

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

CA No. 65/621A/HDB/2016

Date of Order: 24 .03.2017

1. Cambridge Technology Enterprises Limited
Regd. office at Unit No. 04-03, Level 4
Block I, Cyber Pearl, Hitec City
Madhapur, Hyderabad-500 081
2. Mr. Stefan Hetges, Whole Time Director
3. Mr. Motaparthi Venkateswara Rao Kasi, Director
4. Mr. Mallipudi Anand Pattabhiramkumar, Director
5. Mr. Venna Ramana Reddy, Company Secretary

(Applicant No. 2 to 5 are represented by

Power of attorney holder Mr. DRR Swaroop, Whole Time Director)

... Applicants



Authorised Representative for the Applicants:

Mr. S. Chidambaram,
Practising Company Secretary

CORAM:

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

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

ORDER

(As per Mr. Ravikumar Duraisamy, Member (T))

1. This application was initially filed before the Hon'ble Company Law Board, Chennai Bench, Chennai (CLB). Since the National Company Law Tribunal (NCLT) Hyderabad Bench has been constituted for the cases pertaining to the States of Andhra Pradesh

and Telangana, the case is transferred to Hyderabad Bench. Hence, we have taken the case on records of NCLT, Hyderabad Bench and deciding the case.

2. The present Company Application No.65/621A/HDB/2016 has been filed by the Applicants U/s 621A R/w Section 211(3A)/(3C) of the Companies Act (which is referred as Act hereinafter) read with AS 13.
3. The brief facts which are relevant to the issue raised in the present application are:
 - i. Cambridge Technology Enterprises Limited (which is referred to as Company hereinafter) was incorporated as a Private Limited Company on 28th January, 1999 under the Companies Act, 1956 with Registration CIN L72200AP1999PLCO30997. The authorised capital of the Company is Rs.30 crores as on 31.03.2015 divided into three crores equity shares of Rs.10/- each. The main objects of the Company as per its Memorandum of Association are to set up and run electronic data processing centre and to carry on the business of data processing, word processing, software consultancy, designing , developing, manufacturing, marketing and trading in all types of computer software in all areas etc.
 - ii. An inspection was carried on the Company by the Office of the Regional Director, Chennai, Ministry of Corporate Affairs, under section 209 of the Companies Act, 1956.



4. The violation raised in the present application relates to violation of Section 211(3A)/(3C) of the Act r/w AS 13. As per Section 211 (3A) of the Act, every Profit and Loss Account and Balance Sheet of the Company shall comply with Accounting Standard (AS) recommended by the Institute of Chartered Accounts of India.

As per AS 13 (Accounting for Investments), Para 35, "the following information should be disclosed in the financial statements:"

The amount included in profit and loss statement for: "Interest, dividends (showing separately dividends from subsidiary companies) and rentals on investments showing separately such income from long-term and current investments. Gross income should be stated, the amount of income tax deducted at source being included under Advance Tax Paid".



However, on examination, during the said inspection it is found that annual report for the financial years ended dated 31.03.2007, 31.03.2008 and 31.03.2009 that the company had made huge investments in its subsidiary companies of Rs.17,57,23,191; Rs. 28,87,13,830 and Rs. 46,36,04,234. But the company has not disclosed the dividends received from subsidiary companies as explained above. Hence the company has violated the provisions of Section 211 (3A)/(3C) of the Act r/w AS 13.

5. The Company submitted a common reply/explanation dated 17.08.2010 to the said show cause notice dated 26.07.2010 by justifying the action

of the Company and requesting to drop the case. However, the Company has filed the present application by praying the Tribunal to allow them to compound the said alleged offence on reasonable terms and conditions, as it may deem fit and just.

