

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

CA No.83/441/185/HDB/2016

Date of Order: 23.01.2017

Between

Global Clinical Research Services Private Limited
Door No.6-1-1070/1 to 4,
Beside R.R. District Collector Office,
Lakdikapool, Hyderabad – 500 033

..... Applicant

And

The Registrar of Companies
for the States of Andhra Pradesh and Telangana
Second Floor, Corporate Bhawan,
GSI Post, Bandlaguda, Nagole,
Hyderabad – 500 068.

.... Respondent

Counsel for the Applicant

... Shri A. Nagaraj Kumar, Advocate

CORAM:

HON'BLE Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDICIAL)
HON'BLE Mr. RAVIKUMAR DURASAMY, MEMBER (TECHNICAL)

ORDER

[As per Ravikumar Duraisamy, Member (T)]

1. The Company Application bearing No.83/2016 is filed by Global Clinic Research Services Private Limited, under Section 441 of the Companies Act, 2013 read with Rule 88 of NCLT Rules, 2016 by inter-alia seeking direction to dispose of the present Company Application by declaring that there was no violation or contravention, requiring compounding of the offence; compound the offence in issue, if the Tribunal finds that there is a violation/contravention of Section 185 of the Companies Act, 2013 etc.



2. Heard Shri A. Nagaraj Kumar, Counsel for the Applicant and also carefully perused the pleadings along with the supporting documents.
3. The learned Counsel for the applicant submits that M/s Global Clinical Research Services Private Limited (CIN U85110TG2006PTC050946) was incorporated as a Private Limited Company on 23.08.2006 with an authorised share capital of Rs.2,50,00,000/- of 25,00,000 equity shares of Rs.10/- each. The main objects of the Company are to establish effective central clinical drugs, storage and supply of management services etc. One of the Directors of the applicant company was also a director in Sonu Infra Projects and Builders Private Limited (SIPBPL). The SIPBPL has paid an amount of Rs.1,41,78,458/- on behalf of the Applicant Company to its lender in full and final settlement of a loan.
4. The learned Counsel further submits that the Auditor of the Applicant Company in his reports for the period ending 31.03.2014, 31.03.2015 and 31.03.2016 stated that one of the directors of the Applicant Company was interested in SIPBPL at the time of payment of the above said loan and it was stated that it was in contravention of Sub-Section (1) of Section 185 of the Act.
5. The learned Counsel contend that SIPBPL being a private Company and not a subsidiary of public company, Section 295 of Companies Act, 1956 is not applicable for any loan made by and between two private companies and thus there is no violation of Section 295 of the Companies Act, 1956. The corresponding Section 185 of Companies Act, 2013 has come into force on 12.09.2013 and it has no retrospective effect. He relied upon the judgement of the CLB in A.Srisailam Vs. Registrar of Companies (1995) (83) Company Cases 141 (CLB). He further submits that the Company has repaid the said amount of Rs.1,41,78,458/- to SIPBPL and thus the offence is also made good.



6. The learned Counsel, while arguing the case submitted that there is no violation of alleged offence in question and thus he prayed the Tribunal to declare that there is no offence is committed by the Company.
7. The Registrar of Companies, Hyderabad (RoC) has submitted a report vide ROCH/Legal/Sec185(2)/441/GCRPL/Stack/2017/4867 dated 12.0.2017, stating that the Applicant has not admitted the violation and hence, the Tribunal may decide the Company Application on merits.
8. It is not in dispute that the Tribunal is empowered to permit the Company or any officer who is in default to compound alleged offence(s) with fine, either before or after the institution of any prosecution by Registrar of Companies, under Section 441 of the Companies Act, 2013. One of pre-requisite for filing an Application under Section 441 is that the Company/officer-in-default has committed an offence in question and then seek composition of such an offence. In the instant case, the learned Counsel insist that the applicant company has not committed the offence in question as explained above and there is no question of payment of any compounding fee. We are of the considered view that the Tribunal cannot give any declaration declaring that the Company has not committed any offence, but only, it has power to permit composition of alleged offence provided the concerned party come forward admitting alleged offence and expressing willingness to pay compounding fee prescribed for such offence as directed by the Tribunal.
9. The learned Counsel further submit that he would discuss the issue with the Auditor/ approach the Registrar of Companies seeking to settle the issue in question and thus he may be permitted to withdraw the present company application by granting liberty to approach this Tribunal again, in accordance with law.





10. In view of the above facts and circumstances of the case, the Company Application bearing No.83/441/185/HDB/2016 is disposed of as withdrawn with a liberty to approach this tribunal, in accordance with law. No order as to costs.

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

Sd/-

RAVIKUMAR DURASAMY

MEMBER (T)

Sd/-

RAJESWARA RAO VITTANALA

MEMBER (J)

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