

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) No. 247 of 2017**

[Arising out of Order dated 28<sup>th</sup> June, 2017 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad in C.A. 35/621A/HDB2016]

**IN THE MATTER OF :**

1. **Mr. Venumbaka Vijaya Sai Reddy  
S/o Venumbaka Sundrami 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 – 500033.**
2. **Mr. Jella Jagan Mohan Reddy,  
S/o Mr. Jella Nagamalla Reddy,  
Former Director of Jagati Publications Limited,  
Flat No. 17LH, 902, Lanco Hills,  
Manikonda,  
Hyderabad – 500089.**
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 – 500034.**
4. **Mr. Sajjala Ramakrishna Reddy,  
S/o Mr. Sajjala Subba Reddy,  
Former Whole-Time Director 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 Director of Jagati Publications Limited,  
Plot No. 3, 4 and 5, Lotus Pond Residency,  
Road No. 12, Banjara Hills,  
Hyderabad – 500034.**

6. **Mr. Yerramreddy Eswara Prasada Reddy,  
S/o Mr. Yerramreddy Chinna Chenna Reddy,  
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 Kalva Ramachandra Reddy,  
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 Paladugu Madhava Rao,  
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.**

**... Appellants**

**Versus**

**Registrar of Companies, Hyderabad  
Andhra Pradesh & Telangana,  
2<sup>nd</sup> Floor, Corporate Bhawan,  
GSI Post, Tattiannaram, Nagole,  
Banglaguda,  
Hyderabad – 500068**

**... Respondent**

**Company Appeal (AT) No. 248 of 2017**

[Arising out of Order dated 28<sup>th</sup> June, 2017 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad in C.A. 39/621A/HDB2016]

**IN THE MATTER OF:**

1. **Mr. Venumbaka Vijaya Sai Reddy  
S/o Venumbaka Sundrami 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 – 500033.**
2. **Mr. Jella Jagan Mohan Reddy,  
S/o Mr. Jella Nagamalla Reddy,  
Former Director of Jagati Publications Limited,  
Flat No. 17LH, 902, Lanco Hills,  
Manikonda,  
Hyderabad – 500089.**
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 – 500034.**
4. **Mr. Sajjala Ramakrishna Reddy,  
S/o Mr. Sajjala Subba Reddy,  
Former Whole-Time Director 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 Director of Jagati Publications Limited,  
Plot No. 3, 4 and 5, Lotus Pond Residency,  
Road No. 12, Banjara Hills,  
Hyderabad – 500034.**
6. **Mr. Yerramreddy Eswara Prasada Reddy,  
S/o Mr. Yerramreddy Chinna Chenna Reddy,  
Whole-Time Director of J agati Publications Limited,  
Plot No. 424, Road No. 78, Jubilee Hills,  
Hyderabad-500033.**

7. **Mr. Kalva Raja Prasad Reddy,  
S/o Kalva Ramachandra Reddy,  
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 Paladugu Madhava Rao,  
Whole-Time Director of Jagati Publications Limited  
#94, Eshwar Vilas, Nizampet, Quthbullapur,  
Rangareddy,  
Hyderabad-500072.**

**... Appellants**

**Versus**

**Registrar of Companies, Hyderabad  
Andhra Pradesh & Telangana,  
2<sup>nd</sup> Floor, Corporate Bhawan,  
GSI Post, Tattiannaram, Nagole,  
Banglaguda,  
Hyderabad – 500068**

**... Respondent**

**Company Appeal (AT) No. 249 of 2017**

[Arising out of Order dated 28<sup>th</sup> June, 2017 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad in C.A. 28/621A/HDB2016]

**IN THE MATTER OF:**

1. **Mr. Venumbaka Vijaya Sai Reddy  
S/o Venumbaka Sundrami 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 – 500033.**
2. **Mr. Jella Jagan Mohan Reddy,  
S/o Mr. Jella Nagamalla Reddy,  
Former Director of Jagati Publications Limited,  
Flat No. 17LH, 902, Lanco Hills,  
Manikonda,  
Hyderabad – 500089.**

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 – 500034.**
  
4. **Mr. Sajjala Ramakrishna Reddy,  
S/o Mr. Sajjala Subba Reddy,  
Former Whole-Time Director 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 Director of Jagati Publications Limited,  
Plot No. 3, 4 and 5, Lotus Pond Residency,  
Road No. 12, Banjara Hills,  
Hyderabad – 500034.**
  
6. **Mr. Yerramreddy Eswara Prasada Reddy,  
S/o Mr. Yerramreddy Chinna Chenna Reddy,  
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 Kalva Ramachandra Reddy,  
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 Paladugu Madhava Rao,  
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.**

**... Appellants**

**Versus**

**Registrar of Companies, Hyderabad  
Andhra Pradesh & Telangana,  
2<sup>nd</sup> Floor, Corporate Bhawan,  
GSI Post, Tattiannaram, Nagole,  
Banglaguda,  
Hyderabad – 500068**

**... Respondent**

**Company Appeal (AT) No. 250 of 2017**

[Arising out of Order dated 28<sup>th</sup> June, 2017 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad in C.A. 29/621A/HDB2016]

**IN THE MATTER OF:**

1. **Mr. Jella Jagan Mohan Reddy,  
S/o Mr. Jella Nagamalla Reddy,  
Former Director of Jagati Publications Limited,  
Flat No. 17LH, 902, Lanco Hills,  
Manikonda,  
Hyderabad – 500089.**
2. **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 – 500034.**
3. **Mr. Sajjala Ramakrishna Reddy,  
S/o Mr. Sajjala Subba Reddy,  
Former Whole-Time Director of Jagati Publications Limited,  
H. No. 7-56/322 to 324,  
Prashanti Hills, Raidurg Navkhalsa,  
Serlingampalli,  
Hyderabad – 500008.**

