

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD
C.A. No.27/621A/HDB/2016**

Date of Order: 5.06.2017.

1. Mr. Venumbaka Vijaya Sai Reddy,
S/o Mr. Venumbaka Sundrarami Reddy,
Former Director of Jagati Publications Limited,
H.No.8-2-293/82/HE,
Plot No.41, Road No.70,
Huda Enclave, P.O. Film Nagar,
Jubilee Hills,
Hyderabad – 500 033.

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OF THE ORIGINAL**

2. Mr. Jella Jagan Mohan Reddy,
S/o of Mr. Jella Nagamalla Reddy,
Former Director of Jagati Publications Limited,
Flat No.17 LH, 902, Lanco Hills,
Manikonda, Hyderabad – 500 089.

3. Mr. Harish C. Kamarthy,
Mr. Channa Verrapa Kamarthy,
Former Director of Jagati Publications Limited,
#333, 8-2-603/2/M, Road no.10,
Banjara Hills, Hyderabad – 500 034.

..Applicants

Counsel for Applicants : Sh K. Dushyantha Kumar, PCS



CORAM:

**The Hon'ble Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDL)
The Hon'ble Mr. RAVIKUMAR DURASAMY, MEMBER (TECH)**

ORDER

(AS PER Mr. RAVIKUMAR DURASAMY, MEMBER (TECH))

1. The Application was initially filed before the Hon'ble Company Law Board (CLB), Chennai Bench, Chennai. Since the National Company Law Tribunal (NCLT), Hyderabad Bench, has been constituted for the cases pertaining to the states of Andhra Pradesh and Telangana, the case is transferred to the Hyderabad Bench of NCLT, and we have taken the case on records of NCLT, Hyderabad Bench and deciding the case.

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2. The present Application has been filed by Mr. Venumbaka Vijaya Sai Reddy, Former Director, Mr. Jella Jagan Mohan Reddy, Former Director and Mr. Harish C. Kamarthy, Former Director of Jagati Publications Limited, under Section 621A of the Companies Act, 1956 for compounding the offence under Section 211(1) of the Companies Act, 1956. In this regard Form GNL-1 had been filed vide SRN C79596532, dated 23.02.2016 for compounding of the offence.
3. The brief facts of the case as mentioned in the Application are as follows :
 - a. The Applicant Company Jagati Publications Limited was originally incorporated as Private Limited Company on 14.11.2006 and was converted into Public Limited Company on 12.01.2009 under the Companies Act, 1956 vide CIN U22212TG2006PLC051651 having its registered office at 6-3-249/1, Sakshi Towers, Raod No.1, Banjara Hills, Hyderabad, Telangana – 500 034.
 - b. The present Authorised Share Capital of the Applicant Company is Rs.1,20,00,00,000/- (Rupees One Hundred and Twenty Crores Only) divided into 12,00,00,000 (Twelve Crores) Equity shares of Rs.10/- (Rupees Ten) each and the present Paid up Share Capital is Rs.106,55,84,810/- (Rupees One Hundred and Six Crores Fifty five Lakhs Eighty four Thousand Eight Hundred Ten only) divided into 10,65,58,481 (Ten Crores Sixty Five Lakhs Fifty Eight Thousand Four hundred Eighty One) Equity Shares of Rs.10/- (Rupees Ten) each.
 - c. The main objects of the Applicant Company are to carry on business as a Publisher of daily, weekly, monthly, magazines, newspapers on



topic of public interest, social cultural, art and musical production, general commercial, colour craft and process printers, lithographers, photographers, engravers, die makers, plan and chart printers press and advertising agents, contractors etc.,

- d. As per the provisions of section 211(1) of the Companies Act, 1956 every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall subject to the provisions of this section be in the form set out in Part-I of Sch.VI, or as near there as circumstances admit or in such other form as may be approved by the Central Government either generally or in particular case, and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance sheet under the heading "Notes" at the end of the part.
- e. The Office of the Regional Director, South East Region, Hyderabad, during the inspection of books of accounts of the Company's Balance Sheet for the years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13 has observed that the Company has violated the provisions of Section 211(1) read with Schedule VI of the Companies Act, 1956.
- f. During the course of scrutiny of Balance Sheet as at 31.03.2007 by the office of the Regional Director, the Company has initially fixed the issued capital at Rs.5,00,00,000/- (Rupees Five Crores) on 15.11.2006 and was increased to Rs.100,00,00,000/- (Rupees One Hundred Crores) on 23.12.2006. There was no further increase of issued capital as at 31.03.2007 and hence issued capital as at 31.03.2007 was Rs.100,00,00,000/- (Rupees One Hundred Crores).



However, scrutiny revealed that the Balance sheet as at 31.3.2007 prepared by the company do not contain the details of issued capital of Rs.100,00,00,000/- (Rupees One hundred crores) and the same was omitted from disclosure in the Balance Sheet prepared as at 31.03.2007, while the company has disclosed all details of capital it has suppressed the details of significant issue of share capital of Rs.100,00,00,000/- made by the company on 23.12.2006 hereby resulting in suppression of material fact(s) of Issued Capital of Rs.100,00,00,000/- in the Balance Sheet prepared as at 31.03.2007. Further, the Company has made non-disclosure of Issued Capital for the year, 2006-07. This has resulted in violation of section 211(1) of Companies Act, 1956 read with Schedule VI of the Companies Act, 1956.

