

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

CA No. 75/621A/HDB/2016

Date of Order: 30.01.2017

Between

1. Prudential Sugar Corporation Limited
Akash Ganga, Plot #144
4th Floor, Srinagar Colony
Hyderabad – 500016, Telangana
2. Mr. Vinod Kumar Baid
5, Lovelock Place
Kolkata – 700019, West Bengal
3. Mr. Kurra Subba Rao
R/o 7-1-414/3/403, Ameerpet
Hyderabad – 500016
4. Mr. Sandeep Kumar Daga
A5, Flat- 301, Arihant Enclave
493B, G.T. Road, Shibpur
Howrah – 711102, West Bengal

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

.... Applicants

AND



The Registrar of Companies
For the States of Andhra Pradesh & Telangana
Second Floor, Corporate Bhawan
GSI Post, Bandlaguda
Nagole, Hyderabad – 500068

.... Respondent

Counsel for the Applicants:

Sh. Y Suryanaraya

CORAM:

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

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

ORDER
(As per Ravikumar Duraisamy, Member (T))

1. This application was initially filed before the Hon'ble Company Law Board Chennai Bench, Chennai. Since the NCLT Hyderabad Bench has been constituted for the cases pertaining to the States of Andhra Pradesh and Telangana, the case is transferred to Hyderabad Bench, hence, we have taken the case on records of NCLT, Hyderabad Bench and deciding the case.
2. The present Company Application No.75 of 2016 has been filed by the Applicant Company, Mr. Vinod Kumar Baid, Mr. Kurra Subba Rao and Mr. Sandeep Kumar Daga (hereinafter referred to as "Applicants").under Section 621A read with Regulation 40(1) of the Company Law Board Regulations, 1991 for compounding of the offences under Section 159 of the Companies Act, 1956 (hereinafter referred to as "The Act") by praying the Tribunal to take lenient view while imposing penalty for the above mentioned violation of the provisions of the Act.



3. The brief facts of the present Application are as follows:
 - a. The Applicant Company was incorporated as a private limited company on 03.12.1990, under the Companies Act, 1956 with the corporate Identity No. L15432TG1990PLC032781
 - b. The main objects of the Applicant Company are to manufacture sugar and allied products from beetroot, sugarcane, gur, molasses and other

substance or produce or chemicals whatsoever, to establish, erect, build, operate, manage and run factories for manufacture of sugar and by-products, etc.

- c. As per Section 159 of the Companies Act, 1956, the Applicant Company is required to file its Annual Return for the Financial year ending March 31, 2011 within 60 days from the date of conclusion of Annual General Meeting with the Registrar of Companies, Hyderabad (RoC).
- d. The Applicant Company has committed a default of Section 159 of the Companies Act, 1956 by not filing the Annual Return for the Financial Year ended March 31, 2011 with the RoC on or before 29th November, 2011, however the Applicant Company has filed it vide SRN Q77449023 with Additional fee of Rs. 7200 as a penalty with RoC on 26.02.2016 i.e. 1551 days later than it ought to have filed the same.
- e. As per Section 162 of the Companies Act, 1956, if a company fails to comply with the provisions of Section 159, the Company and every officer of the Company who is in default shall be punishable with fine which may extend to Rs.500 for every day during which the default continues.
- f. The Applicants submit that the Applicant Company has not filed the Annual Return within the due time since the person in charge has left the organization without discharging his duties and now the Directors realized that they committed contravention of non-compliance of



Section 159 of the Companies Act, 1956 which is purely unintentional and inadvertent.

- g. The Applicant Company submits that there is no mens rea and it unequivocally declares that the offences committed by it do not affect the public interest in any way, and no harm is caused to the public interest.
- h. The Applicants further submit that they have shown their commitment to comply with the requirements of the Companies Act by promptly taking all necessary action to fulfil the requirements of the relevant section of the Act and suomoto taking all the necessary steps to make the present application for compounding the offences under Section 621A of the Companies Act, 1956. Furthermore, the management of the Applicant Company has taken actions and implemented policies designed to prevent any future defaults.
- i. The Applicants have prayed the Tribunal to take lenient view while imposing penalty as the Company made good the violation by filing the due return with additional fee of Rs. 7200 and also prayed that the present application be considered expeditiously by the Hon'ble Board.



4. We have heard Mr. Y Suryanarayana, Learned Counsel for the Applicants and perused the RoC report dated 24.10.2016 and the connected case records.

5. The RoC, while affirming the facts of the case, has stated that the Company Prudential Sugar Corporation Limited, Mr. Vinod Kumar Baid, Whole Time Director, Mr. Kurra Subba Rao, Whole Time Director and Mr. Sandeep Kumar Daga, Company Secretary have submitted an application under Section 621A of the Companies Act, 1956 for compounding the offence under Section 159 of the Companies Act, 1956 for themselves and the Company through E-Form GNL-1 vide SRN G03758257. It is further stated that a show cause notice was issued Ref No. RAP&TG/032731/CK/TBR/2016/SCN/ 2580,581, 582,583 dated 11.02.2016 calling upon to show cause as to why the penal action under Section 162/168/210(5) and 220(3) of the Companies Act, 1956 read with Section 92(5)/99/129(7) & 137(3) of the Companies Act, 2013 shall not be initiated against the Applicants within 10 days failing which legal action will be taken without further reference. Subsequently, a prosecution complaint is also filed before the Hon'ble EO court, Hyderabad. Further, there are complaints received in the RoC office against the Applicant Company alleging mismanagement, etc and those complaints are under examination due to which the Company is marked under management dispute category. Recently, the Ministry has ordered for inspection of books and accounts under Section 206 of the Companies Act, 2013.



6. During the course of hearing on 06.12.2016, the learned counsel for the Applicants was advised to submit the Profit/Loss of the Applicant No.1 Company for the last 5 years in a tabulated form. Accordingly, he submitted the following statement:

Amount (in Rs.)

2014-15	2013-14	2012-13	2011-12	2010-11
70,16,881	1,05,99,657	1,68,35,645	2,36,54,802	54,14,840

7. The Applicant Company is in operation and made substantial/decent profits during the last 5 years. Therefore, the submissions made by the Applicants in the Application is not tenable. Company of this size is not dependent on a single employee who left the Company. It is a statutory requirement as provided in the Companies Act, failure of the same for such a long period, the Bench is not inclined to take lenient view as prayed for in the application.



8. We have considered the facts and circumstances of the case and in the interest of justice, we allow the Applicants to compound the offence committed under Section 159 of the Companies Act, 1956 subject to following conditions:

- a. We hereby impose a penalty of Rs. 1,00,000/- on the Applicant Company, Rs. 5,00,000/- each on Applicant Nos. 2 and 3 and Rs. 1,00,000/- on Applicant No.4 i.e., the Company Secretary, which

is to be paid within three weeks from the date of receipt of copy of the order.

- b. The Applicants are directed to report compliance of the same to the Registry of NCLT.
- c. Further, the Applicants are warned to be careful in the future and not repeat the violations else serious view will be taken by this Tribunal.

In terms of above, the Company Application is disposed off.



Sd/-

RAVIKUMAR DURAISAMY
MEMBER (T)

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (J)

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