

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

C.A.NO. 12/621A/HDB/2016

Date of Order: 29.08.2016

In the matter of:

1. Teamasia Semiconductors(India) Limited

205, Moghal Emami Mansion, Chintal Basti Road, Khairatbad,
Hyderabad, Telangana – 500004, represented by its Director Shri Chetan
Desai (Holding DIN:0524740)

**2. Shri Kurupath Madhavan Nayar (DIN: 01306133), Director, Son of
T.Madhavan Nayar, aged about 71 years, resident of No.6, Dena Palace,
Nahur Village Road, Mulund West, Mumbai – 400080, Maharashtra**

**3. Shri Vaidyanathan Ramakrishna Iyer (DIN: 06599330), Director, Son of
Ramakrishna Ramaswamy Iyer, aged about 71 years, resident of D4/204,
Alaknanda, Lokgram, Kalyan East, Katemanivali, Thane-421306,
Maharashtra**

**4. Shri Chetan Desai (DIN: 05242740), Director, Son of Jayesh Desai, aged
about 29 years, resident of 68-2-2/C.3, Netaji Street, Ashok Nagar,
Kakinada- 533003, Andhra Pradesh**

.....Applicants

Counsel for the Applicants

.. Shri Y. Suryanarayana

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Hon'ble Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDL)

Hon'ble Mr. RAVIKUMAR DURAISAMY, MEMBER (TECH)

ORDER

(As per Rajeswara Rao Vittanala, Member (J))

1. The application was initially filed before Company Law Board, Chennai Bench, Chennai. Since, NCLT, Hyderabad Bench has been constituted for the cases relating 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 application has been filed U/S. 621 A of Companies Act, 1956 read with Regulation 35, 40 and 44 of Company Law Board Regulations, 1991 by praying the Tribunal that the Applicants may be permitted to compound the unintended offence made under Section 149 of Companies Act, 2013 by imposing minimum consolidated composition fee and further direct the Registrar of Companies (RoC), Telangana and Andhra Pradesh to withdraw the complaint from Hon'ble Court of Special Judge for Economic offences-cum-VIII, AMSJ Court, Nampally, Hyderabad and to relieve the applicants of all legal consequences. It is to be noted that the provisions of Section 621A of the Companies Act, 1956 is analogous to Section 441 of the Companies Act, 2013, which gives the power to the Tribunal for compounding of offences.

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Though Section 621A of Companies Act, 1956 was mentioned in the Application filed before Company Law Board, Chennai, provision under Section 441 of the Companies Act, 2013 was mentioned in the Affidavit dated 16th August, 2016.

3. The brief facts as stated in the application are as follows:
- a. The Applicant Company is a Public Limited Company, limited by shares, incorporated under the provisions of Companies Act, 1956, having its registered office situated at 205, Moghal Emami Mansion, Chintal Basti Road, Khairatbad, Hyderabad, Telangana – 500004 and is presently engaged in the business of trading, buying, selling, importing and exporting all manner of electrical, electronic and telecommunication goods, components, devices, etc.
 - b. A show cause notice was issued to the company and its directors by the RoC, Hyderabad vide Ref No. RPA & TG/TBR/027883/2015/SCN/1175, dated 19.08.2015, under Section 149 of the Companies Act, 2013 read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014, seeking to show cause as to why the penal action under Section 450 of Companies Act, 2013, shall not be initiated against the applicants for not appointing a woman director on the Board of Directors of Company. As per Section 149 Companies Act, 2013 and Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 (which came into force with effect from 1.04.2014) every company shall have a Board of Directors consisting of individuals as directors and shall have—(a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and (b) a maximum of fifteen directors:

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Provided that a company may appoint more than fifteen directors after passing a special resolution.

Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.

Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 specifies that the following class of companies shall appoint at least one woman director-

- i. every listed company
- ii. Every other public company having - (a) paid-up share capital of one hundred crore rupees or more; or (b) turnover of three hundred crore rupees or more:

Provided that a company, which has been incorporated under the Act and is covered under provisions of second proviso to sub-Section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation.

