

Mr. Venumbaka Vijaya Sai Reddy vs Registrar Of Companies on 20 December, 2017

1

NATIONAL COMPANY LAW APPELLATE TRIBUNAL NEW DELHI

Company Appeal (AT) No. 247 of 2017
[Arising out of Order dated 28th 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,
2nd Floor, Corporate Bhawan,
GSI Post, Tattiannaram, Nagole,
Banglaguda,
Hyderabad - 500068

... Respondent

Company Appeal (AT) No. 248 of 2017

[Arising out of Order dated 28th 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 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.

... Appellants

Versus

Registrar of Companies, Hyderabad
Andhra Pradesh & Telangana,
2nd Floor, Corporate Bhawan,
GSI Post, Tattiannaram, Nagole,
Banglaguda,
Hyderabad - 500068

... Respondent

Company Appeal (AT) No. 249 of 2017

[Arising out of Order dated 28th 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.

Company Appeals (AT) Nos. 247 to 254 of 2017

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,
2nd Floor, Corporate Bhawan,
GSI Post, Tattiannaram, Nagole,
Banglaguda,
Hyderabad - 500068

... Respondent

Company Appeal (AT) No. 250 of 2017

[Arising out of Order dated 28th 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.

Company Appeals (AT) Nos. 247 to 254 of 201

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,
2nd Floor, Corporate Bhawan,
GSI Post, Tattiannaram, Nagole,
Banglaguda,
Hyderabad - 500068

... Respondent

Company Appeal (AT) No. 251 of 2017

[Arising out of Order dated 28th 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.

Company Appeals (AT) Nos. 247 to 254 of 201

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,
2nd Floor, Corporate Bhawan,
GSI Post, Tattiannaram, Nagole,
Banglaguda,
Hyderabad - 500068

... Respondent

Company Appeal (AT) No. 252 of 2017

[Arising out of Order dated 28th 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.

Company Appeals (AT) Nos. 247 to 254 of 2017

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,
2nd Floor, Corporate Bhawan,
GSI Post, Tattiannaram, Nagole,
Banglaguda, Hyderabad - 500068

... Respondent

Company Appeal (AT) No. 253 of 2017

[Arising out of Order dated 28th 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.

Company Appeals (AT) Nos. 247 to 254 of 201

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,
2nd Floor, Corporate Bhawan,
GSI Post, Tattiannaram, Nagole,
Banglaguda,
Hyderabad - 500068

... Respondent

Company Appeal (AT) No. 254 of 2017

[Arising out of Order dated 28th 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,
2nd Floor, Corporate Bhawan,
GSI Post, Tattiannaram, Nagole,
Banglaguda, Hyderabad - 500068

... Respondent

Company Appeals (AT) Nos. 247 to 254 of 201

12

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

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

JUDGEMENT

A.I.S. Cheema, J :

These appeals arise out of different impugned orders dated 28th June, 2017 in Company Appeals (AT) Nos. 247, 248, 251 to 254 of 2017 and orders dated 5th 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 30th 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 Company Appeals (AT) Nos. 247 to 254 of 2017 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. Application No. and Date of Order of Company Appeal No. before NCLAT No. NCLT

1. C.A. No. 35/621A/HDB2016 Company Appeal (AT) No. 247 of 2017 [Impugned Order dated 28th June, 2017]

2. C.A. No. 39/621A/HDB2016 Company Appeal (AT) No. 248 of 2017 [Impugned Order dated 28th June, 2017]

3. C.A. No. 28/621A/HDB2016 Company Appeal (AT) No. 249 of 2017 [Impugned Order dated 5th June, 2017]

4. C.A. No. 29/621A/HDB2016 Company Appeal (AT) No. 250 of 2017 [Impugned Order dated 5th June, 2017]

5. C.A. No. 37/621A/HDB2016 Company Appeal (AT) No. 251 of 2017 [Impugned Order dated 28th June, 2017]

6. C.A. No. 34/621A/HDB2016 Company Appeal (AT) No. 252 of 2017 [Impugned Order dated 28th June, 2017]

7. C.A. No. 36/621A/HDB2016 Company Appeal (AT) No. 253 of 2017 [Impugned Order dated 28th June, 2017]

8. C.A. No. 38/621A/HDB2016 Company Appeal (AT) No. 254 of 2017 [Impugned Order dated 28th June, 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)"

