

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

CA No. 08/621A/HDB/2016

Date of Order: 24.03.2017

In the matter of:

1. Deccan Chronicle Holdings Limited (DCHL)
36, Sarojini Devi Road,
Secunderabad – 500003, Telangana

2. Mr. Tikkavarapu Venkatram Reddy,
Chairman of DCHL
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 of DCHL
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 of DCHL
H.No-8-2-283/B/5, Plot No.2
Road No. 3, Banjara Hills
Hyderabad – 500034, Telangana

.... Applicants

Counsel for the Applicants

....Mr. Siva. K. Gopinathan

Mr. A.S.Prashanth

Mr. Amir Ali Bavani

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL



CORAM:

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

Hon'ble Mr. Rajeswara Rao Vittalana, 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 209(1)(d) 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 (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, stereotypers, 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. The Company had invested in “Deutsche Bank Mutual Fund” and in this regard the company had not passed any specific resolution to invest in the Deutsche Bank Mutual Fund and hence it is submitted that, they have contravened the provisions of Section 292(1)(d) of the Companies Act, 1956.
- e. It is further submitted that not passing of a specific resolution to invest in Deutsche Bank Mutual Fund as per Section 292(1)(d) of the Companies Act, 1956 was due to urgency and due to lack of time for holding a specific Board Meeting for consideration and invest the funds with Mutual Fund and there was no other intention to violate the provisions of the Companies Act, 1956.
- f. The Applicants also submit that the default committed under Section 292(1)(d) of the Companies Act, 1956 has been made good, and accordingly, the Petitioners filed the present application for compounding of offence under Section 621A of the Companies Act, 1956.



4. We have heard the Learned Counsel for the Applicants, perused the RoC report dated 11.04.2016 and other connected case records available in the file.
5. The RoC, while affirming the contentions made in the petition, 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 C24329864, the Company and its Directors have submitted an application under Section 621A of the Companies Act, 1956 for compounding the offence under Section 292(1)(c) of the Companies Act, 1956. It is also stated that the Company was ordered for inspection under Section 209A of the Act 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, the Inspecting officers pointed out that the Ledger Account of ‘Advertisement Control’ in DCHL on 25.06.2008- Voucher No. DCH/H/08-09/00448, there was an entry for Rs.516,05,88,853/- with narration ‘being funds transferred’ which was transferred to ICICI Bank Account No. (9347) from which Rs.250 Crores were transferred on 26.06.2008 to a newly opened account on 20.6.2008 at Deutsche Bank Ltd. (A/C No. 000004760420019) and there from money was transferred and invested in Deutsche Bank Mutual Fund A/C No.0533471000 for investments into credit opportunities funds on 26.06.2008 itself. It was observed from the minutes of Board Meeting that there is no specific Board Resolution passed authorizing the aforesaid investment in Mutual Fund. Although the matter was taken to DCHL vide letter dated 17.05.2013, the reply of the company was not satisfactory. Accordingly, the Company and its officers rendered themselves liable for action under Section 292(1)(c) of the Companies Act, 1956.

The RoC has also mentioned that a show cause No. RAP/209A/DROC(SRD)/ CK/DCHL/Sec.292/2014/1148/2 dated 05.08.2014 was issued to the Company and its four directors.

In addition, the RoC report specifies that if a Company fails to comply with the provisions of Section 292, as per Section 629A of the Companies Act, 1956, the company and every officer of the Company who is in default shall be punishable with fine which may extend to five thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day during which the contravention continues.

6. An amount of Rs.25,00,00,000/- was invested by the Applicant Company in "Deutsche Bank Mutual fund" on 26.06.2008. The applicants have also submitted a copy of the ledger for the period from 01.4.2008 to 31.03.2011 evidencing making the said investment. From the same ledger it is also observed that an amount of Rs.1.12 crores approximately was received as dividend on 30.09.2008.



During the hearing held on 09.03.2017, the Applicants were granted liberty to place on record certain material facts along with relevant document for due consideration of this Bench with respect to the alleged offence made good.

Accordingly, an affidavit dated 17.03.2017 was filed, wherein the Applicants No. 2,3 and 4 made following submissions:

- i. It is stated that the alleged offence has been made good on account of following reasons:
 - a. The Applicants in terms of the Board Resolution dated 5.12.2005 were having a general authority and power to invest the funds of the Company. As per the said Resolution, the investment could be duly made for and on behalf of the Applicant Company by the Applicants herein.
 - b. The amount which was invested by the Applicant Company in Deutsche Bank Mutual Fund, has been duly realised along with interest and thus the alleged offence has been made good.

c. In the present case, even otherwise, no fresh Board Meeting can take place in view of the pending proceedings of the Applicant Company before the Hon'ble Principal Bench, NCLT, New Delhi (Company Law Board, New Delhi) in CP No.3 of 2014 wherein in terms of the undertaking given by the Applicant Company, restrained the convening of any Board Meeting vide its Order dated 10.09.2014. The Applicant Company accordingly w.e.f 10.09.2014 has not convened any further board Meetings.

ii. Section 292(1)(d) of the Companies Act, 1956 does not envisage any post facto consent as the alleged offence has been duly made good by the Applicants herein.

iii. The present Application was filed on 06.10.2014, immediately after issuance of the Show Cause Notice dated 05.08.2014 and no proceedings in pursuance of the said show cause notice have been initiated, nor any prosecution has been filed. Hence, Application is filed on suo moto basis.

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 applicants have submitted that due to urgency and due to lack of time for holding a specific Board meeting and there was no other intention to violate the provisions of the Companies Act, 1956. We have also taken note of the submission that the management of the company had taken all reasonable necessary steps to ensure compliance of Section 292 (i) (d) of the Companies Act, 1956 in future.

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 submission of facts and steps taken to ensure future compliance we are inclined to compound the application with following directions:

- a. We direct the Applicants i.e., the Company and its Directors to pay Rs.2 lakhs each, totalling to Rs.8 lakhs towards compounding fee.
- b. All the Applicants are required to pay the compounding fee within a period of three weeks from the date of receipt of the copy of the order and report compliance of the case 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.

In terms of above, the CA No. 08/621A/HDB/2016 is disposed of.

Sd/-

Sd/-

RAVIKUMAR DURASAMY

RAJESWARA RAO VITTANALA

MEMBER (T)

MEMBER (J)



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