- c. The Applicant Company submitted a reply dated 26.09.2015 to the show cause notice issued by RoC by stating that the Company has not carried out any commercial operations from the year 2000 and the Company's entire share capital is fully eroded due to past losses. The Company is also proposing to go for winding up as there is no hope of commencing any commercial activities in the current situation.
- d. The Registrar of Companies, not being satisfied with the reply of the Company, filed a complaint vide CC/900063/2016 under Section 450 of Companies Act, 2013, before the Hon'ble Court of Special Judge for Economic Offences-cum-VIII AMSJ Court, Hyderabad, inter alia, charging the applicants for non-compliance of Section 149 of Companies Act, 2013 read with Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 and the last hearing in the aforesaid case was held on

By order

07.04.2016 for examination under Section 251 of Criminal Code Procedure and the matter is posted for trial on 25.04.2016

- e. It is further submitted that the Company has appointed a woman director namely Ms. Keerthi Chetan Desai holding DIN: 07455741, at the Board meeting held on 01.03.2016, in accordance with the provisions of the Companies Act, 2013 and filed form DIR-12 with the Registrar of Companies, on 02.03.2016. However such appointment ought to have been made on or before 31.12.2014 as per said provision. Therefore the total delay in appointment of a woman director on the Board of Company is 14 (Fourteen) months. It is contended that the said mistake was unintentional.
- f. The Learned Counsel further filed additional information by way of an affidavit dated 16.08.2016 by stating that the Company is not carrying out commercial activities since Financial year 1999-2000 and the net worth of the Company has completely eroded and proposing to wind-up as there is no hope of commencing any commercial activities by the Company.
4. We have heard Shri Y. Suryanarayana, learned Counsel for Applicants and also perused the report of Registrar of Companies, Hyderabad vide proceeding No. ROCH/Legal/Sec 149/621A/TSIL/STACK/2016 and also the connected case record.
5. The Registrar of Companies, while reiterating the contentions made in the application has stated that on 25.04.2016 the Company and its three Directors Mr. Kurupath Madhavan Nayar, Mr. Vaidyanathan Ramakarishnan Iyer, Mr. Chetan Desai have submitted an application under section 621A of the Companies Act, 1956 vide SRN C80376767. The Subject Company was registered in the State of Telangana on 04th September, 1997 and it was originally incorporated as a private

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Company in the erstwhile state of Telangana vide CIN No. U64203TG1997PLC027883

The applicant company has violated the provision of Section 149 of Companies Act, 2013. The maximum amount of fine is charged as per Section 172 of Companies Act, 2013 which specifies that if a Company contravenes any of the provisions of this chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees

6. In the light of the above facts of the case, the issue to be decided in the present case is whether the NCLT is having power to allow the applicants to compound the offence in question, especially when prosecution was already initiated and the same is in advance stage.

7. We have noticed that similar issue arose for consideration in the case of Reliance Industries Ltd Vs. Unknown (1997 89 Comp Cases 67 CLB). After considering the relevant provisions and law, the Learned Member of Western Region Bench of CLB has held that the Company Law Board has been vested with the power, authority and jurisdiction to compound the offence and it is only when such compounding is done that the matter can be brought before the Learned Addl. Chief Metropolitan Magistrate, IIIrd Court, Esplanade, Mumbai to accord permission to compound the offences, which are punishable with fine or imprisonment or both. Accordingly, the case for compounding was considered on merits and then permitted the compounding of offences, subject to terms and conditions mentioned therein by the Learned Bench.

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8. We have further noticed that the above decision was differed by Learned Member, Northern Region Bench, New Delhi by taking the stand that before taking up the issue of compounding offence by the Company Law Board, the applicants have to obtain prior permission of the Criminal Court, where prosecution for the same offence was pending. Accordingly, appropriate petition was moved before the concerned Criminal court by the applicant by seeking permission for composition of offence in question. However, the Learned Magistrate rejected the request by interalia observing that the court could not issue any direction to any of the parties to compound the offence.
9. The Learned Member of Company Law Board, by observing that there are two conflicting decisions rendered by the CLB benches on question of obtaining permission i.e., whether it is prior to or after compounding application, was of the opinion that the above question should be considered and decided by a larger Bench to be constituted by the Chairman of the Company Law Board.
10. Accordingly, a larger Bench, consisting of three members of CLB (Hon'ble P. Majumdar, Hon'ble S. Balasubramanian and Hon'ble C. Das) was constituted in the case known as Hoffland Finance Ltd Vs. Unknown (1997 Company Cases (Vol.90) 38). After considering the entire issue and law on the subject, it was ultimately held, by an order dated 12th May, 1997, 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

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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.