Company Appeals (AT) Nos. 247 to 254 of 2017 3-A Synopsis of Company Appeal (AT) No. 247 of 2017 Company Compou- Viola Violatio Penalty Maximu Penal Status of No. of Nature of Pleadings Prayer Appea nding tion n for under m Provision the Appella Offence l (AT) Applicatio unde the Section Penalty s Compoundi nts No. n r year ng No. secti Application on s at NCLT, Hyderabad Compa CA- 211(3A 2007-08 Sec- Under Section Rejected 8 Cash Company had filed e- The ny 35/621A/) of the 211(7) of Section 211(7) of Director Flow form 23AC and ACA Hon'ble Appeal HDB/201 Compa the 211(7) the s and 1 statemen along with attachments Appellat (AT) 6 at ni ies Compani for Compani Compan t not for the year 2007-08 , e 247 NCLT, Act, es Act, violation es Act y filed the same has been Tribunal of Hyderabad 1956 1956 of doesn't Secretar along approved and may be 2017 d Section prescribe y in i.e. with registered by the ROC, pleaded 211(3A) any Total of Balance Hyderabad. to set of the continui 9 Sheet During the inspection aside the Compani ng Appella in the year 2016, it was order es Act- penalty nts observed by the ROC passed 1956 is as the that the Cash flow by NCLT, Imprison offence is statement for the year Hyderabad

-ment for a One- 2007-2008 was not filed ad and a term, Time and the same has been compou which Offence, filed with ROC on nd the may there is 25.02.2016. The same same by extend to no was duly acknowledged imposing 6 continui by the ROC, Hyderabad. the months ng However, the Hon'ble compou OR with default Regional Director (SER), nding fee fine, in the for the said non-subject which said compliance has been to may case. compounded U/s minimu extend to 227(3)(d) and levied m Rs. maximum penalty of penalty 10,000/- Rs.5000/- vide its prescrib or with Order No. ed under both 9/(193)/Telangana/RD Compani (ACR)/621A2016/746 es Act, dated 27.05.2016. 1956 Company Appeals (AT) Nos. 247 to 254 of 2017 3-B Synopsis of Company Appeal (AT) No. 248 of 2017 Company Compou- Violat Violati Penalty Maximum Penal Status of No. of Nature of

Pleadings Prayer Appeal nding ion on for under Penalty Provision the Appellant Offence (AT) Application under the Section s Compoundi s No. No. sectio year ng n Application s at NCLT, Compa CA- 217(2A 2007- Sec-217(5) Under Section Rejected 8 Directors Cash Company had filed e- The ny 39/621A/ A) of o8 of the Section 217(5) of (Eight Flow form 23AC and ACA Hon'ble Appeal HDB/201 the Companie 217(5) the Appellants) statement along with attachments Appellat (AT) 6 at Compa s Act, for Compani not filed for the year 2007-08 , e 248 NCLT, nies 1956 violation es Act along with the same has been Tribunal of Hyderabad Act, of doesn't Balance approved and may be 2017 d 1956 Section prescribe Sheet registered by the ROC, pleased 217(2AA) any Hyderabad. to set of continui During the inspection aside the Compani ng in the year 2016, it was order es Act- penalty observed by the ROC passed 1956 is as the that the Cash flow by NCLT, Imprison offence is statement for the year Hyderab

-ment for a One- 2007-2008 was not filed ad and a term, Time and the same has been compou which Offence, filed with ROC on nd the may there is 25.02.2016. The same same by extend to no was duly acknowledged imposing 6 continui by the ROC, the months ng Hyderabad. However, compou OR with default the Hon'ble Regional nding fee fine, in the Director (SER), for the subject which said said non-compliance to may case. has been compounded minimu extend to U/s m Rs. 227(3)(d) and levied penalty 20,000/- maximum penalty of prescrib or with Rs.5000/- vide its ed under both Order No. Compani 9/(193)/Telangana/RD es Act, (ACR)/621A2016/746 1956 dated 27.05.2016.

