

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

CA No. 76/621A/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

.... Applicants

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

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)

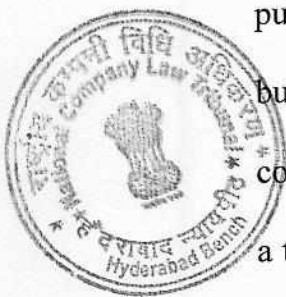
ORDER
(As per Ravikumar Duraisamy, Member (T))

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.76 of 2016 has been filed by the Applicant Company and by Mr. Vinod Kumar Baid, Mr. Kurra Subba Rao and Mr. Sandeep Kumar Daga (hereinafter referred to as "Applicant Directors") under Section 621A read with Regulation 40(1) of the Company law Board Regulations, 1991 for compounding of the offences under Section 92 of the Companies Act, 2013 (hereinafter referred to as "The Act") 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 92 of the Companies Act, 2013, the Applicant Company is required to file its Annual Return for the Financial year ending March 31, 2015 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 92 of the Companies Act, 2013 by not filing the Annual Return for the Financial Year ended March 31, 2013 with the RoC on or before 26.02.2016, however the Applicant Company has filed it vide SRN G02710903 with Additional fee of Rs. 3600 as a penalty with RoC on 06.05.2016 i.e. 71 days later than it ought to have filed the same.
- e. As per Section 92(5) of the Companies Act, 2013, if a company fails to comply with the provisions of Section 92, the Company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.
- f. The Applicants submit that the Applicant company has applied to the Registrar for the extension of Conduct of Annual General Meeting for the Financial Year 2015 for 3 months, due to the Company in the



tag of management dispute and the application neither approved nor rejected by the Registrar of Companies, as per the due date to conduct the Annual General Meeting for financial year ended 31st march, 2015, on or before 30.09.2015, the Company has conducted the AGM on 28.12.2015 and due to the above said reason, the Company has not filed the annual return within time.

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.



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 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 vide ROCH/Legal/Sec92/

621A/32731/PSCL/2016/2673 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 read with Section 441 of the Companies Act, 2013 for compounding the offence under Section 92 of the Companies Act, 2013 for themselves and the Company through E-Form GNL-1 vide SRN G04708764. 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 Profits/Loss of the Applicant No.1 Company for the last 5 years in a tabulated form. Accordingly, he submitted the following statement:

2014-15	2013-14	2012-13	2011-12	2010-11
7,016,881	1,05,99,657	1,68,35,645	2,36,54,802	54,14,840

7. In the light of penal provision stated supra, the following two issues arise for consideration:

- In what types of cases, the CLB/NCLT can exercise its powers under Section 621A of Companies Act, 1956, for composition of offence(s), without reference to Criminal Court.
- Whether the present case is a fit case to allow composition of alleged offence.

8. Under the new Companies Act 2013, NCLT is empowered to compound offences leading to fine only u/s 441. Section 441 reads as follows:

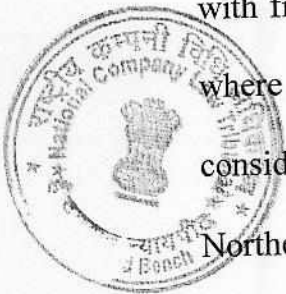
“(1) Notwithstanding anything contained in the code of Criminal Procedure, 1973(2 of 1974), any offence punishable under this Act (whether committed by a company or any officer thereof) **with fine only, may, either before or after the institution of any prosecution, be compounded by the Tribunal or Central Government etc.** So there is



no ambiguity in the new Act, 2013 that Tribunal has power and jurisdiction for offence(s) liable for fine only.

Whereas under Companies Act, 1956, powers of CLB are more under Section 621 A, for compounding of offences. However, there are two divergent views on the exercise of powers by the CLB u/s 621(A) in a case, where the Companies Act, prescribes a penalty of fine or imprisonment or imprisonment with fine and, also whether court permission is required, when a prosecution has already been instituted by the Registrar of Companies. There are two conflicting decisions on the question whether permission of the Court is necessary or not, before considering issue of compounding of offence committed under the Companies Act, 1956.

In Reliance Industries Ltd case (1997) 89 Company cases 67 CLB), the CLB, after discussing the issue in detail, has held that Company Law Board is vested with power, authority and jurisdiction to compound offences and, it is only when such compounding is done that the matter can be brought before the court for according permission to compound the offences, which are punishable with fine or imprisonment or both. However, in Hoffland Finance Ltd case, where default under section 68(a)(b) of the Companies Act, 1956 was under consideration, the Learned Member of CLB found that in earlier case, the Northern Region Bench of the Company Law Board, while considering similar default has directed the defaulter to obtain permission of the criminal court and, after obtaining such permission of the Criminal Court by the defaulter, the offence in question was compounded by the learned Member presiding over the Northern Region Bench of Company Law Board.



In view of above two conflicting views of Western Region Bench and the Northern Region Bench of Company Law Board, the Learned Member of Company Law Board, Northern Region Bench referred the issue to the full Bench, when similar question arise in Hoffland Finance Ltd. The issue referred is "whether before compounding any offences punishable under the Act, the Company Law Board could compound the offence without directing the accused or defaulter to obtain permission of the trial Court, where the prosecution was pending, and on obtaining such permission, the Company Law Board then could consider the question of compounding the offence.

