterology Private Limited:

- a. Mr. Duvvuru Nageshwar Reddy, Managing Director
- b. Mr. Guduru Venkat Rao, Whole Time Director
- c. Ms. Kusum Lata, Company Secretary (Key Managerial Person)

The above persons filed the present case because, during the period of contravention, the Company Board of Directors consisted of 6 Directors, 2 Directors are responsible for running of the company affairs, i.e. Managing Director and the Whole Time Director and a Key Management Personnel i.e. a Company Secretary, who assists the Board to carry out the statutory Secretarial work/filings with the Registrar of Companies.

The present Company Application was filed on 14.09.2015, before the Hon'ble CLB, Chennai. The offence committed was pertaining to the AGM to be conducted for the Financial Year 2013-14. At that time, applicable provision was Section 621A of the Companies Act, 1956 and accordingly, the present application was filed wherein the penalty is with fine which may extend to fifty thousand rupees and in case of continuing default, with a further fine which may extend to two thousand five hundred rupees for every day after the first during which such default continues. For the violation of Section 96 of the Companies Act, 2013, the penal provision is Section 99 which was notified on 1.6.2016, much later to the filing of the company application in CLB. Therefore, we are of the considered view that Section 621A of the Companies Act 1956 will be applicable in current scenario and accordingly, we are inclined to compound the present application with following directions:

- a. The First Applicant Company to pay Rs.25,000/- towards compounding fees,
- b. Applicant No.2 & 3 to pay Rs.50,000/- each towards compounding fees,
- c. Applicant No.4 to pay Rs.25,000/- towards compounding fees,
- d. We direct all the applicants to pay the compounding fees within three weeks from the date of receipt of copy of the order and submit report of compliance of the same to the Registry of NCLT,
- e. The applicants are also warned to be careful and not repeat any violations in future, else serious view will be taken.

7. In the result, CA No.23/621A/HDB/2016 is disposed of.

Sd/-  
**RAVIKUMAR DURAISAMY**  
MEMBER (TECHNICAL)

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

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*V. Annapoorna*  
**V. ANNA POORNA**  
Asst. DIRECTOR  
NCLT, HYDERABAD - 68

