

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

CA No. 120/621A/CB/2015

(TP No.141/HDB/2016)

Date of Order: 24.03.2017

Between:

1. Visakha Hospitals and Diagnostics Limited
6-3-248/2, Road No.1, Banjara Hills,
Hyderabad – 500034
2. Dr. Bhupathiraju Soma Raju
Plot No.29, Road No.5, Banjara Hills,
Hyderabad – 500034
3. Dr. Nallamala Krishna Reddy
Plot No. 23/1, Street No. 2
Kakatiya Nagar, Habsiguda
Hyderabad – 500007
4. Dr. Vemuri Krishna Murthy
C/o R.K. Hospital
Door No. 26-16-7, China Gantayada
Chaitanya Nagar, Gajuwaka
Visakhapatnam – 530026

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

..... Applicants

AND

The Registrar of Companies,
For the states of Telangana and Andhra Pradesh
2nd Floor, Corporate Bhawan
GSI Post, Nagole, Bandlaguda
Hyderabad – 500068

Counsel for the Applicants:

Sh. R. Venkata Ramana, PCS

CORAM:

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

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

ORDER

(As per Ravikumar Duraisamy, Member (T))

1. The Company Application bearing no. 120/621A/CB/2015 was initially filed by Visakha Hospitals and Diagnostics Limited along with its three Directors i.e., Dr. Bhupathiraju Soma Raju, Dr. Nallamala Krishna Reddy and Dr. Vemuri Krishna Murthy, before the then Hon'ble Company Law Board, Chennai Bench, at Chennai (CLB). On constitution of NCLT Bench at Hyderabad for the cases pertaining to the States of Telangana and Andhra Pradesh, the case is transferred to this Bench. Hence, we have taken the case on records of this Bench and deciding the case.
2. The present application is filed under Section 621A read with Section 211 of the Companies Act, 1956, by interalia, seeking to compound the offence committed under Section 211 of the Companies Act, 1956 and praying the CLB to levy nominal fee to be paid by the Applicants.
3. The brief facts of the case, as averred in the Application are as follows:
 - i. The Applicant Company was incorporated on 14th December, 1998 as a Private Limited Company vide Corporate Identity Number U85110AP1998PTC 030685 issued by the Registrar of Companies, Hyderabad (RoC).
 - ii. The main objects of the Company are to carry on the business of design, construction and running of all kinds of Hospitals,



Dispensaries, Nursing Homes, Clinics, Laboratories, Diagnostic Centres and Health Clubs, etc.

iii. The Applicants submit this application under Section 621A of the Companies Act, 1956 for compounding of offence under sub-section (7) of Section 211 read with sub-section (6) of Section 209 of the Companies Act, 1956 in respect of the Annual Accounts of the Company for the financial years 2007-08, 2008-09, 2009-10 and 2010-11 because the same were not made as per the specifications mentioned under Part II of Schedule VI in so far as pertains to quantitative details of turnover, etc.



iv. The Applicants submit that, due to the special and complex nature of the health care industry, the Applicant Company could not make the disclosures regarding quantitative details of turnover in the Profit and Loss account for the financial years 2007-08, 2008-09, 2009-10 and 2010-11.

S No.	Financial Year	Provisions	Officers in default
1	2007-08 Date of AGM in which Annual Accounts were adopted: 26 th September, 2008	Para 3(i) (a) and (ii) (d) of Part II of Schedule VI read with Section 211 of the Companies Act, 1956.	Dr. Bhupathiraju Soma Raju, *Dr. Nallamala Krishna Reddy Dr. Vemuri Krishna Murthy
2	2008-09 Date of AGM in which Annual Accounts were adopted: 25 th	Para 3(i) (a) and (ii) (d) of Part II of Schedule VI read with Section 211 of the	Dr. Bhupathiraju Soma Raju, *Dr. Nallamala

	September, 2009	Companies Act, 1956.	Krishna Reddy Dr. Vemuri Krishna Murthy
3	2009-10 Date of AGM in which Annual Accounts were adopted: 30 th December, 2010	Para 3(i) (a) and (ii) (d) of Part II of Schedule VI read with Section 211 of the Companies Act, 1956.	Dr. Bhupathiraju Soma Raju, *Dr. Nallamala Krishna Reddy Dr. Vemuri Krishna Murthy
4	2010-2011 Date of AGM in which Annual Accounts were adopted: 30 th September, 2011	Para 3(i) (a) and (ii) (d) of Part II of Schedule VI read with Section 211 of the Companies Act, 1956.	Dr. Bhupathiraju Soma Raju, *Dr. Nallamala Krishna Reddy Dr. Vemuri Krishna Murthy



*Dr. Nallamala Krishna Reddy has filed separate application for compounding under Section 211 of the Companies Act, 1956 for the years 2007-08, 2008-09 and 2009-10 on 4th August, 2011 vide SRN B17603424 and the hearing of which is awaited. This present application is filed by him only for the year 2010-11. Dr. Bhupathiraju Soma Raju and Dr. Vemuri Krishna Murthy are filing this application for all the years viz., 2007-08, 2008-09, 2009-10 and 2010-11.

- v. The Applicants further submit that they did not have any intention to non-comply with the provisions of Section 211 of the Companies Act, 1956 on the part of the Company and that nobody's right has been prejudicially affected due to it. Moreover, neither the Applicant

Company nor anyone else has derived any benefit and no one has been put to any loss due to non-compliance.

4. Heard Sh. Venkata Ramana, Learned Counsel for the Applicants and have perused the related documents and connected case records.

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. Moreover, the company has committed the offence in question for the first time and the Registrar of the Companies has also not opposed the application and, they have come to the Tribunal suo moto. 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. And the word 'Or' indicates an alternative equivalent to either (Meriam Webster Dictionary) Therefore, he prayed that the Tribunal can allow the present compounding offence.

6. The RoC, has submitted its report vide No. RAP/Legal/621A/vishaka/01-30685/2015/398 dated 11.05.2015, wherein it is stated that matter of

contravention of Section 211 relates to the period from 01.04.2007 to 31.03.2011 (there are total 4 counts of violation u/s 211).

If a company fails to comply with the provisions of Section 211, 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 may extend to Rs.10,000/- or both.

7. Whether the Tribunal has power to compound this type of violation was already discussed in detail in CA No. 59/621A/HDB/2016 (Cambridge Technology Enterprises Limited), order dated 21.12.2016 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. In terms of above facts, submissions of the Counsel and in the interest of justice, we are inclined to compound the application with following directions:

- a. Since the present application is filed by Applicants No. 2 and 4 for violation pertaining to all 4 years while Applicant No.3 only

for the year 2010-11, we direct Dr. Bhupathiraju Soma Raju and Dr. Vemuri Krishna Murthy i.e. Applicants No.2 and 4 to pay Rs. 40,000 each and Dr. Nallamala Krishna Reddy i.e. Applicant No.3 to pay Rs. 10,000 towards compounding fee.

- 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 also warned to be careful and not repeat any violation in future else serious view will be taken.

In terms of above, the CA No. 120/621A/HDB/2016 is disposed of.



Sd/-

RAVIKUMAR DURAISAMY

MEMBER (T)

Sd/-

RAJESWARA RAO VITTANALA

MEMBER (J)

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