

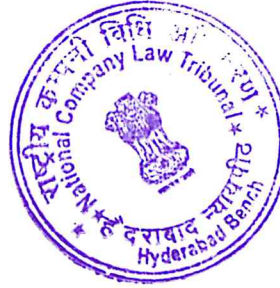
**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

CA No. 09/621A/HDB/2016

Date of Order: 17.03.2017

In the matter of:

1. Deccan Chronicle Holdings Limited
36, Sarojini Devi Road,
Secunderabad – 500003, Telangana
2. Mr. Tikkavarapu Venkatram Reddy,
Chairman
Plot No. 54, H.No-8-2-703/A-6/C
Road No.12, Banjara Hills
Hyderabad- 500034, Telangana
3. Mr. Tikkavarapu Vinayak Ravi Reddy,
Vice chairman and Managing Director
Plot No. 53, H.No-8-2-703/A-6/C
Road No.12, Banjara Hills
Hyderabad- 500034, Telangana
4. Mr. Karthik Iyer Parasuram,
Vice Chairman
H.No-8-2-283/B/5, Plot No.2
Road No. 3, Banjara Hills
Hyderabad – 500034, Telangana



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

.... Applicants

Counsel for the Applicants

....

Mr. Alok Dhir along with

Mr. Siva. K. Gopinathan

Mr. A.S.Prashanth

Mr. Amir Ali Bavani

CORAM:

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

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



ORDER

(As per Ravikumar Duraisamy, Member (Tech))

1. The present Company Application is filed before the then Hon'ble Company Law Board, Chennai (CLB). Since the National Company Law Tribunal (NCLT), Hyderabad has been constituted for the cases pertaining to the states of Telangana and Andhra Pradesh, the case is transferred to this Bench. Hence, we have taken it on records of NCLT, Hyderabad Bench and deciding the case.
2. The present application is filed by the Applicants under Section 621A of the Companies Act, 1956 for compounding the offences under Section 217 of the Companies Act, 1956 before the Hyderabad Bench of NCLT, praying the Tribunal to take a lenient view in compounding the offences committed under the Companies Act, 1956.
3. The brief facts of the case as averred in the Application are as follows:
 - a. Deccan Chronicles Holdings Limited (hereinafter referred to as "Company") was incorporated on 16th December, 2002, under the provisions of the Companies Act, 1956 and registered as a Limited Company with the

Registrar of Companies, Hyderabad (RoC) having CIN L22122AP2002PLC040110.

- b. The present Authorised Share Capital of the Company is Rs. 70,00,00,000/- (Rupees Seventy Crore only) divided into 35,00,00,000 Crore (Thirty Five Crore) Equity Shares of Rs. 2/- each out of which Rs. 41,79,44,438/- (Forty One Crores Seventy Nine Lakhs Forty Four Thousand Four Hundred Thirty Eight only) divided into 20,89,72,219 (Twenty Crores Eighty Nine Lakhs Seventy Two Thousand Two Hundred and Nineteen only) Equity Shares of Rs.2/- each have been issued and have been fully subscribed and paid up.

- c. The main objects of the Applicant Company are to carry on business of printers and publishers of newspapers, magazines, periodicals, journals, books and pamphlets and other library works in different languages and to carry on all or any of the business of printers, publishers, stationers, lithographers, typefounders, sterotypers, electrotypers, off-set printing, photographic printers, photolithographers, chrome-lithographers, engravers, diesinkers, book binders, card printers, Calendar printers, translators, paper and ink and or other stationery goods, book sellers, advertising agents, Engineers, and dealers in or manufacturers of or importers and exporters of any other article, goods, finished or unfinished or other things of a character or kind similar or analogous to the forgoing of any of their connected directly or indirectly with them, etc.



d. Section 217(1) (d) reads as follows:

Material changes and commitments, if any; affecting the financial position of the Company which have occurred between the end of the financial year of the company to which the balance sheet relates and the date of the report.

e. Section 217 (2) reads as follows:

The board's report shall, so far as is material for the appreciation of the state of the Company's affairs by its members and will not in the Board's opinion be harmful to the business of the company or of any of its subsidiaries, deal with any changes which have occurred during the financial year.