4. **Mr. Yeduguri Sandinti Jagan Mohan Reddy,  
S/o Yeduguri Sandinti Raja Sekhar,  
Former Director of Jagati Publications Limited,  
Plot No. 3, 4 and 5, Lotus Pond Residency,  
Road No. 12, Banjara Hills,  
Hyderabad – 500034.**
5. **Mr. Yerramreddy Eswara Prasada Reddy,  
S/o Mr. Yerramreddy Chinna Chenna Reddy,  
Whole-Time Director of Jagati Publications Limited,  
Plot No. 424, Road No. 78, Jubilee Hills,  
Hyderabad-500033.**
6. **Mr. Kalva Raja Prasad Reddy,  
S/o Kalva Ramachandra Reddy,  
Whole-Time Director of Jagati Publications Limited  
1-1503, Aparna Sarovar, Kanche Gachibowli,  
Goppanpally, Rangareddy,  
Hyderabad-500046.**
7. **Mr. Paladugu Venkata Krishna Prasad,  
S/o Paladugu Madhava Rao,  
Whole-Time Director of Jagati Publications Limited  
#94, Eshwar Vilas, Nizampet, Quthbullapur,  
Rangareddy,  
Hyderabad-500072.**
8. **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.**

**... Appellants**

**Versus**

**Registrar of Companies, Hyderabad  
Andhra Pradesh & Telangana,  
2<sup>nd</sup> Floor, Corporate Bhawan,  
GSI Post, Tattiannaram, Nagole,  
Banglaguda,  
Hyderabad – 500068**

**... Respondent**

**Company Appeal (AT) No. 251 of 2017**

[Arising out of Order dated 28<sup>th</sup> June, 2017 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad in C.A. 37/621A/HDB2016]

**IN THE MATTER OF:**

1. **Mr. Venumbaka Vijaya Sai Reddy  
S/o Venumbaka Sundrami 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 – 500033.**
2. **Mr. Jella Jagan Mohan Reddy,  
S/o Mr. Jella Nagamalla Reddy,  
Former Director of Jagati Publications Limited,  
Flat No. 17LH, 902, Lanco Hills,  
Manikonda,  
Hyderabad – 500089.**
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 – 500034.**
4. **Mr. Sajjala Ramakrishna Reddy,  
S/o Mr. Sajjala Subba Reddy,  
Former Whole-Time Director 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 Director of Jagati Publications Limited,  
Plot No. 3, 4 and 5, Lotus Pond Residency,  
Road No. 12, Banjara Hills,  
Hyderabad – 500034.**



6. **Mr. Yerramreddy Eswara Prasada Reddy,  
S/o Mr. Yerramreddy Chinna Chenna Reddy,  
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 Kalva Ramachandra Reddy,  
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 Paladugu Madhava Rao,  
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.**
- ... Appellants**

**Versus**

**Registrar of Companies, Hyderabad  
Andhra Pradesh & Telangana,  
2<sup>nd</sup> Floor, Corporate Bhawan,  
GSI Post, Tattiannaram, Nagole,  
Banglaguda,  
Hyderabad – 500068**

**... Respondent**

**Company Appeal (AT) No. 252 of 2017**

[Arising out of Order dated 28<sup>th</sup> June, 2017 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad in C.A. 34/621A/HDB2016]

**IN THE MATTER OF:**

1. **Mr. Venumbaka Vijaya Sai Reddy  
S/o Venumbaka Sundrami 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 – 500033.**

2. **Mr. Jella Jagan Mohan Reddy,  
S/o Mr. Jella Nagamalla Reddy,  
Former Director of Jagati Publications Limited,  
Flat No. 17LH, 902, Lanco Hills,  
Manikonda,  
Hyderabad – 500089.**
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 – 500034.**

**... Appellants**

**Versus**

**Registrar of Companies, Hyderabad  
Andhra Pradesh & Telangana,  
2<sup>nd</sup> Floor, Corporate Bhawan,  
GSI Post, Tattiannaram, Nagole,  
Bangaluda, Hyderabad – 500068**

**... Respondent**

**Company Appeal (AT) No. 253 of 2017**

[Arising out of Order dated 28<sup>th</sup> June, 2017 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad in C.A. 36/621A/HDB2016]

**IN THE MATTER OF:**

1. **Mr. Venumbaka Vijaya Sai Reddy  
S/o Venumbaka Sundrami 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 – 500033.**
2. **Mr. Jella Jagan Mohan Reddy,  
S/o Mr. Jella Nagamalla Reddy,  
Former Director of Jagati Publications Limited,  
Flat No. 17LH, 902, Lanco Hills,  
Manikonda,  
Hyderabad – 500089.**

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 – 500034.**

**... Appellants**

**Versus**

**Registrar of Companies, Hyderabad  
Andhra Pradesh & Telangana,  
2<sup>nd</sup> Floor, Corporate Bhawan,  
GSI Post, Tattiannaram, Nagole,  
Banglaguda,  
Hyderabad – 500068**

**... Respondent**

**Company Appeal (AT) No. 254 of 2017**

[Arising out of Order dated 28<sup>th</sup> June, 2017 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad in C.A. 38/621A/HDB2016]

**IN THE MATTER OF:**

1. **Mr. Venumbaka Vijaya Sai Reddy  
S/o Venumbaka Sundrami 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 – 500033.**
2. **Mr. Jella Jagan Mohan Reddy,  
S/o Mr. Jella Nagamalla Reddy,  
Former Director of Jagati Publications Limited,  
Flat No. 17LH, 902, Lanco Hills,  
Manikonda,  
Hyderabad – 500089.**
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 – 500034.**

**... Appellants**

**Versus**

**Registrar of Companies, Hyderabad  
Andhra Pradesh & Telangana,  
2<sup>nd</sup> Floor, Corporate Bhawan,  
GSI Post, Tattiannaram, Nagole,  
Banglaguda, Hyderabad – 500068**

