

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, AT HYDERABAD

C.A. No.28/621A/HDB/2016

Date of Order: 5.06.2017.

1. Mr. Venumbaka Vijaya Sai Reddy,
S/o 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.
2. Mr. Jella Jagan Mohan Reddy,
S/o 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,
S/o Mr. Channa Verrapa Kamarthy,
Former Director of Jagati Publications Limited
#333, 8-2-603/2/M, Road no.10,
Banjara Hills, Hyderabad – 500 034.
4. Mr. Sajjala Ramakrishna Reddy,
S/o Mr. Sajjala Subba Reddy,
Former Whole-Time of Jagati Publications Limited
H.No: 7-56/322 to 324, Prashanti Hills
Raidurg Navkhalsa, Serlingampalli
Hyderabad – 500008
5. Mr. Yeduguri Sandinti Jagan Mohan Reddy,
S/o Yeduguri Sandinti Raja Sekhar,
Former Whole-Time Director of Jagati Publications Limited
Plot No. 3,4 and 5, Lotus Pond Residency
Road No.12, Banjara Hills
Hyderabad – 500034

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OF THE ORIGINAL



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6. Mr. Yerramreddy Eswara Prasada Reddy
S/o Mr. Yerramreddy Chinna Chenna Reddy
Former Whole-Time Director of Jagati Publications Limited
Plot No. 424, Road No. 78, Jubilee Hills
Hyderabad – 500033
7. Mr. Kalva Raja Prasad Reddy
S/o Mr. Kalva Ramachandra Reddy
Former Whole-Time Director of Jagati Publications Limited
1-1503, Aparna Sarovar, Kanche Gachibowli
Goppanpally, Rangareddy
Hyderabad – 500046
8. Mr. Paladugu Venkata Krishna Prasad
S/o Mr. Paladugu Madhava Rao
Former Whole-Time Director of Jagati Publications Limited
94, Eshwar Vilas, Nizampet,
Quthbullapur, Rangareddy
Hyderabad – 500072
9. Mrs. Nanduri Rajyalakshmi
D/o Mr. Nanduri Sri Rama Rao,
Former Company Secretary of Jagati Publications Limited
3-4-174/12/13, Kanta Reddy Nagar
Attapur, Hyderabad - 500048 ..Applicants



Counsel for Applicants

:

Sh K. Dushyantha Kumar,
P.C.S.

CORAM:

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

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

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ORDER

(As Per Mr. Ravikumar Duraisamy, Member (T))

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.
2. The present Application has been filed by the Applicants, 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 C79600615, 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/- each and the present Paid up Share Capital is



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Rs.1,06,55,84,810/- (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/- 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.



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- f. The Balance Sheet as at 31.3.2008 prepared by the company disclosed the Issued Capital as Rs. 81,91,80,010/- (Rupees Eighty One Crore

Ninety One Lakhs Eighty Thousand and Ten only) falsely instead of disclosing the issued capital as Rs.1,00,00,00,000/- (One Hundred Crores only) thereby resulting in disclosing false particulars of issued capital in the Balance Sheet as at 31.3.2008. This has resulted in violation of Section 211(1) of the Companies Act, 1956 read with Schedule VI of the Companies Act, 1956.

- g. For the allegations raised in the preliminary Findings Letter, the Company replied to Office of the Regional Director, South East Region, Hyderabad, stating that the Company has maintained books of accounts in line with the provisions of Section 211 read with part 1 and part 2 of Schedule VI to the Companies Act, 1956.



- h. The Applicants admit that inadvertently the Issued Capital was mentioned as Rs. 81,91,80,010/- (Eighty one Crores Ninety one lakhs Eighty thousand Ten only) instead of Rs.1,00,00,00,000/- (One Hundred Crores) in Balance Sheet for 2007-08 (covering period 01.04.2007 to 31.03.2008).
- i. 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.

j. 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.

k. This is a fit case for grant of relief by Composition of offence and the Bench may kindly take a lenient 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)/948 dated 25.05.2016 stating that the present application was made based on the preliminary enquiry report issued by the Inspecting Officer. 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, the Applicants 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 C79600615 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 and a preliminary findings letter dated 30.07.2015 was issued to 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.

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) Hoffland Finance Limited in re(1997)13 SCL 12(CLB-Delhi)
- ii) VLS Finance Limited Vs. Union of India (2005) 123 Company cases33 (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.



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) order dated 21.12.2016. 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

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the year ending 31.03.2008 was the same amount of Rs.100 Crores whereas the subscribed and paid up capital was Rs.81,91,80,010/- (Rupees Eighty one Crores Ninety one lakhs Eighty thousand and Ten only). Further, perusal of the Balance Sheet as on 31.3.2008, under the Heading 'Source of funds', share capital is shown as Rs.106,41,87,650/- Though the Audited Accounts shows share capital as Rs. 106,41,87,650/-, the authorized representative has again submitted the issued capital as Rs. 100 Crores only even on the recent written submissions made to the Tribunal. This shows that the paid up share capital is more than Authorized Capital of Rs.100 crores which cannot happen. Issued Capital should always be either less than or equal to Authorized Capital. However, for the year ended 31.03.2008 the issued capital shown in the Balance sheet is more than the Authorized Capital. The Balance Sheet as on 31.3.2008 was audited by S.P. Associates, Chartered Accountants Firm and signed by two Whole-Time Directors and the Company Secretary. It is surprising to note that even though the accounts are audited and signed by two Whole-time Directors and the Company Secretary, subscribed and paid-up capital (Rs.106,41,87,650/-) is shown as more than the Authorized share capital (Rs. 100 crores).



Balance sheet of a Company is an important / basic Financial Statement used by stakeholders for various purposes. Generally, Audited Balance Sheet will depict correct/factual amount under various heads and especially there cannot be any factual error with reference to Authorised, Issued and Subscribed Capital of any Company. Therefore, the Balance Sheet as at 31.03.2008 is not in accordance with Section 211(1) of the Companies Act 1956 in as much as "True & Fair view", is not depicted in the Balance Sheet, thereby resulting in disclosing false

particulars of issued capital. Further, the applicants have also failed to exercise / exhibit due regard and failed to take reasonable steps while preparing the Balance Sheet for the year 2007-2008. Therefore, the application is liable to be dismissed.

In view of the above, the applicants submission that by inadvertent, default has not caused any prejudice to Member (or) Creditors, not to affect public interest, no harm is caused to public interest etc. does not hold good in the instant facts of the case as discussed supra.

Generally decrease in paid up capital can occur in various ways viz buyback of shares, forfeiture of shares, reduction of share capital etc., However the current balance sheet does not have any of these events information.

8. Considering the facts that different/ contradictory amount is shown in different documents produced before this Bench, as discussed above, we are of the considered view that the instant case is not a fit case for compounding the alleged offence as prayed for. Therefore, we direct Registrar of Companies / Regional Director to initiate appropriate action against the applicants as per the provisions of the Companies Act, 1956.

In terms of the above the C.A. No.28/621A/HDB/2016 is dismissed



Sd/-
RAVIKUMAR DURASAMY
MEMBER (TECH)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDL)

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