6. The Registrar of Companies, Hyderabad for the states of Telangana and Andhra Pradesh, has forwarded its report on the issue, vide ROC AP&TG/ Legal/ Sec211/ 621A/ CTEL/ STACK/ 2016/ 1816 dated 01.08.2016. It is stated therein that Mr. DRR Swaroop, Whole Time Director, Mr. Stefan Hetges, Mr. M. Venkateshwar Rao Kasi, Mr. Mallipudi Anand Pattabhiramkumar and Mr. V. Ramana Reddy, Company Secretary, through their power of attorney holder, have submitted an application on 24th June, 2016 u/s 621A of the Companies Act, 1956 for compounding of the offence under Section 211 (3A)/(3C) of the Act r/w AS 13.



7. It is further stated in the report that it is first offence of the Company coming for Compounding. As per section 211(7) of the Companies Act, 1956, if any person not being a person referred to in sub-section (6) of Section 209 fails to take all reasonable steps to secure compliance by the company, as respects to accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in accounts, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend of six months or with fine which may extend to ten thousand rupees, or with both. The Registrar of Companies, however, did not oppose the application for

compounding of the offence in question and thus submitted to the Tribunal to consider the case on merits.

8. Heard Sri S. Chidambaram, learned PCS for the applicants and carefully perused all the pleadings, material papers filed in its support and, the relevant case laws.
9. A memo dated 08.02.2017 was filed by the Learned PCS on behalf of Applicants wherein they confirmed that none of the subsidiary declared any dividends for the years 2006-07, 2007-08 and 2008-09 and submitted relevant documents.
10. The learned PCS, while reiterating various contentions raised in the company application, has further submitted that CLB/NCLT is having the power to compound the offence in question. Moreover, the company has committed the offence in question for the first time and the Registrar of the Companies has also not opposed the application and they have come to the Tribunal suo moto. In support of his contentions, he has relied upon the following cases:
 - i) Hoffland Finance Limited in re(1997)13 SCL 12(CLB-Delhi)
 - ii) VLS Finance Limited Vs. Union of India (2005) 123 Company cases33 (Delhi)



He has thus submitted that NCLT has full powers to compound offences attracting imprisonment or fine or both, even without referring to any Criminal Court or Special Courts. And the word 'Or' indicates an alternative equivalent to either (Meriam Webster Dictionary) Therefore, he prayed that the Tribunal can allow the present composition of offence.

11. Whether the Tribunal is having power to compound this type of violation was already discussed in detail (in similar matter of this Company) in CA No. 59/621A/HDB/2016 order dated 21.12.2016 of this Company. Therefore, to avoid repetition of the stand already taken by this Tribunal, we deem fit not to elaborate the same in this Order

12. As discussed in the aforesaid Order, the provisions relating to compounding of offence under Section 621A of the Act and, the law as declared by the Hon'ble Full Bench of CLB and Hon'ble High Court of Delhi, which is affirmed by the Hon'ble Supreme Court, we hold that this Tribunal is having power and jurisdiction to decide the issue in question in the present case.

13. It is not in dispute that offence in question is compoundable and, the applicants have also declared in unequivocal that the new management of the Company has taken appropriate actions and implemented policies/designs to prevent any future defaults and the offence is unintentional and there is no mens rea.

The Registrar of Companies also has not opposed the case and left it to the consideration of Tribunal as per merits. The Company also committed not to recur this type of the offences in future.

14. In the light of the facts and circumstances of the case and, also in the interest of Justice, we are inclined to allow the present application by exercising the powers conferred under Section 621A of the Companies Act, 1956, however, subject to payment of compounding fees for the alleged offence committed under Section 211 (3A)/(3C) of the Act r/w AS 13 with following conditions:



- a. We direct that each applicants to pay Rs.10,000/- (Rupees Ten Thousand) only, which is the maximum penalty prescribed under Section 211(7) of the Act within a period of three weeks from the date of the receipt of the copy of the order.
- b. We further direct the Applicants to report the compliance of the same to the Registry of NCLT.
- c. The applicants are also warned to be careful and not repeat any violation in future else serious view will be taken.



Sd/-

RAVIKUMAR DURAISAMY

Member (T)

Sd/-

RAJESWARA RAO VITTANALA

Member (J)

V. Anna Poorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68