9. The Hon'ble full Bench consisting of Hon'ble Members P.Majumdar, S. Balasubramanian and C. Das, has referred 5 types of penalties, which have been provided in the Companies Act, for the violation/contravention of the provisions. They are (1) fine only, (2) imprisonment or fine, (3) imprisonment or fine or with both, (4) imprisonment and fine 5) imprisonment only. Before section 621A was inserted by the Companies Amendment Act 1988 (this section came into effect on May 31st, 1991), as per section 621 all offences against the Act were required to be tried by the Court, on the complaint of the Registrar or shareholder of the company or person authorised by the Central Government in that behalf. Section 621A was inserted on the recommendations of the Sachar Committee. After discussing the entire Law on the subject, Hon'ble Full Bench held that the sub-section 1 of section 621A confers power on the Regional Director to compound offences punishable with fine only



subject to certain limitations. The Hon'ble Full Bench, vide its order dated 12th May, 1997, has interalia held as follows:

“The exercise of powers of the Company Law Board under sub-section (1), is not subject to the provisions of sub-section (7) and the decision of the Company Law Board in compounding an offence punishable with fine or imprisonment or with both is final and is only subject to the appeal to the High Court and the question of obtaining the permission of the court either before or after the composition does not arise”.

“The exercise of powers by the Company Law Board under Section 621A (1) is independent of exercise of powers by the court under sub-section (7), and all offences other than those which are punishable with imprisonment only or with imprisonment and also fine can, be compounded by the Company Law Board without any reference to Sub-Section (7), even in cases where the prosecution is pending in a criminal court.”



10. The similar issue was also raised in V.L.S. Finance Ltd Vs Union of India (UoI) and others on 5th November, 2003 before the Hon'ble Delhi High Court. One of the issues considered by the Hon'ble Delhi High Court in the case was whether or not the Company Law Board has the power to compound the offences punishable with fine or imprisonment or both without permission of the Court. As per clause 58 of the Companies Act (Amendment bill 1987, (32 of 1985), the

power to compound shall not be exercisable by the Company Law Board and the Regional Director in relation to offences, which are punishable with imprisonment only or with imprisonment and fine.

After considering the issues raised there, the Hon'ble High Court, after taking into consideration of various relevant provisions including that of Section 621A of the Act and, the decision of the Full Bench in Hoffland Finance Limited, cited above in its judgment dated 5th November, 2003 held as follows:

“Accordingly, we hold that the exercise of powers by the Company Law Board under Section 621A (1) is independent of exercise of powers by the court under sub-section (7), and all offences other than those which are punishable with imprisonment only or with imprisonment and also fine can, be compounded by the Company Law Board without any reference to Sub-Section (7), even in cases where the prosecution is pending in a criminal court. It is an accepted position that there is no decision of the High Court or of the Supreme Court on the aforesaid question except for the aforesaid decision of the Company Law Board in Hoffland Finance Limited (supra).



11. The decision of the Hon'ble Delhi High Court in VLS Finance Limited vs Union of India & others was questioned before the Hon'ble Supreme Court of India by Civil Appeal No.2102 of 2004 which was dismissed vide order dated 10th May 2013 by holding that the power under sub-section (1) and Sub-Section (7) of Section 621A

are parallel powers to be exercised by the Company Law Board or authorities mentioned therein and prior permission of the court is not necessary for compounding of the offence.

12. In fact, there is hardly any ambiguity for the powers to be exercised by CLB under Section 621A of the Companies Act, 1956. Only bar for compounding of offence by CLB is in a case where *an offence punishable with imprisonment only, or with imprisonment and also fine, and it can be done either before or after the institution of any prosecution.*

Section 621A of the Act, read as follows:

(1) Notwithstanding anything contained in the Code of Criminal procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof), *not being an offence punishable with imprisonment only, or with imprisonment and also fine, may, either before or after the institution of any prosecution, be compounded by-*

(a) *The Company Law Board etc*



13. In the light of the above discussions of the provisions of section 621(A) of the Companies Act 1956, and the interpretations given by the Hon'ble Full Bench Judgement of the CLB: the Hon'ble High Court of Delhi in VLS Finance Ltd and the Hon'ble Supreme Court, as cited above, there is no iota of doubt about jurisdiction and power of the Company Law Board or NCLT to consider for composition of offences under the Companies Act, 1956, either before or after

institution of the prosecution and, the only exception is in a case, where the offence alleged is liable to be punished **with imprisonment only or with imprisonment and also with fine.**

However, the Criminal Court does not have any jurisdiction before the Institution of criminal case but whereas the Company Law Board/ Tribunal has power and competency, under the Companies Act, to entertain even suo moto application before institution of criminal case.

14. In the light of above discussion of the provisions relating to compounding of offence under Section 621A of the Act and, the law as declared by the Hon'ble Full Bench of CLB and Hon'ble High Court of Delhi, which was affirmed by the Hon'ble Supreme Court, we hold that this Tribunal is having power and jurisdiction to decide the issue in question in the present case.



15. 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.

16. 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 92 of the Companies Act, 2013
subject to following conditions:

- a. We hereby impose a penalty of Rs. 50,000/- on the Applicant Company, Rs. 2,50,000/- each on Applicant Nos. 2 and 3 and Rs. 50,000/- 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 DURASAMY

MEMBER (T)

Sd/-

RAJESWARA RAO VITTANALA

MEMBER (J)

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