

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
COMPANY APPELLATE JURISDICTION**

Company Appeal (AT) No. 38, 39, 40, 41 and 42 of 2016

**(arising out of Order dated 22nd September 2016 passed by NCLT,
Hyderabad in C.A.Nos. 01, 02, 03, 04 and 05/621-A/HDB/2016)**

Deccan Chronide Holdings Ltd. & Ors.

.... Appellants

Vs.

Registrar of Companies, Hyderabad

....Respondent

For Appellant : Mr. Alok Dhir, Mr. Milan Singh Negi, Mr. Kunal Godwani and Ms. Varsha Banerjee, Advocates

For Respondent : Mr. Sanjib Kumar Mohanty, Senior Panel Central Government Counsel

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

In all these appeals as the appellants are common and similar question of law involved they were heard together and disposed of by this common judgement.

2. The appellants contravened different provisions of the Companies Act 1956, which attracted punishment of fine etc. in regard to separate five contraventions of different periods. The appellants preferred five separate applications under Section 621-A of the Companies Act 1956 (now Section 441 of the Companies Act, 2013) for compounding offence(s). By separate order(s), all dated 26th October 2016, the Tribunal observed that the relief as sought for by the appellants are premature and therefore, the Tribunal was

not inclined to consider the same at that stage. The appellants have been directed to approach the Central Government for approval of the related party transaction.

3. The brief facts of the case are as follows: -

The 1st Appellant company is carrying on business on business of printing and publishers of newspapers, magazines, periodicals, journals, books and other library works in different languages as also business of printers, publishers, stationers, lithographers, type founders etc.

4. Sub-section (1) of Section 297 of the Companies Act prohibits the director of a Company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm or a private Company of which the director is a member or director from entering into any contract with the Company for the sale, purchase or supply of any goods, materials or services and from underwriting the subscription of any shares in, or debentures of, the Company except with the consent of Board of Directors of the Company.

Under proviso thereto in case of a Company of not less than rupees one crore, no such contract can be entered into except with the previous approval of the Central Government.

5. Facts of the case is that the appellant company was inspected under Section 209-A of the Companies Act 1956 pursuant to Government of India, Ministry of Corporate Affairs letter No. F.No. 7/345/2012-C:/II dated 13th September 2012. While inspecting the books and records of the Company, the Inspecting Officer observed that the appellant company had transaction

with M/s Bhagyam Builders from financial year 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010

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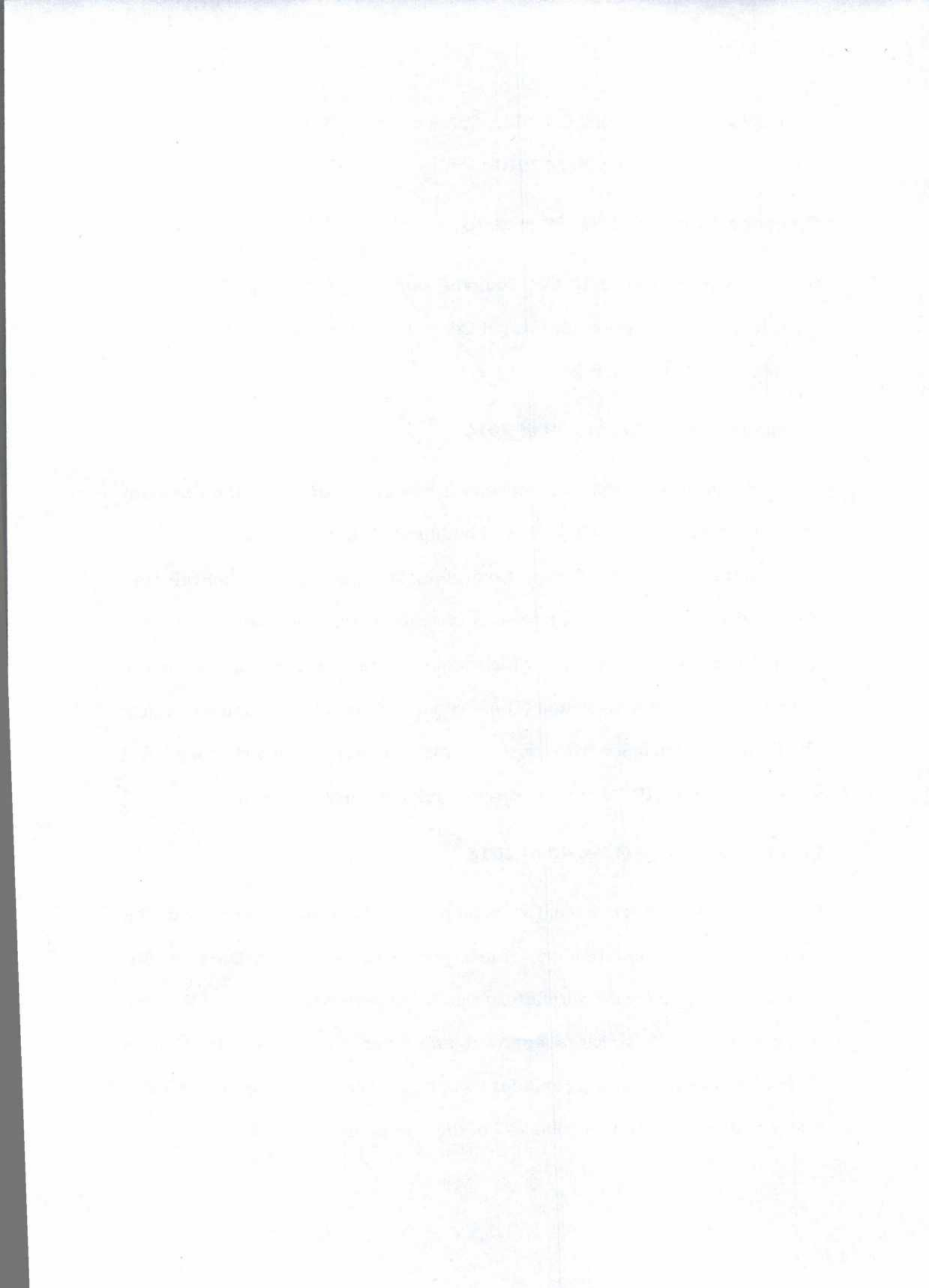
6. It was alleged that the Company entered into deemed interested transaction without prior approval of Central Government as required under sub-section (1) of Section 297.

