

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

C.A.NO. 61/CB/621A/2016

TA No.155/HDB/2016

Date of Order: 28 .02.2017

Between:

Sh. S. Vasu Reddy,
Ex-Company Secretary of Hetero Drugs Limited
C/o K R VV S Reddy,
1st Floor, D.No:1-3-237/238,
Tallabasti, Kavadiguda,
Hyderabad-500 080, Telangana

... Applicant

AND

The Registrar of Companies, Hyderabad,
For Andhra Pradesh & Telangana,
2nd Floor, Corporate Bhawan,
GSI Post, Tattiannaram,
Nagole, Bandlaguda,
Hyderabad -500 068, Telangana



... Respondent

Counsel for the Applicant

.. Mrs. Lakshmi Subramanian, PCS
and Mr. P.S.Shastry

CORAM

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

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

ORDER

(As per Ravikumar Duraisamy, Member (T))

1. The Application was initially filed before the then Hon'ble Company Law Board, Chennai Bench, Chennai (CLB). Since the National Company Law Tribunal, Hyderabad Bench (NCLT) has been constituted for the cases pertaining to states of Andhra Pradesh & Telangana, the case is transferred to NCLT. Hence, we have taken it on records of NCLT and deciding the case.
2. The present application has been filed Under Section 621A read with Section 372A(5) of the Companies Act, 1956 by praying to compound the non-compliance of the Section 372A(5) of the Companies Act, 1956.
3. The brief facts of the case as averred in the application are as follows:-
 - (a) Hetero Drugs Limited, the Applicant Company was originally incorporated under the Companies Act, 1956 on 06.04.1993 with the Registration No.01-015582 in the State of Andhra Pradesh. The Registered Office of the Company is situated at 7-2-A2, Hetero Corporate, Industrial Estate, Sanathnagar, Hyderabad-500018, Telangana.
 - b) Authorised Share Capital of the Applicant Company is Rs. 10,00,00,000/- (Rupees Ten Crores Only) divided into 1,00,00,000 (One Crore) Equity Shares of Rs. 10 (Rupees Ten) each. Issued, Subscribed and Paid up capital is Rs.3,45,00,000/- (Rupees Three



Crores Forty Five Lakhs Only) divided into 34,50,000 (Thirty Four Lakhs Fifty Thousand) Equity Shares of Rs, 10/- (Rupees Ten) each. The present business activities of the company is to carry on the business to manufacture, sell, deal export and import in all types of chemicals, drugs, pharmaceuticals, pesticides and dyestuffs and other intermediates.

c) The Applicant also state that in the opinion of the Management, the company has not violated any of the applicable provisions of the Companies Act, 1956 since the violation pointed out by the O/o The Registrar of Companies was due to the mis-understanding that the company has not maintained the Investment Register, to be maintained under section 372A(5). The company has since clarified in its response that it has duly maintained the Investment Register. Subsequently, the company had made a compounding application for compounding the alleged offence committed under Section 372A(5) of the Companies Act, 1956. Hence in order to buy peace, the applicant (Sh. S. Vasu Reddy, Company Secretary), along with the company (Hetero Drugs Limited), has decided to make an application before the Registrar of Companies, for compounding the alleged offence committed under section 372A(5) of the Companies Act, 1956.



4. We have heard Mrs. Lakshmi Subramanian, Practicing Company Secretary and also perused the report submitted by the Registrar of

Companies, Hyderabad (RoC) vide proceedings No.RAP/Legal/621A/HeteroDrugs/Sec372A5/2015 dated 10-12-2015.

5. The RoC, while reiterating the contentions raised in the application, has stated that the said company was ordered for Inspection under section 209A of the Companies Act, 1956 by Ministry of Corporate Affairs, vide Ministry's letter No.5(15)/AP/209A/2012 dated 17.06.2014. While inspecting the books and records of the company, it was observed by the Inspecting Officers that the company not maintained register showing the particulars in respect of every investment or loan made, guarantee given or security provided by it in relation to investment made in Jagati Publications Private Limited. Therefore, the company and its officers in default rendered themselves liable for action under section 372A(5) of the Companies Act, 1956. The Office of RoC has issued Show Cause Notice to the company and its directors on 30.08.2013. RoC has also stated in their report that the applicants have not clearly mentioned in their petition as to how the offence was made good, while considering the compounding application, applicants may be put to strict proof of the same.