**... Respondent**

**Present: For Appellants : Shri K. Dushyantha Kumar, Practicing  
Company Secretary**

**For Respondent : Shri Sanjib K. Mohanty, Senior Panel  
Central Government Counsel**

## **J U D G E M E N T**

**A.I.S. Cheema, J :**

These appeals arise out of different impugned orders dated 28<sup>th</sup> June, 2017 in Company Appeals (AT) Nos. 247, 248, 251 to 254 of 2017 and orders dated 5<sup>th</sup> June, 2017 in Company Appeals (AT) Nos. 249 and 250 of 2017 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad ('NCLT' in brief). These eight matters relate to 'Jagati Publications Limited', incorporated under the Companies Act, 1956 ('Act' in brief). The Office of the Regional Director, South-East Region, Hyderabad, during the inspection of books of accounts of the Company's Balance-Sheets for the years 2006-07 to 2012-13, observed various violations of different sections of the Act. A preliminary finding letter dated 30<sup>th</sup> July, 2015 was issued to the Company regarding violation of the different provisions of the Companies Act, 1956. This led to filing of various Compounding Applications by the Former Directors, Former Whole-Time Directors and Whole-Time Directors and also Former Company Secretary of the Company. The applications for compounding were filed initially before the Company Law Board, Chennai Bench, Chennai. On the constitution of NCLT, Hyderabad Bench, the applications came to be transferred to the NCLT. The learned NCLT, after considering

various applications which were moved by the Applicants for compounding the offences under Section 621A of the Act, allowed some of the applications imposing penalties which are now impugned and rejected some applications.

2. The Company Applications Numbers and impugned orders passed by the NCLT, Hyderabad, which have given rise to the above appeals seriatim are :

Sl. No.	Application No. and Date of Order of NCLT	Company Appeal No. before NCLAT
1.	C.A. No. 35/621A/HDB2016 [Impugned Order dated 28 <sup>th</sup> June, 2017]	Company Appeal (AT) No. 247 of 2017
2.	C.A. No. 39/621A/HDB2016 [Impugned Order dated 28 <sup>th</sup> June, 2017]	Company Appeal (AT) No. 248 of 2017
3.	C.A. No. 28/621A/HDB2016 [Impugned Order dated 5 <sup>th</sup> June, 2017]	Company Appeal (AT) No. 249 of 2017
4.	C.A. No. 29/621A/HDB2016 [Impugned Order dated 5 <sup>th</sup> June, 2017]	Company Appeal (AT) No. 250 of 2017
5.	C.A. No. 37/621A/HDB2016 [Impugned Order dated 28 <sup>th</sup> June, 2017]	Company Appeal (AT) No. 251 of 2017
6.	C.A. No. 34/621A/HDB2016 [Impugned Order dated 28 <sup>th</sup> June, 2017]	Company Appeal (AT) No. 252 of 2017
7.	C.A. No. 36/621A/HDB2016 [Impugned Order dated 28 <sup>th</sup> June, 2017]	Company Appeal (AT) No. 253 of 2017
8.	C.A. No. 38/621A/HDB2016 [Impugned Order dated 28 <sup>th</sup> June, 2017]	Company Appeal (AT) No. 254 of 2017

3. The learned Practicing Company Secretary, who has argued these appeals for the Appellants-Original Applicants before the NCLT, for the convenience of understanding filed Charts with reference to the eight matters. These charts are as under :-

**“(Para 3 A to H in landscape)”**

## 3-A

**Synopsis of Company Appeal (AT) No. 247 of 2017**

<b>Company Appeal (AT) No.</b>	<b>Compounding Application No.</b>	<b>Violation under section</b>	<b>Violation for the year</b>	<b>Penalty under Section</b>	<b>Maximum Penalty</b>	<b>Penal Provisions</b>	<b>Status of the Compounding Application at NCLT, Hyderabad</b>	<b>No. of Appellants</b>	<b>Nature of Offence</b>	<b>Pleadings</b>	<b>Prayer</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>
Company Appeal (AT) 247 of 2017	CA-35/621A/2016 at NCLT, Hyderabad	211(3A) of the Companies Act, 1956	2007-08	Sec-211(7) of the Companies Act, 1956	Under Section 211(7) for violation of Section 211(3A) of the Companies Act-1956 is Imprisonment for a term, which may extend to 6 months OR with fine, which may extend to Rs. 10,000/- or with both	Section 211(7) of the Companies Act doesn't prescribe any continuing penalty as the offence is a One-Time Offence, there is no continuing default in the said case.	Rejected	8 Directors and 1 Company Secretary in i.e. Total of 9 Appellants	Cash Flow statement not filed along with Balance Sheet	Company had filed e-form 23AC and ACA along with attachments for the year 2007-08, the same has been approved and registered by the ROC, Hyderabad. During the inspection in the year 2016, it was observed by the ROC that the Cash flow statement for the year 2007-2008 was not filed and the same has been filed with ROC on 25.02.2016. The same was duly acknowledged by the ROC, Hyderabad. However, the Hon'ble Regional Director (SER), for the said non-compliance has been compounded U/s 227(3)(d) and levied maximum penalty of Rs.5000/- vide its Order No. 9/(193)/Telangana/RD (ACR)/621A2016/746 dated 27.05.2016.	The Hon'ble Appellate Tribunal may be pleased to set aside the order passed by NCLT, Hyderabad and compound the same by imposing the compounding fee subject to minimum penalty prescribed under Companies Act, 1956

