

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

CA No. 77/621A/HDB/2016

Date of Order: 30 .01.2017

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

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

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.77 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 "Applicants") under Section 621A read with Regulation 40(1) of the Company law Board Regulations, 1991 for compounding of the offences under Section 137(1) 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 137 of the Companies Act, 2013, the Applicant Company is required to file a copy of Financial Statement with Registrar for the financial year ended March 31, 2015 within 30 days from the conclusion of Annual General Meeting of the Company.
- d. The Applicant Company has committed a default of Section 137 of the Companies Act, 2013 by not filing the Financial Statement for the financial year ended March 31, 2015 with the RoC on or before 27.01.2016, however the Applicant Company has filed the Annual Return for the financial year ended March 31, 2015 vide SRN Q77847309 with Additional fee of Rs. 2400 as an additional fee with RoC on 17.03.2016 i.e. 50 days later than it ought to have filed the same.
- e. As per Section 137(3) of the Companies Act, 2013, if a company fails to comply with the provisions of Section 137, before the expiry of the period specified in Section 403 of the Companies Act, 2013, Company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees under the Companies Act, 2013.
- f. The Applicants submit that the Applicant company has applied to the Registrar of Companies for the extension to hold Annual General Meeting for the Financial Year 2015 for 3 months vide SRN



C62475918 dated 28.08.2015, due to the Company in the tag of management dispute the application neither approved nor rejected by the Registrar of Companies, as per the due date to conduct the Annual General Meeting 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 held the Annual General Meeting within due date.

- 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 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/Sec137/621A/32731/PSCL/2016/2674 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 137 of the Companies Act, 2013 for themselves and the Company through E-Form GNL-1 vide SRN G04711131. It also stated that as per Section 137 (3) of the Companies Act, 2013, if a Company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified in Section 403, the Company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be punishable with imprisonment for a term which



may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both. 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:

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. Whether the Tribunal has power to compound this type of violation was already discussed in detail (in similar matter of this Company) in CA No. 76/621A/HDB/2016 order dated 27.01.2017 of this Company. Therefore, to avoid repetition of the stand already taken by this Tribunal, we deem fit not to elaborate the same in this Order.
8. As discussed in the aforesaid Order, 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 is 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.
9. 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.
10. 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 137(1) 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

