BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, AT HYDERABAD.

CA No. 62/621A/HDB/2016

Date of Order: 20.01.2017.

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. Motaparthy 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.62/621A/HDB/2016 was filed by the Applicants u/s 621A r/w Section 211 r/w Schedule VI, Part I the Companies Act, 1956 (which is referred as Act hereinafter).

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 Schedule VI, Part I of Section 211 of the Act. As per the said provision, the Loans and Advances are required to be classified as under:

a. Advances and Loans to Subsidiaries.

b. Advances and Loans to Partnership firms- in which the company or its subsidiaries is a partner.

c. Bills of Exchange

d. Advance recoverable in Cash/Kind or for value to be received.

e. Balances with Customs and Port Trust, etc., (where payable on demand).

-Loans and Advances considered good (in respect of which the company is fully secured)

-Loans and Advances considered doubtful or bad. (Loans due by directors/other officers of the company or any of them jointly or severally with any person or loans due by firm/private company in which any director is a partner/director/member).

- Loans and advances due from companies/subsidiary companies-maximum amount due by director or any officer at any time during the year shown by way of a note.

However, on examination, during the said inspection it is found that Schedule 8 of the Annual Report for the financial year ended dated 31-03-2007, Schedule 11 of the Annual Reports for the financial years ended dated 31-03-2008, and 31-03-2009 that the details of loans and advances were not furnished as stated above, thus the provisions of Section 211 were contravened.

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. 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/2016/1813 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 under schedule VI, Part I of Section 211 of the Act.

8. 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 such person as is referred to in sub-section (6) of Section 209 fails to take all reasonable steps to secure compliance by the Company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with other requirements of this Act as to matters to be stated in account, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both. Ultimately, 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.

9. 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.

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 compounding offence.

11. 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.

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 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.

13. 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.

14. 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.

15. 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.

16. 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 schedule VI, Part I of Section 211 of the Act and with following directions:

    a. We direct 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 compliance of the same to the Registry of NCLT.

    c. The applicants are also warned to be careful and not to repeat any violation in future else serious view will be taken thereby.

    No order as to costs.

Sd/-

RAVIKUMAR DURAISAMY

Member (T)

Sd/-

RAJESWARA RAO VITTANALA

Member (J)

V. Annapoorna

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