

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

CA No. 61/621A/HDB/2016

Date of Order: 20.01.2017.

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

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 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.61/621A/HDB/2016 was filed by the Applicants u/s 621A r/w Section 211 (3A)/(3C) of the Companies Act, 1956 (which is referred as "Act" hereinafter) r/w AS 26.

3. The brief facts which are relevant to the issue are;

i. The Applicant Company was registered in the name of Unique Solutions (India) Private Limited with the Registrar of Companies, Hyderabad on 28th January, 1999 under the Companies Act, 1956 and consequently the name was changed to Cambridge Technology Enterprises Limited vide Registration CIN L72200AP 1999PLCO30997 and the registered office of the Company is at 04-03, Level 4, Block 1, Cyber Pearl, Hitec City, Madhapur, Hyderabad – 500 081, Telangana, India. 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 object 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 out on the Company by the Office of the Regional Director, Chennai, Ministry of Corporate Affairs, under section 209 of the Companies Act 1956. The Deputy Director has issued a show cause notice bearing no. JDI/MAS/21/2010 dated 26-07-2010 by pointing out various Violations/contraventions/ of the provisions of companies Act committed by the Company.

4. The violation raised in the present application relates to violation of Section 211(3A)/(3C) of the Act r/w AS 26. 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 26 (Intangible Assets), Para 90, 'the financial statements should disclose the following for each class of intangible assets, distinguishing between internally generated intangible assets and other intangible assets'.



- a. The useful lives or the amortization rates used;
- b. The amortization methods used;
- c. The gross carrying amount and the accumulated amortization (aggregated with accumulated impairment losses) at the beginning and the end of the period;

- d. A reconciliation of the carrying amount at the beginning and end of the period showing:
- i. Additions, indicating separately those from internal development and through amalgamation;
 - ii. Retirement and disposals;
 - iii. Impairment losses recognized in the statement of profit and loss during the period (if any);
 - iv. Impairment losses reversed in the statement of profit and loss during the period (if any);
 - v. Amortization recognised during the period, and
 - vi. Other changes in carrying amount during the period.

However, on examination, during the said inspection it is found that the Annual Reports for the financial years ended dated 31-03-2007, 31-03-2008 and 31-03-2009 that the company had intangible assets of Rs. 1,19,656 as at 31-03-2007, of Rs. 10,11,55,434/- as at 31-03-2008 and of Rs. 5,96,47,824/- as at 31-03-2009. But the company did not disclose the information relating to intangible assets as per Para 90 of the Accounting Standard 26.



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 suo-moto 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 applicant submits that the offence was committed by the Applicant Company which is not intentional and the same is not of such nature as to prejudice the interest of the members or other creditors or others dealing with the Company. The company also declared unconditionally that the offence in question does not affect the public interest in any way, and no harm is caused to the public interest.
7. In pursuant to the above inspection, the Company has filed the present application suo-moto by praying the Tribunal to allow them to compound the offence alleged to have been committed under Section 211(3A)/(3C) r/w AS 26 of the Act, on reasonable terms and conditions, as it may deem fit and just.
8. 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/2016/1812 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 for compounding of the offence u/s 211(3A)/(3C) of the Act r/w AS 26.

9. It is further stated in the report that it is first offence of the Company coming for Compounding. As per section 211(8) of the Companies Act, 1956, if any person not being a person referred to in sub-section (6) of Section 209, having been charged by the Managing Director or manager, or Board of Directors, as the case may be, with the duty of seeing that the provisions of this section and the other requirements aforesaid are complied with, makes default in doing so, 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 did not oppose the application for compounding of the offence in question and thus submitted to the Tribunal to consider the case on merits.

10. Heard Sri S. Chidambaram, learned Practicing Company Secretary for the applicants and carefully perused all the pleadings, material papers filed in its support and the relevant case laws.



11. 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 compounding offence.

12. Whether the Tribunal has 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.



13. 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 was also 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.

14. Though the Applicants contend that the compounding application was made suomotu, however, from the facts, it is understood that the same was filed after a show-cause notice was issued by the RoC.

15. With regards to the averments made in the Application that it is not likely to cause any prejudice to the Applicant Company, its members or creditors is totally not acceptable in view of the above discussions in pre-paras as the Applicant Company is a listed company having many shareholders

16. It is not in dispute that offence in question is compoundable and, the applicants have also declared in unequivocal terms 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.



17. 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 26 and with following conditions:

- a. Accordingly, we direct each applicants to pay Rs.10,000/- (Rupees Ten Thousands only) which is the maximum punishment prescribed under Section 211(8) of the said Act, which is to be paid within a period of three weeks from the date of the receipt of the copy of the order.
- b. We direct the Applicants to report 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 thereby.

No order as to costs.



Sd/-

RAVIKUMAR DURASAMY

Member (T)

Sd/-

RAJESWARA RAO VITTANALA

Member (J)

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