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

C.A.NO. 65/CB/621A/2016

TA No.159/HDB/2016

Date of Order: 28.02.2017

Between:

Sh. B. Nagi Reddy,
Ex-Director of Hetero Health Care Limited
Plot No.145, Road No.72,
Jubilee Hills,
Hyderabad-500072, Telangana

.. Applicant

AND

The Registrar of Companies, Hyderabad,
For Andhra Pradesh & Telangana,
2nd Floor, Corporate Bhawan,
GSI Post, Tattiannaram,
Nagole, Bandlaguda,
Hyderabad- 500068, 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)

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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, Hyderabad Bench 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 Healthcare Limited was originally incorporated under the Companies Act, 1956 on 24.03.2006 with the Registration No.01-049614 in the State of Andhra Pradesh and the Corporate Identity Number (CIN) of the company is U52520TG2006PLC049614. 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. 2,00,00,000/- (Rupees Two Crore Only) divided into 20,00,000



(Twenty Lakhs) Equity Shares of Rs. 10 (Rupees Ten) each. Issued, Subscribed and Paid up capital is Rs.1,98,00,000/- (Rupees One Crore Ninety Eight Lakhs Only) divided into 19,80,000 (Nineteen Lakhs Eighty Thousand) Equity Shares of Rs. 10/- (Rupees Ten) each. The present business activities of the company is to manufacture cosmetics, health care product and such other product including veterinary products and to market in wholesale or in retail the said products and to export all kinds of such products as general merchants and traders in such goods and commodities on ready or forward basis, commission agents, buying and selling agents, brokers, importers and exporters and to act as manufacturers' representatives.

- (c) The Applicant also states 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 (RoC) 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. B. Nagi Reddy), along with the company (Hetero Healthcare Limited), has decided to make an application before the RoC in Form GNL-1 vide SRN C66940255 dated 15.10.2015, for



compounding the alleged offense 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 RoC vide proceedings No. RAP/Legal/621A/HeteroHealth/Sec372A5/2015/2110 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 in its report dated 10.12.2015 has also stated 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/2013/1056) 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.

Moreover, the show-cause notices further stated that the investment of Rs.1,00,00,000/- (Rupees One Crore Only) made by the company in the shares of 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. B. Nagi Reddy (Applicant), stating that the applicant has resigned from the Board of Directors of the company effective from 24.09.2009. He was a director at the time of the Investment made. The company was inspected by the Ministry of Corporate Affairs and issued show cause notice to the company and also to the directors of the company. Since the applicant was also



director at the time of investment, he was also served a copy of the show-cause notice dated 30.08.2013.

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 24.09.2009 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, Associated Partner of M/s. Lakshmmi Subramanian & Associates Chennai, has filed a Memo in the matter of the said company, stating that the applicant received Show Cause Notice (30.08.2013) from the RoC, Andhra Pradesh for the violation under section 372(5) of the Companies Act. Whereas against the Show Cause Notice as referred above, the compounding application was made before the Company Law Board, Chennai Bench by the company and its directors vide CA No.53/621A/CB/2015 & CA No.54/621A/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. The Applicant reiterated that the Company has

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). We have also considered the request of the Applicants to levy the same compounding fee as laid by CLB vide its Order dated 18.9.2015.

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/-

RAVIKUMAR DURAISAMY
MEMBER (T)

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (J)

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