(a) in the nature of the Company's business;

(b) in the Company's subsidiaries or in the nature of the business carried on by them; and

(c) Generally in the classes of business in which the company has an interest.

f. The Applicants submitted that the Board of Directors of the Company at its meeting held on 11.06.2009 had taken note of Deccan Chronicle Bangalore Limited (DCBL) becoming subsidiary of the Company with effect from 25.04.2009;

It is further submitted that Investment in Deccan Chronicle Bangalore Limited is comparatively small with reference to the size of the Company and its total investment, and further submits that the investment in DCBL has been correctly treated in the financial statements of the Company in line with



Accounting Standard-13 issued by the ICAI and the guidance note then in force.

It is also submitted that failure to make a report in the Directors' Report about the material changes and commitments with respect to subsidiary company namely DCBL was only due to inadvertence and there was no other intention to violate the provisions of Section 217 of the Companies Act 1956.

g. A Show Cause notice No.RAP/209A/DROC(SRD)/CK/DCHL/Sec.217(193)/2014/1148/9, dated 05.08.2014, issued by the Registrar of Companies, Hyderabad for Andhra Pradesh and Telangana, and subsequently, the present application is filed for compounding of offence under Section 621 A of the Companies Act, 1956.

h. It is further submitted that the Management of the Company had taken all reasonable/necessary steps to ensure compliance of Section 217 of the Companies Act, 1956 in future and that the said default was neither intentional nor wilful but due to inadvertence.

4. We have heard the Learned Counsel for the Applicants, perused the RoC report and connected case records.
5. The RoC, in its report vide RAP/Legal/621A/DCHL/Sec217/C24318297/2016/414 dated 11.04.2016, , has stated that "the Applicants have not clearly mentioned in their Petition as to how the offences were made good and that while the Tribunal is considering the compounding application, the Applicants may be put to strict proof of the same." The RoC has mentioned that on 06.10.2014, vide

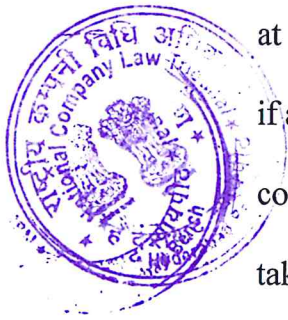


SRN C24318297, the Company and its Directors have submitted an application under Section 621A of the Companies Act, 1956 for compounding the offence under Section 217 of the Companies Act, 1956. It is also stated that the Company was ordered for inspection under Section 209A of the Companies Act, 1956 vide Ministry's letter No. F.No.7/345/2012-C:/II dated 13.09.2012.

While inspecting the books and records of the company, it is noted that the Board of Directors in Board Report dated 30.6.2009, on the balance sheet as at 31.3.2009 failed to make report about the material changes and commitments, if any, affecting the financial position of the Company in respect of its subsidiary company namely Deccan Chronicle Bangalore Limited. Although the matter was taken to DCHL vide letter dated 17.05.2013 and 04.07.2013, the reply of the company was not satisfactory. Accordingly, the Company and its officers rendered themselves liable for action under Section 217(5) of the Companies Act, 1956.

In addition, the RoC report specifies that if a Company fails to take all reasonable steps to comply with provisions of sub-section (1) to (3), or being the Chairman signs the Board Report otherwise than in conformity with the provisions of sub-section (4) of Section 217 of the Companies Act, 1956, as per Section 217(5), he shall in respect of each offence be punishable with imprisonment which may extend to six months or fine which may extend to twenty thousand rupees or with both.