6. The RoC, in its Show-Cause Notice (Ref No:RAP/DROC(D)/209A/2013/1063) dated 30.08.2013, has stated that the purpose, terms of the investments is to be mentioned along with other particulars of the investments in the investment register to be maintained under section 372A(5) of the Companies Act, 1956. The show-cause notice



further stated that the investment of Rs.6,75,00,000/- (Rupees Six Crores and Seventy Five Lakhs only) made by the company in the shares of Janani Infrastructure Private Limited and Jagati Publications Private Limited (which at the time of investment was a Private Limited Company and subsequently converted into a Public Limited Company), prima facie, appear to be in violation of Memorandum of Association (ultra-vires), read with section 291, 372A(1), 372A(2), 372A(5), 209 & 211 and General Circular No.8/99 dated 04.06.1999.

7. Further, written submission has been received from Mrs. Lakshmi Subramanian on behalf of Shri. S. Vasu Reddy (Applicant), stating that the applicant has resigned as a Company Secretary of the company in question effective from 01.04.2008. He was a Company Secretary at the time of the investment made. Since the applicant was Company Secretary at the time of investment, he was also served a copy of the show cause notice dated 30.08.2013. Show Cause Notice was not received personally by the Applicant as the Applicant migrated to USA and settled there. Subsequently the applicant came to know that the company and some of the directors had filed compounding applications before the Company Law Board and non-compliances were compounded considering the directors applications along with the application of the company.



8. The applicant further submits that the Company Law Board, Chennai Bench has considered the compounding applications of the company and few directors of the company have compounded the non-compliances vide its order dated 18.09.2015. Though the applicant had resigned on 01.04.2008, has made compounding application with a view to discharge from the list of defaulters appearing in RoC and to buy peace.
9. Sh. Pullela S Shastry, Associate Partner of Mrs. Lakshmi Subramanian & Associates, Chennai, has filed a Memo, stating that the applicant received Show Cause Notice (30.08.2013) from the RoC for the violation under Section 372A(5) of the Companies Act, 1956. Whereas against the Show Cause Notice, the compounding application was made before the Company Law Board, Chennai Bench by the company and its directors vide CA No.49/621A/CB/2015 & CA No.50/621A/CB/2015 for the violation under 372A(5) of the Companies Act, 1956 which was compounded.
10. We have carefully considered various pleadings made in the application and the submissions made by the Learned Practicing Company Secretary. We have also considered the submissions of the Applicant that he has migrated to USA and settled there. The company has further reiterated that they have duly maintained the investment register under section 372A(5) of the Companies Act, 1956 and the company was not in a position to provide its records as the same were



in the custody of CBI (which appears to be a peculiar situation). Moreover, the investment made in Jagathi Publications Private Limited and Janani Infrastructures Private Limited was in terms of Equity share capital and the copy of the ledger/ Investment Register was also submitted to this Bench.

11. In view of the above facts and circumstances of the case, CLB had already compounded the alleged offence of the Company as well as other few Directors and in the interest of justice, we are inclined to permit the applicant to compound the alleged violation as mentioned above by paying the compounding fee.

- a. We direct the applicant to pay Rs. 10,000/- (Rupees Ten Thousand only) within a period of 3 weeks from the date of receipt of copy of this order and report the compliance of the same to the Registry of NCLT.
- b. The applicant is also warned to be careful in the future and if such conduct is ever repeated, then appropriate proceedings shall be initiated and a serious view shall be taken.

In terms of above, the application is disposed of.

Sd/-

Sd/-



RAVIKUMAR DURASAMY
MEMBER (T)

RAJESWARA RAO VITTANALA
MEMBER (J)

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