## 3-B

**Synopsis of Company Appeal (AT) No. 248 of 2017**

Company Appeal (AT) No.	Compounding Application No.	Violation under section	Violation for the year	Penalty under Section	Maximum Penalty	Penal Provisions	Status of the Compounding Application at NCLT, Hyderabad	No. of Appellants	Nature of Offence	Pleadings	Prayer
1	2	3	4	5	6	7	8	9	10	11	12
Company Appeal (AT) 248 of 2017	CA-39/621A/HDB/2016 at NCLT, Hyderabad	217(2A) of the Companies Act, 1956	2007-08	Sec-217(5) of the Companies Act, 1956	Under Section 217(5) for violation of Section 217(2AA) of Companies Act-1956 is Imprisonment for a term, which may extend to 6 months OR with fine, which may extend to Rs. 20,000/- or with both	Section 217(5) of the Companies Act doesn't prescribe any continuing penalty as the offence is a One-Time Offence, there is no continuing default in the said case.	Rejected	8 Directors (Eight Appellants)	Cash Flow statement not filed along with Balance Sheet	Company had filed e-form 23AC and ACA along with attachments for the year 2007-08, the same has been approved and registered by the ROC, Hyderabad. During the inspection in the year 2016, it was observed by the ROC that the Cash flow statement for the year 2007-2008 was not filed and the same has been filed with ROC on 25.02.2016. The same was duly acknowledged by the ROC, Hyderabad. However, the Hon'ble Regional Director (SER), for the said non-compliance has been compounded U/s 227(3)(d) and levied maximum penalty of Rs.5000/- vide its Order No. 9/(193)/Telangana/RD (ACR)/621A2016/746 dated 27.05.2016.	The Hon'ble Appellate Tribunal may be pleased to set aside the order passed by NCLT, Hyderabad and compound the same by imposing the compounding fee subject to minimum penalty prescribed under Companies Act, 1956

3-C

**Synopsis of Company Appeal (AT) No. 249 of 2017**

<b>Company Appeal (AT) No.</b>	<b>Compounding Application No.</b>	<b>Violation under section</b>	<b>Violation for the year</b>	<b>Penalty under Section</b>	<b>Maximum Penalty</b>	<b>Penal Provisions</b>	<b>Status of the Compounding Applications at NCLT, Hyderabad</b>	<b>No. of Appellants</b>	<b>Nature of Offence</b>	<b>Pleadings</b>	<b>Prayer</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>
Company Appeal (AT) 249 of 2017	CA-28/621A/HDB/2016 at NCLT, Hyderabad	211(1) of the Companies Act, 1956	2007-08	Sec-211(7) of the Companies Act, 1956	Under Section 211(7) for violation of Section 211(1) of the Companies Act-1956 is Imprisonment for a term, which may extend to 6 months OR with fine, which may extend to Rs. 10,000/- or with both	Section 211(7) of the Companies Act doesn't prescribe any continuing penalty as the offence is a One-Time Offence, there is no continuing default in the said case.	Rejected	8 Directors and 1 Company Secretary in i.e. Total of 9 Appellants	Issued Capital disclosed as Rs. 81.91 Cr. Instead of Rs. 100 Crores	The NCLT, Hyderabad Bench had allowed Compounding Applications with respect to same offence for various financial years vide its order as elucidated below: CA-27/621A/HDB/2016 : 2006-07 CA-30/621A/HDB/2016 : 2009-10 CA-31/621A/HDB/2016 : 2010-11 CA-32/621A/HDB/2016 : 2011-12 CA-33/621A/HDB/2016 : 2012-13	The Hon'ble Appellate Tribunal may be pleased to set aside the order passed by NCLT, Hyderabad and compound the same by imposing the compounding fee subject to minimum penalty prescribed under Companies Act, 1956



## 3-D

**Synopsis of Company Appeal (AT) No. 250 of 2017**

<b>Company Appeal (AT) No.</b>	<b>Compounding Application No.</b>	<b>Violation under section</b>	<b>Violation for the year</b>	<b>Penalty under Section</b>	<b>Maximum Penalty</b>	<b>Penal Provisions</b>	<b>Status of the Compounding Application at NCLT, Hyderabad</b>	<b>No. of Appellants</b>	<b>Nature of Offence</b>	<b>Pleadings</b>	<b>Prayer</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>
Company Appeal (AT) 250 of 2017	CA-29/621A/HDB/2016 at NCLT, Hyderabad	211(1) of the Companies Act, 1956	2008-09	Sec-211(7) of the Companies Act, 1956	Under Section 211(7) for violation of Section 211(1) of the Companies Act-1956 is Imprisonment for a term, which may extend to 6 months OR with fine, which may extend to Rs. 10,000/- or with both	Section 211(7) of the Companies Act doesn't prescribe any continuing penalty as the offence is a One-Time Offence, there is no continuing default in the said case.	Rejected	8 Directors and 1 Company Secretary in i.e. Total of 9 Appellants	Issued Capital disclosed as Rs. 84.41 Cr. Instead of Rs. 100 Crores.	The NCLT, Hyderabad Bench had allowed Compounding Applications with respect to same offence for various financial years vide its order as elucidated below: CA-27/621A/HDB/2016 : 2006-07 CA-30/621A/HDB/2016 : 2009-10 CA-31/621A/HDB/2016 : 2010-11 CA-32/621A/HDB/2016 : 2011-12 CA-33/621A/HDB/2016 : 2012-13	The Hon'ble Appellate Tribunal may be pleased to set aside the order passed by NCLT, Hyderabad and compound the same by imposing the compounding fee subject to minimum penalty prescribed under Companies Act, 1956

3-E

**Synopsis of Company Appeal (AT) No. 251 of 2017**

Company Appeal (AT) No.	Compounding Application No.	Violation under section	Violation for the year	Penalty under Section	Maximum Penalty	Penal Provisions	Status of the Compounding Applications at NCLT, Hyderabad	No. of Appellants	Nature of Offence	Pleadings	Prayer
1	2	3	4	5	6	7	8	9	10	11	12
Company Appeal (AT) 251 of 2017	CA-37/621A/HDB/2016 at NCLT, Hyderabad	211(3B) of the Companies Act, 1956	2007-08	Sec-211(7) of the Companies Act, 1956	Under Section 211(7) for violation of Section 211(3B) of the Companies Act-1956 is Imprisonment for a term, which may extend to 6 months OR with fine, which may extend to Rs. 10,000/- or with both	Section 211(7) of the Companies Act doesn't prescribe any continuing penalty as the offence is a One-Time Offence, there is no continuing default in the said case.	Rejected	8 Directors and 1 Company Secretary in i.e. Total of 9 Appellants	Cash Flow statement not filed along with Balance Sheet	Company had filed e-form 23AC and ACA along with attachments for the year 2007-08, the same has been approved and registered by the ROC, Hyderabad. During the inspection in the year 2016, it was observed by the ROC that the Cash flow statement for the year 2007-2008 was not filed and the same has been filed with ROC on 25.02.2016. The same was duly acknowledged by the ROC, Hyderabad. However, the Hon'ble Regional Director (SER), for the said non-compliance has been compounded U/s 227(3)(d) and levied maximum penalty of Rs.5000/- vide its Order No. 9/(193)/Telangana/RD (ACR)/621A2016/746 dated 27.05.2016.	The Hon'ble Appellate Tribunal may be pleased to set aside the order passed by NCLT, Hyderabad and compound the same by imposing the compounding fee subject to minimum penalty prescribed under Companies Act, 1956