6. During the hearing, Mr. Alok Dhir, Learned Senior Counsel for the Applicants made the following submissions:



- a. Since, DCBL became a subsidiary of the Applicant Company w.e.f. 25.4.2009, the same could not have any material effect on the financial position of the Applicant company for the year 31.3.2009.
- b. In pursuant to the resolution dated 21.02.2007 and due consent of the Board, an amount of Rs.8,03,70,000/- was invested by the Applicant Company in DCBL in 2007 itself.
- c. Since DCBL was amalgamated with the Applicant Company in the very same financial year in which it became a subsidiary of the Applicant Company, i.e. Financial Year 2009-10, no violation of the provisions of Section 217 of the Companies Act, 1956 has been committed by the Applicants in the instant case.
- d. It is further submitted that, as per the applicable provisions of law in the year 2009, there was no requirement of informing material events as to the investment of the Applicant Company in DCBL to the Stock Exchange as such and accordingly, the acquisition of shares of DCBL was not filed with the Stock Exchange.
- e. That at the time of sanctioning of the Scheme of Amalgamation, due advertisement and notice was issued to public at large in terms of the provisions of the Companies Act and thus, there has been no alleged non-disclosure on the part of Applicants.
- f. With regards to the application being filed suo-moto, the learned counsel submits that no proceedings in pursuance to the said Show Cause Notice have been initiated, nor any prosecution has been filed and even the RoC report



has specifically admitted that no prosecution is pending against the Applicants.

g. He further submits that on the account of mere technicality, they are being accused that on 30.06.2009, i.e. the date of Directors' Report qua Financial Year 31.03.2009, the Applicants have failed to disclose the fact that DCBL has become a subsidiary of the Applicant Company.



h. In addition, the Directors' Report attached to the Financial Year 31.03.2010, specifically states and brings to the notice of all concerned the factum of DCBL being a subsidiary of the Applicant Company and the order dated 12.03.2010 of the Hon'ble High Court of Andhra Pradesh sanctioning the scheme. Therefore, the technical default, if any, has been rectified and made good and thus there is neither any requirement nor any occasion to initiate any further proceedings against the Applicants.

7. Though the Applicants have stated that the present Application is filed suo-motu under Section 621A of the Companies Act, 1956 but it is noted that they have come before this Tribunal only after a show cause notice dated 05.08.2014 was issued by RoC. Further, para 9(d) of the Form No. GNL-1 states that the application is being filed in pursuance to the notice received from RoC.

8. The Directors Report dated 11.06.2009 did not contain the fact that the DCBL has become a wholly owned subsidiary of Deccan Chronicle Holdings Company Limited w.e.f. 25.04.2009 for the period ending 31.03.2009. Further the balance

sheet submitted by the applicant for the financial year 2009-10 in the Directors Report dated 13.08.2010 under the heading of amalgamation of subsidiary, the fact that DCBL (which became a subsidiary during the year under review) amalgamated with DCHL along with few other subsidiary companies and the scheme of amalgamation was sanctioned by the Hon'ble High Court of AP vide Order dated 12.03.2010. However, the fact of the same was mentioned in the Directors' report for the year ended 31.03.2010 dated 11.08.2013. Therefore, the contention of the applicant is accepted and as prayed by the applicant in the application a lenient view is taken while considering the quantum of penalty. The said information was placed on public dominion at a relevant time due to publication of voting on the scheme of merger and subsequently in their balance sheet as on 31.03.2010 and the Directors' report attached there to, this fact has been stated and the default if any has been duly rectified and made good.

The investment of Rs.25 00,00,000/- in DCBL is not disclosed to the stock exchange and the applicant contended that there is no requirement for the same.

9. With regard to the question whether NCLT has full powers to compound offences attracting imprisonment or fine or both, even without referring to any Criminal Court or Special Courts was already discussed by this Bench in detail in the matter of Cambridge Technology Enterprises Limited (CA No. 59/621A/HDB/2016) order dated 21.12.2016. Therefore, to avoid repetition of the stand already taken by this Tribunal, we deem fit not to elaborate the same in this Order.



10. In view of the above facts, contentions of the Counsel and the disclosure made in the Directors' Report dated 13.08.2010 and steps taken to ensure future compliance we are inclined to compound the application with following directions:



a. We direct the Company and its three directors to pay Rs.10,000/- each, towards compounding fee.

b. All the Applicants are required to pay the compounding fee within a period of two weeks from the date of receipt of the copy of the order and report compliance of the same to the Registry of NCLT.

In terms of above, the CA No. 09/621A/HDB/2016 is disposed of.

Sd/-

RAVIKUMAR DURASAMY

MEMBER (T)

Sd/-

RAJESWARA RAO VITTANALA

MEMBER (J)

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