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7. Pursuant to aforesaid inspection it was also found that the Company entered transactions with M/s Flamingo Enterprises in which Mr. Tikkavarapu Venkatram Reddy, Chairman, Mr. Tikkavarapy Vinayak Ravi Reddy, Vice-Chairman are partners. It was alleged that the transactions were deemed interested transaction which requires prior approval of the Central Government under sub-section (1) of Section 297 which the company failed. The Company also failed to disclose the transaction in audited Balance Sheet as on 31st March 2013 as required under related party disclosure.

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8. In the said letter dated 13th September 2012, it was also alleged that the company had entered into transaction with one of its Director, Mr. T.Vinayak Ravi Reddy for purchase of Bentley car with companies funds which required Board of Directors approval and prior approval of the Central Government as the paid-up capital is more than one crore, as per requirement under sub-section (1) of Section 297 of the Companies Act, 1956.



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9. In the said letter dated 13th September 2012, it was further alleged that the Company entered into deemed interested party transactions with M/s Flyington Freighters Pvt. Ltd. in which a director of the Company holds directorship. It was so done without prior approval of the Central Government under sub-section (1) of Section 297 of Companies Act 1956.

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10. The same very Ministry of Corporate Affairs letter dated 13th September 2012 alleged that while inspecting the books and record of the Company, the Inspecting Officers observed that the appellant company had transaction with related parties as per Accounting Standards-18, the details given under significant accounting policies attached to Balance Sheet of year ending 31st March 2008, 31st March 2009, 31st March 2010, 31st March 2011 and 30th March 2012 but without any break up. It was alleged that the Company had not obtained prior approval of the Central Government as required in sub-section (1) of Section 297 of the Companies Act 1956.

11. With regard to all the five interested party transactions and violation of sub-section (1) of Section 297, show-cause notices were also issued by the Registrar of Companies, Hyderabad on 5th August 2014.

12. Pursuant to show-cause notice, the appellant company failed to replies failed to provide details of transactions related party transaction which were forming part of the Annual Reports, but not provided to the Inspecting Officer during the inspection.

13. In the aforesaid background five sets of petitions for 'composition of offences' under Section 621-A of the Companies Act 1956 (now Section 441 of Companies Act 2013 – compounding of certain offences) filed by the appellants. Learned Tribunal by impugned judgement all dated 21st October 2016, having noticed that prior approval of the Central Government was not obtained held that the applications for composition/compounding under Section 621-A were premature and directed the appellants to obtain approval of the Central Government.

14. Learned counsel for the appellants submitted that once violation of sub-section (1) of Section 297 of Act 1956 is alleged and offence is committed, the question of obtaining prior permission does not arise.

15. We have heard the learned counsel for the appellants, the respondents and perused the record. As noticed, sub-section (1) of Section 297 prohibits related party transaction except with the consent of the Board of Directors and in case the company having a paid-up share capital of not less than rupees one crore, with the previous approval of the Central Government. As per sub-section (5) of Section 297, if consent is not accorded to any contract under the said section anything done in pursuance of the contract shall be voidable at the option of the Board. The relevant extract of sub-section (1) and sub-section (5) of Section 297 of Act 1956 reads as follows: -

"Section 297 of the Companies Act

297. Board' s sanction to be required for certain contracts in which particular directors are interested.

(1) Except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company-

(a) for the sale, purchase or supply of any goods, materials or services; or

(b) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company: Provided that in the case of a company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government.

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(5) If consent is not accorded to any contract under this section, anything done in pursuance of the contract shall be voidable at the option of the Board."

16. In these cases, as it is admitted that while entering into interested transaction prior approval of the Central Government as required under sub-section (1) of Section 297 of Companies Act 1956 has not obtained, the question of obtaining post facto approval does not arise. Once it is alleged and accepted that the company or directors(appellants herein) have made

interested party transaction without prior approval of the Central Government, which attracts penal action, the petition under Section 621 A of the Act 1956 (now Section 441 of the Act 2013) is maintainable. The Tribunal cannot abdicate its power and jurisdiction of condonation of punishment, if permitted under law by asking the party to obtain the approval of the Central Government.

17. For the reason aforesaid, we hold that the Tribunal wrongly abdicated its power of condonation of punishment and wrongly held that the applications were pre mature.

18. For the reason aforesaid, we set aside impugned orders all dated 26th October 2016 passed in C.A.Nos. 01, 02, 03, 04 and 05/621-A/HDB/2016 and remit all the cases to the Tribunal, New Delhi for its decision after notice and hearing of the parties.

(Mr. Balvinder Singh)
Member (Technical)

(Justice S.J. Mukhopadhaya)
Chairperson

NEW DELHI
28th FEBRUARY, 2017