3-F

**Synopsis of Company Appeal (AT) No. 252 of 2017**

Company Appeal (AT) No.	Compounding Application No.	Violation under section	Violation for the year	Penalty under Section	Maximum Penalty	Penal Provisions	Status of the Compounding Applications at NCLT, Hyderabad	No. of Appellants	Nature of Offence	Pleadings	Prayer
1	2	3	4	5	6	7	8	9	10	11	12
Company Appeal (AT) 252 of 2017	CA-34/621A/HDB/2016 at NCLT, Hyderabad	211(3A) of the Companies Act, 1956	2006-07	Sec-211(7) of the Companies Act, 1956	Under Section 211(7) for violation of Section 211(3A) of the Companies Act-1956 is Imprisonment for a term, which may extend to 6 months OR with fine, which may extend to Rs. 10,000/- or with both	Section 211(7) of the Companies Act doesn't prescribe any continuing penalty as the offence is a One-Time Offence, there is no continuing default in the said case.	Allowed. However, Maximum Penalty is Rs. 10,000/- where as NCLT levied a compounding fee of Rs. 1,00,000 per Director	3 Directors i.e. 3 Appellants in the said case.	Non-Preparation of Cash Flow Statement and non-disclosure of Related Party Transactions	Maximum Penalty is Rs. 10,000 for the said violation under Section 211(7) the National Law Tribunal, Hyderabad had allowed the Compounding application but had levied exemplary compounding fee of Rs. 1,00,000 per director. However, the offence is a one time offence and the Appellants are not liable to pay any continuing penalty.  However, the Hon'ble Regional Director (SER), for the said non compliance has been compounded U/s 227(3) (d) and levied maximum penalty of Rs. 5000/- vide its Order. No. 9/(197)/Telangana/RD(ACR)/621A2016/753 dated 27.05.2016.	The Hon'ble Appellate Tribunal may be pleased to set aside the order passed by NCLT, Hyderabad and have a lenient view and impose compounding fee subject to minimum penalty as prescribed under Companies Act, 1956

3-G

**Synopsis of Company Appeal (AT) No. 253 of 2017**

Company Appeal (AT) No.	Compounding Application No.	Violation under section	Violation for the year	Penalty under Section	Maximum Penalty	Penal Provisions	Status of the Compounding Applications at NCLT, Hyderabad	No. of Appellants	Nature of Offence	Pleadings	Prayer
1	2	3	4	5	6	7	8	9	10	11	12
Company Appeal (AT) 253 of 2017	CA-36/621A/HDB/2016 at NCLT, Hyderabad	211(3B) of the Companies Act, 1956	2006-07	Sec-211(7) of the Companies Act, 1956	Under Section 211(7) for violation of Section 211(3B) of the Companies Act-1956 is Imprisonment for a term, which may extend to 6 months OR with fine, which may extend to Rs. 10,000/- or with both	Section 211(7) of the Companies Act doesn't prescribe any continuing penalty as the offence is a One-Time Offence, there is no continuing default in the said case.	Allowed. However, Maximum Penalty is Rs. 10,000/- where as NCLT levied a compounding fee of Rs. 1,00,000 per Director	3 Directors i.e. 3 Appellants in the said case.	Non-Preparation of Cash Flow Statement and non-disclosure of Related Party Transactions	Maximum Penalty is Rs. 10,000 for the said violation under Section 211(7) the National Company Law Tribunal, Hyderabad had allowed the Compounding application but had levied exemplary compounding fee of Rs. 1,00,000 per director. However, the offence is a one time offence and the Appellants are not liable to pay any continuing penalty.  However, the Hon'ble Regional Director (SER), for the said non compliance has been compounded U/s 227(3) (d) and levied maximum penalty of Rs. 5000/- vide its Order. No. 9/(197)/Telangana/RD(ACR)/621A2016/753 dated 27.05.2016.	The Hon'ble Appellate Tribunal may be pleased to set aside the order passed by NCLT, Hyderabad and have a lenient view and impose compounding fee subject to minimum penalty as prescribed under Companies Act, 1956

## 3-H

**Synopsis of Company Appeal (AT) No. 254 of 2017**

Company Appeal (AT) No.	Compounding Application No.	Violation under section	Violation for the year	Penalty under Section	Maximum Penalty	Penal Provisions	Status of the Compounding Applications at NCLT, Hyderabad	No. of Appellants	Nature of Offence	Pleadings	Prayer
1	2	3	4	5	6	7	8	9	10	11	12
Company Appeal (AT) 254 of 2017	CA-38/621A/HDB/2016 at NCLT, Hyderabad	217(2A) of the Companies Act, 1956	2006-07	Sec-217(5) of the Companies Act, 1956	Under Section 217(5) for violation of Section 217(2AA) of the Companies Act-1956 is Imprisonment for a term, which may extend to 6 months OR with fine, which may extend to Rs. 20,000/- or with both	Section 217(5) of the Companies Act doesn't prescribe any continuing penalty as the offence is a One-Time Offence, there is no continuing default in the said case.	Allowed. However, Maximum Penalty is Rs. 20,000/- where as NCLT levied a compounding fee of Rs. 2,00,000 per Director	3 Directors i.e. 3 Appellants in the said case.	Non-Preparation of Cash Flow Statement and non-disclosure of Related Party Transactions	Maximum Penalty with respect to this violation is Rs.20,000 for the said violation under Section 217(5) the National Company Law Tribunal, Hyderabad had allowed the Compounding application but had levied exemplary compounding fee of Rs. 2,00,000 per director. However, the offence is a one time offence and the Appellants are not liable to pay any continuing penalty.  However, the Hon'ble Regional Director (SER), for the said non compliance has been compounded U/s 227(3) (d) and levied maximum penalty of Rs. 5000/- vide its Order. No. 9/(197)/Telangana/RD(ACR)/6 21A2016/753 dated 27.05.2016.	The Hon'ble Appellate Tribunal may be pleased to set aside the order passed by NCLT, Hyderabad and have a lenient view and impose compounding fee subject to minimum penalty as prescribed under Companies Act, 1956