11. We have also come across another decision on the issue rendered by the Hon'ble High Court of Delhi in V.L.S Finance Ltd Vs. Union of India (UoI) and others (2003 VIII AD Delhi 166, 2005, 123 Company cases 433 Delhi, (2003)DLT 159) dealing with the said issue along with other issues raised therein. The Hon'ble Court, inter alia held at para 14 of the order dated 5th November, 2003, which is reproduced below:

“It is an accepted position that there is no decision of any High Court or of the Supreme Court on the aforesaid question except for the aforesaid decision of the Company Law Board in Hoffland Finance Ltd (Supra). I have carefully perused the decision of Hoffland Finance Ltd (Supra) and also considered the arguments of the parties in order to arrive at a just and proper decision in the matter.”

It is further held therein that the Company Law Board can compound the offence of the nature prescribed under sub-section (1) either before the institution of the criminal proceeding or even after institution of criminal proceeding and the said power is not subjected to the provision of sub-section (7). Both are parallel powers to be exercised by the present authorities who have been empowered under the statute and one power is not independent on other. The Issue No. (ii) is accordingly answered against the appellant holding that the power exercised by the Company Law Board in the present case in compounding the offence although prosecution was pending, is legal and valid. The Hon'ble Supreme Court upheld the above decision.

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12. In the light of above decision of the Larger Bench of Company Law Board and the subsequent decision of Hon'ble High Court of Delhi, the issue of the Company Law Board/NCLT having jurisdiction and power to compound offences, where no fine or imprisonment or both is prescribed under the Act, is no longer res integra. The Tribunal can exercise its jurisdiction under Section 621A of Companies Act, 1956 or its corresponding Section 441 of Companies Act, 2013. Though the applicant has filed the Application under Section 621A of the Companies Act, 1956, later he has mentioned Section 441 of the Companies Act, 2013 in their Affidavit dated 16th August, 2016. Hence, we are considering the merits of the present case.
13. It is not in dispute that the Applicant Company has violated provisions of Section 149 of the Companies Act, 2013 with respect to the appointment of Woman Director as one of the Board of Directors. Subsequently, the Company has appointed a Woman Director namely Ms. Keerti Chetan Desai at the Board meeting held on 01.03.2016. It has also filed form DIR-12 with RoC on 02.3.2016 i.e., with the delay of 14 (fourteen) months. The applicants have replied only on 26.09.2015 to the show cause issued to them by RoC vide Ref No. RAP&TG/TBR/009561/2015/SCN/1054, dated 10.08.2015. The Company has requested the RoC to exonerate them as the financial position of Company was not in good state.
14. The Applicants have filed this application for compounding of offence in question after initiating prosecution.
15. In the facts and circumstances of the case, we are satisfied with the reasons furnished by applicants for 14 (fourteen) months delay in complying with the provision of Companies Act for appointing a Woman Director. Hence,

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we are inclined to permit the applicants to compound the offence in question by taking a lenient view as prayed by the applicants.

THIS BENCH DOTH ORDER

16. Accordingly, we dispose off the application by directing first applicant to pay a compounding fee of Rs. 1,00,000/- (Rupees One Lakh Only) and Applicants No. 2 to 4 Rs. 50,000/- (Rupees Fifty Thousand Only) each and deposit the same with the authorities within three weeks. After the receipt of compounding fee, the Registrar of Companies is directed to bring about the compounding of offence to the notice of the Learned Special Judge for Economic offences-cum-VIII AMSJ Court, Hyderabad for passing appropriate orders.



RAVIKUMAR DURAISAMY (TECH)



RAJESWARA RAO VITTANALA (JUDL)