- g. The Applicants admit that there was a contravention of Section 211(1) of the Companies Act, 1956 read with Schedule VI and there was no intention of violating the provisions of the Act. However, inadvertently due to typographical and clerical errors the company could not be complied with and there was no malafide intention of contravention of the provision of the Act.
- h. The Applicants submit that the default is not intentional and is not of such nature as would prejudice the interests of the members or creditors or others dealing with the applicants company. The applicants unequivocally declare that the said default is such as not to affect the public interest in any way, and no harm is caused to the public interest.
- i. It is further stated that it is the first offence that has come for compounding by the Applicants and as per Section 211(7) of the Companies Act, 1956, if any such person as is referred in sub-section (6) of the section 209 of the Companies Act, 1956 fails to take all reasonable steps to secure compliance by the company as



respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

- j. This is a fit case for grant of relief by composition of offence and the Bench may kindly take a convenient view and may levy the compounding fees reasonably.

4. Registrar of Companies, Hyderabad, submitted his report vide No.RAP&TG/Jagati/621A/STA/2016/Sec211/(1)/949 dated 25.05.2016 stating that the applicants have not clearly mentioned how the offence was made good. Hence the applicants may be put to strict proof of the same.

- a. It is stated that on 23.02.2016, three former Directors Mr. V. Vijaya Sai Reddy, Mr. J. Jagan Mohan Reddy and Mr. Harish C. Murthy have submitted an application under Section 621A of the Companies Act, 1956 for compounding of offence under Section 211(1) of the Companies Act, 1956 vide SRN C79596532 and that the Applicants have admitted the violations of the provisions of Companies Act, 1956.

- b. The Office of the Regional Director, South East Region, Hyderabad, during the inspection of Books of Accounts of the Company's Balance Sheet for the years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13 a preliminary findings letter dated 30.07.2015 was issued to the company vide letter No.RD (SER)209A/ROCHYD/JAGATIPUB/51651/2015/TEAM/2



alleging that the company has violated the provisions of Sec.211(1) read with Sch.VI of the Companies Act, 1956.

It is further stated that it is the first offence that has come for compounding by the Applicants and as per Section 211(7) of the Companies Act, 1956, if any such person as is referred in sub-section (6) of the section 209 of the Companies Act, 1956 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting with the provisions of this section and with the other requirements of his Act as to the matters to be stated in the accounts, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees, or with both.

5.The learned PCS, while reiterating various contentions raised in the company application, has further submitted that CLB/NCLT is having the power to compound the offence in question. In support of his contentions, he has relied upon the following cases:



- i) Hofland Finance Limited in re(1997) 13 SCL 12 (CLB-Delhi)
- ii) VLS Finance Limited Vs. Union of India (2005) 123 Company cases 33 (Delhi).

He has thus submitted that NCLT has full powers to compound offences attracting imprisonment or fine or both, even without referring to any Criminal Court or Special Courts. Therefore, he prayed that the Tribunal can allow the present compounding offence.

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6. With regard to the question whether NCLT has full powers to compound offences attracting imprisonment or fine or both, even without referring to any Criminal Court or Special Courts was already discussed by this Bench in detail in the matter of Cambridge Technology Enterprises Limited (CA No.59/621A/HDB/2016) vide order dated 21.12.2016 wherein it was held that NCLT has full power to compound. Therefore, to avoid repetition of the stand already taken by this Tribunal, we deem fit not to elaborate the same in this order.

7. The Authorised representative of Jagati Publications Limited, submitted a letter subsequent to the hearing held on 1st March, 2017 and the same has been taken on record. Upon perusal of the aforesaid letter it is noted that the authorised share capital and issued capital of the company for the year ending 31.03.2007 was the same amount of Rs.100/- (One Hundred Crores) whereas the subscribed and paid up capital was Rs.50,04,58,000/- (Rupees Fifty Crores, Four Lakhs and Fifty Eight Thousand Only). The balance sheet of the company for the same period also depicts the same amount of Rs.50,04,58,000/- (Rupees Fifty Crores Four Lakhs Fifty Eight Thousand only)



8. We have considered all the records, submissions of the applicants and convinced with the reasons cited by them. Therefore, we are inclined to compound the application with the following direction:

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- a) All the Applicants/Former Directors of the Jagati Publications Limited are directed to pay a sum of Rs.80,000/-(Rupees Eighty thousand only) each towards compounding fee as prescribed under Section 211(7) of the Companies Act 1956.
- b) All the Applicants are required to pay the compounding fee within a period of three weeks from the date of receipt of the copy of the order and report compliance of the same to the Registry of NCLT.
- c) The Applicants are warned to be careful in future and not to repeat any violation of the provisions of the Companies Act or else serious view will be taken by the Tribunal.
- d) In terms of the above the C.A. No.27/621A/HDB/2016 is disposed off.



Sd/-

RAVIKUMAR DURASAMY
MEMBER (TECHNICAL)

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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