4. Aggrieved by the rejection of the Compounding Applications as appearing from the charts above with reference to the Company Appeal (AT) No. 247 of 2017 to Company Appeal (AT) No. 251 of 2017 and allowing compounding but imposing penalty in excess of what is permissible under relevant Sections with reference to Company Appeals (AT) Nos. 252 to 254 of 2017, the Company Appeals are filed. The Appeals are heard.

5. It is the submission for the appellants that Company Appeals (AT) Nos. 247, 248 and 251 of 2017 relate to non-filing of cash-flow statement with the balance-sheets. It is stated that the inspection started in 2012 and was completed around July, 2015. It is stated that when preliminary finding letter dated 30<sup>th</sup> July, 2015 was given to the Company, the Compounding Applications were filed. It is stated for the appellants that in the chart in Column of pleadings, the appellants have shown as to how after the errors were pointed out, the appellants immediately ensured that necessary compliance was done and the Cash-Flow Statement was filed and accepted by the Registrar of Companies (ROC) on 25<sup>th</sup> February, 2016. Thus, according to him, the appellants made good the default. Referring to the Charts, it has been stated for the appellants that the orders of the Regional Director with reference to compounding under Section 227 (3)(d) is with reference to the punishment under separate section and the defaults with regard to sections violated as in Column 3 of the Charts material above are yet to be compounded.

6. Now we will take up separate matters to deal in brief with the impugned orders passed and the contentions of the appellants as well as the learned counsel for the ROC. In the impugned order reference is there to defaults alleged against the Company. We will pick paras from the Impugned Orders in this regard.

**I. Company Appeal (AT) No. 247 of 2017 :**

The default pointed out in impugned order is as under :-

“8. In view of the above, the Company was required to prepare a Cash Flow Statement for 2007-08 in compliance with AS-3 prescribed vide Rules ibid. However, during the inspection it was revealed that, it has not prepared the Cash Flow Statement for 2007-08 as the same could not be produced by the Company during inspection and has not attached the same along with Balance Sheet and Profit and Loss Account filed before Registrar of Companies for 2007-08. This has resulted in violation of Section 211 (3A) of the Companies Act, 1956.”

The learned NCLT in Paragraph 15 of the judgement observed that though the inspecting team pointed out non-compliance/violation of AS-3 and of Section 211(3A) of the Companies Act, while filing compounding application, applicants made wrong submissions before the Company Law Board in spite of submitting individual affidavits. Because of these

observations, we asked the appellants to file copies of the Compounding Applications with annexures which had been filed before the NCLT. Then, in all these matters, copies of the Compounding Applications have been filed. With the assistance of the learned Practicing Company Secretary as well as learned counsel for ROC, we have tried to make out as to what is the “false submissions through affidavit” the learned NCLT is referring to, but we have not been able to make out what according to NCLT were the false submissions. If it relates to making statement that Cash Flow Statement is annexed, NCLT has not considered defence that due to recent introduction of e-filing, service producer failed to attach the Cash Flow Statement and when defect was pointed out immediately compliance was done. Looking to the nature of offence and the submissions of the ROC that this was the first time default, we feel that it would not be appropriate to reject compounding. Counsel for ROC has not shown any such defect in the compounding applications or in affidavit in support filed by the appellants.

Looking to the nature of offence and the submissions for the ROC that this was the first time default, we feel that it would be appropriate to allow compounding. We have seen the reply filed by the respondent in this appeal and the reply which ROC has filed regarding the compounding applications before the NCLT and its report. Admittedly, it is the first time offence which has come up for compounding. We deem it appropriate to permit compounding.



**II. Company Appeal (AT) No. 248 of 2017 :**

In this matter, in the impugned order, the default against the appellants pointed out is :-

“7. In view of the above, the Company was required to prepare a Cash Flow Statement for 2007-08 in compliance with AS-3 prescribed vide Rules ibid. However, during the inspection it was revealed that, it has not prepared the Cash Flow Statement for 2007-08 as the same could not be produced by the Company during inspection and has not attached the same along with Balance Sheet and profit and loss account filed before ROC for 2007-08. This has resulted in violation of Section 217 2(AA) (i) of Companies Act, 1956.”

Like the matter of Company Appeal (AT) No. 247 of 2017, in this matter also, the learned NCLT observed in paragraph 17 that false submissions through affidavit have been made amounting to serious lapse and thus went on to reject the compounding application. In this matter also, the learned counsel for the ROC has not been able to support the observation of the NCLT that there has been false statement made. We consider the defence of Appellants also. In this matter also, the ROC has accepted that it is the first time offence and the learned counsel for ROC is submitting that in all these Appeals, the defaults noticed were pointed

out for the first time and this Tribunal may take suitable decision regarding the defaults and request regarding compounding.

Considering the defaults and the offence and the fact that the appellants in this matter as in Company Appeal (AT) No. 247 of 2017 have admitted the offence, we feel even this matter also needs to be allowed and the compounding should be permitted.

### **III. Company Appeal (AT) No. 249 of 2017 :**

In this matter, the default alleged against the appellants as recorded in the impugned order is as follows :

“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.”

The appellants claimed that it was inadvertent mistake committed and it was not done intentionally. The learned NCLT while dealing with the application, recorded that the authorised representative of the Jagati Publications Limited submitted a letter subsequent to the hearing held on 1<sup>st</sup> March, 2017 and perusal of the same has shown that the authorised

share capital and issued share capital of the Company for the year ending 31<sup>st</sup> March, 2008 were the same amount of Rs. 100 Crores whereas the subscribed and paid-up capital was Rs. 81,91,80,010/-. The learned NCLT perused the Balance Sheet as on 31<sup>st</sup> March, 2008 under the heading “Source of Funds” to observe that share-capital was shown as Rs.106,41,87,650/-. It then went on to observe that the authorised share capital has been shown more than the share capital as Rs. 100 Crores. Thus entering into these details (although the Regional Director in his inspection had not put up these aspects), learned NCLT went on to reject the application for compounding.

Learned Company Secretary for the appellants pointed out Page 122-Schedule – I forming part of the accounts filed with copy of Compounding Applications, Balance Sheet as on 31<sup>st</sup> March, 2008 attached with copy of the compounding application which has been filed to submit that the learned NCLT wrongly counted “Share Application Money” as the share capital for the purpose of calculating Issued Capital as it had not yet attained the status of Issued Capital. We have noted that for the purpose of Financial Accounts such depiction is as per Accounting Rules applicable. However, it had yet not attained the status of Issued Capital.

The learned counsel for ROC submitted that looking to the nature of default amounting to offence, and that it is first time, ROC is leaving to the discretion of this Tribunal to take any suitable decision with regard to the offence pointed out.

Looking to the above factors, we find that even in this matter also, it would be appropriate to set aside the impugned order dated 5<sup>th</sup> June, 2017 and permit compounding. We are also taking this view because the appellants have pointed out that for the same offence for different years as shown in the Chart, compounding has been allowed by the learned NCLT.

**IV. Company Appeal (AT) No. 250 of 2017 :**

In this matter also, there are similar charges against the appellants as recorded in the Company Appeal (AT) No. 249 of the 2017 except for the fact that Company Appeal (AT) No. 249 of 2017 relates to year 2007-08 and this appeal relates to the year 2008-09.

For similar reasons, we find even this appeal needs to be allowed and compounding should be permitted.

**V. Company Appeal (AT) No. 251 of 2017 :**

In this matter, the default pointed out against the appellants was as follows :

“12. To the Observations of the Inspection Team, the Applicants replied stating that while filing e-form 23AC and ACA for the year 2007-08, the Cash Flow Statement was inadvertently not enclosed whereas the same was mentioned in Auditors Report. The above submission / claim of the Applicants are factually incorrect and are not supported with the evidence. A perusal of the Annual Report 2007-08 revealed that no

Cash Flow Statement was forming part of Balance Sheet, Profit & Loss Account for the Financial Year 2007-08, though the Income for the year was Rs. 10,51,42,809/-.

13. The Company has further not complied with the Accounting Standard-3 by nondisclosure of Related Pay Transactions (RPT) as follows :

- a) The deviation from the accounting standards;
- b) The reasons for such deviation and
- c) The financial effect, if any, arising due to such deviation.

This has resulted in violation of Section 211(3B) of the Companies Act, 1956, read with Accounting Standard-3, for the year 2007-08.”

The learned NCLT in this matter also went on to reject the application observing that while filing the compounding applications, the applicants made wrong statements/submissions. As mentioned, with reference to Company Appeals (AT) Nos. 247 and 248 of 2017, in this matter also, we have taken copy of the compounding application filed by the applicants on record and the learned counsel for the ROC is unable to say as to how it can be said that there are false submissions. It may be mentioned that it was not a stand taken by the ROC before NCLT that the original applicants

have made false submissions, nor any action was sought for against the applicants-appellants for making false submissions. Only because in the Balance Sheets, a reference has been made to Cash-Flow Statement claiming to be annexed and the same is not found to be annexed cannot be branded as false submission. The defence of the appellants is that just in 2006-07, e-filing had been introduced and service provider could not attach the Cash Flow Statement, which defect when noticed was immediately corrected.

For the said reasons, even this appeal may have to be allowed and compounding may have to be permitted.

**VI. Company Appeal (AT) No. 252 of 2017**

**VII. Company Appeal (AT) No. 253 of 2017**

**VIII. Company Appeal (AT) No. 254 of 2017 :**

These three appeals need to be taken up together as other aspects are not in dispute except that while passing the impugned orders dated 28<sup>th</sup> June, 2017, the learned NCLT while permitting compounding, imposed penalty in excess of what could be the fine under the given provision. It has been argued that the compounding fee could not have been more than the fine which could be imposed even if the trial was to take place. The relevant penal sections are Section 211(7) for Company Appeals (AT) Nos. 252 and 253 of 2017) and Section 217(5) for Company Appeal (AT) No. 254 of 2017. The concerned sub-Sections read as under:-

**“Sec 211 - Form and contents of balance sheet and profit and loss account.**

*xxx*

*xxx*

*xxx*

- (7) *If any such person as is referred to in sub-section (6) of section 209 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 :*

*Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defense to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section and the other requirements aforesaid were complied with and was in a position to discharge that duty :*

*Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed willfully.”*

**Section 217 - Board's report.****xxx****xxx****xxx**

(5) *If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of sub-sections (1) to (3), or being the chairman, signs the Board's report otherwise than in conformity with the provisions of sub-section (4), 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 twenty thousand rupees, or with both:*

**Provided** *that no person shall be sentenced to imprisonment for any such offence unless it was committed willfully:*

**Provided** *further that in any proceedings against a person in respect of an offence under sub-section (1), it shall be a defense to prove, that a competent and reliable person was charged with the duty of seeing that the provisions of that sub-section were complied with and was in a position to discharge that duty."*



Referring to these sub-Sections, it has been argued for the appellants that violations of Section 211(3) (A) and Section 211(3) (b) as well as Section 217(2AA) of the Act respectively with reference to these three appeals are not violations which are of recurring nature. Learned Company Secretary submitted that in the Companies Act, wherever Legislature wanted to provide fine or penalty on recurring basis, has specifically so stated. For example, default under Section 168 of the Act of 1956 would attract fine up to Rs.50,000/- and in case of continuing default further fine which may extend upto Rs.2,500/- per day. It is rightly submitted that unless recurring nature is shown, the learned NCLT could not have multiplied the compounding fees as has been done.

In the impugned orders in these appeals, relevant portions regarding directing of payment of compounding fee are as follows :

**Company Appeal (AT) No. 252 of 2017 :**

“18. Considering the above facts and circumstances and submissions made by the applicants we are inclined to compound the offences with the following Directions :

- a) All the Applicants are directed to pay a sum of Rs. 1,00,000/- (Rupees One Lakh Only) each towards the compounding fee (Rs. 10,000 X 10 Years).
- b) 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.

xxx

xxx

xxx”

**Company Appeal (AT) No. 253 of 2017 :**

“14. Considering the above facts and circumstances of the case, we are inclined to compound the offence/default committed in non-compliance of Section 211(3B) of the Companies Act, 1956 read with AS-18. Accordingly we direct that the Applicants to pay the following compounding fee.

- a) All the Applicants are directed to pay a sum of Rs. 1,00,000/- (Rupees One Lakh Only) each towards the compounding fee (Rs. 10,000 X 10 years).
- b) 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.

xxx

xxx

xxx”

**Company Appeal (AT) No. 254 of 2017 :**

“12. Considering the above facts and circumstances of the case, we are inclined to compound the offence with the following directions :

- a) All the Applicants are directed to pay a sum of Rs.2,00,000/- (Rupees Two Lakh Only) each

towards the compounding fee (Rs. 20,000 X 10 years).

- b) 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.

xxx

xxx

xxx”

Learned Company Secretary for the appellants referring to the above operative orders of the learned NCLT referred to Section 211(7) and Section 217(5) to show as to what could be the maximum penalty as specified in Column 6 of the Charts (mentioned above). Learned counsel for ROC is not disputing the submissions made by the learned Company Secretary for the appellants and considering the concerned sections and the scheme of the Act and reading Sections 211(7) and 217(5) of the Companies Act, 1956, we find that the impugned orders in all these appeals require correction and need to be modified.

7. For the above reasons, we pass the following orders :

A. Company Appeal (AT) No. 247 of 2017 :

The appeal is allowed. The impugned order dated 28<sup>th</sup> June, 2017 is quashed and set aside. Compounding is allowed. Each of the appellants are directed to pay compounding fee of Rs. 10,000/-

(Rupees Ten Thousand Only) for violation of Section 211(3A) of the Companies Act, 1956, as alleged. The Appellants shall pay the compounding fee from their personal accounts.

B. Company Appeal (AT) No. 248 of 2017 :

The appeal is allowed. The impugned order dated 28<sup>th</sup> June, 2017 is quashed and set aside. Compounding is allowed. Each of the appellants are directed to pay compounding fee of Rs. 20,000/- (Rupees Twenty Thousand Only) for violation of Section 217(2AA) of the Companies Act, 1956, as alleged. The Appellants shall pay the compounding fee from their personal accounts.

C. Company Appeal (AT) No. 249 of 2017 :

The appeal is allowed. The impugned order dated 5<sup>th</sup> June, 2017 is quashed and set aside. Compounding is allowed. Each of the appellants are directed to pay compounding fee of Rs. 10,000/- (Rupees Ten Thousand Only) for violation of Section 211(1) of the Companies Act, 1956, as alleged. The Appellants shall pay the compounding fee from their personal accounts.

D. Company Appeal (AT) No. 250 of 2017 :

The appeal is allowed. The impugned order dated 5<sup>th</sup> June, 2017 is quashed and set aside. Compounding is allowed. Each of the appellants are directed to pay compounding fee of Rs. 10,000/- (Rupees Ten Thousand Only) for violation of Section 211(1) of the

Companies Act, 1956, as alleged. The Appellants shall pay the compounding fee from their personal accounts.

E. Company Appeal (AT) No. 251 of 2017 :

The appeal is allowed. The impugned order dated 28<sup>th</sup> June, 2017 is quashed and set aside. Compounding is allowed. Each of the appellants are directed to pay compounding fee of Rs. 10,000/- (Rupees Ten Thousand Only) for violation of Section 211(3B) of the Companies Act, 1956, as alleged. The Appellants shall pay the compounding fee from their personal accounts.

F. Company Appeal (AT) No. 252 of 2017 :

The appeal is allowed. The impugned order dated 28<sup>th</sup> June, 2017 is quashed and set aside. Compounding is allowed. Each of the appellants are directed to pay compounding fee of Rs. 10,000/- (Rupees Ten Thousand Only) for violation of Section 211(3A) of the Companies Act, 1956, as alleged. The Appellants shall pay the compounding fee from their personal accounts.

G. Company Appeal (AT) No. 253 of 2017 :

The appeal is allowed. The impugned order dated 28<sup>th</sup> June, 2017 is quashed and set aside. Compounding is alleged. Each of the appellants are directed to pay compounding fee of Rs. 10,000/- (Rupees Ten Thousand Only) for violation of Section 211(3B) of the

Companies Act, 1956, as alleged. The Appellants shall pay the compounding fee from their personal accounts.

H. Company Appeal (AT) No. 254 of 2017 :

The appeal is allowed. The impugned order dated 28<sup>th</sup> June, 2017 is quashed and set aside. Compounding is allowed. Each of the appellants are directed to pay compounding fee of Rs. 20,000/- (Rupees Twenty Thousand Only) for violation of Section 217(2AA) of the Companies Act, 1956, as alleged. The Appellants shall pay the compounding fee from their personal accounts.

I. Copy of this Judgement be sent to concerned Registrar of Companies at Hyderabad.

[Justice A.I.S. Cheema]  
Member (Judicial)

[Balvinder Singh]  
Member (Technical)

New Delhi

20<sup>th</sup> December, 2017.

/ng/nn