Company Appeals (AT) Nos. 247 to 254 of 2017 3-C Synopsis of Company Appeal (AT) No. 249 of 2017 Company Compou- Violat Violatio Penalty Maximum Penal Status of No. of Nature Pleadings Prayer Appeal nding ion n for under Penalty Provision the Appellan of (AT) Application under the year Section s Compoundi ts Offence No. No. sectio ng n Application s at NCLT, Hyderabad Compa CA- 211(1) 2007-08 Sec- Under Section Rejected 8 Issued The NCLT, Hyderabad The ny 28/621A/ of the 211(7) of Section 211(7) of Director Capital Bench had allowed Hon'ble Appeal HDB/201 Compa the 211(7) the s and 1 disclos Compounding Appellat (AT) 6 at n-ies Compani for Compani Compa ed as Applications with respect e 249 NCLT, Act, es Act, violation es Act ny Rs. to same offence for Tribunal of Hyderabad 1956 1956 of doesn't Secretar 81.91 various financial years may be 2017 d Section prescribe y in i.e. Cr. vide its order as pleased 211(1) of any Total of Instead elucidated below: to set the continui 9 of Rs. aside the Compani ng Appella 100 CA-27/621A/HDB/2016 : order es Act- penalty nts Crores 2006-07 passed CA-30/621A/HDB/2016 :

1956 is	as the
Imprison	offence
-ment for	is a One-
a term,	Time
which	Offence,
may	there is
extend to	no
6	continui
months	ng
OR with	default

fine,	in the
which	said
may	case.
extend to	
Rs.	
10,000/-	
or with	
both	

Company Appeals (AT) Nos. 247 to 254 of 2017 3-D Synopsis of Company Appeal (AT) No. 250 of 2017 Company Compou- Violat Violatio Penalty Maximum Penal Status of No. of Nature of Pleadings Prayer Appeal nding ion n for under Penalty Provision the Appellan Offence (AT) Application under the year Section s Compoundi ts No. No. secti ng on Application s at NCLT, Hyderabad Compa CA- 211(1) 2008-09 Sec- Under Section Rejected 8 Issued The NCLT, Hyderabad The ny 29/ of the 211(7) of Section 211(7) of Director Capital Bench had allowed Hon'ble Appeal 621A/ Compa the 211(7) the s and 1 disclosed Compounding Appellat (AT) HDB/ nies Compani for Compani Compa as Rs. Applications with respect e 250 2016 at Act, es Act, violation es Act ny 84.41 to same offence for Tribunal of NCLT, 1956 1956 of doesn't Secretar Cr. various financial years may be 2017 Hyderabad Section prescribe y in i.e. Instead vide its order as pleased d 211(1) of any Total of of Rs. elucidated below: to set the continui 9 100 aside the Compani ng Appella Crores. CA-27/621A/HDB/2016 : order es Act- penalty nts 2006-07 passed 1956 is as the CA-30/621A/HDB/2016 : by Imprison offence 2009-10 CA- NCLT,

-ment is a One- 31/621A/HDB/2016 : Hyderabad 2010-11 CA-

for a	Time
term,	Offence,
which	there is
may	no
extend	continui
to 6	ng
months	default
OR with	in the
fine,	said
which	case.
may	
extend	
to Rs.	
10,000/-	
or with	
both	

Company Appeals (AT) Nos. 247 to 254 of 2017 3-E Synopsis of Company Appeal (AT) No. 251 of 2017 Company Compou- Violat Violatio Penalty Maximum Penal Status of No. of Nature of Pleadings Prayer Appeal nding ion n for under Penalty Provision the Appellan Offence (AT) Application under the year Section s Compoundi ts No. No. sectio ng n Applications at NCLT, Compa CA-37/ 211(3B 2007-08 Sec- Under Section Rejected 8 Cash Company had filed e- The ny 621A/) of the 211(7) of Section 211(7) of Director Flow form 23AC and ACA Hon'ble Appeal HDB/201 Compa the 211(7) the s and I statemen along with attachments Appellat (AT) 6 at nies Compani for Compani Compan t not for the year 2007-08 , e 251 NCLT, Act, es Act, violation es Act y filed the same has been Tribunal of Hyderabad 1956 1956 of doesn't Secretar along approved and may be 2017 d Section prescribe y in i.e. with registered by the ROC, pleaded 211(3B) any Total of Balance Hyderabad. to set of the continui 9 Sheet During the inspection aside the Compani ng Appella in the year 2016, it was order es Act- penalty nts observed by the ROC passed 1956 is as the that the Cash flow by NCLT, Imprison offence is statement for the year Hyderabad

-ment for a One- 2007-2008 was not filed ad and a term, Time and the same has been compou which Offence, filed with ROC on nd the may there is 25.02.2016. The same same by extend to no was duly acknowledged imposing 6 continui by the ROC, the months ng Hyderabad. However, compou OR with default the Hon'ble Regional nding fee fine, in the Director (SER), for the subject which said said non-compliance to may case. has been compounded minimu extend to U/s m Rs. 227(3)(d) and levied penalty 10,000/- maximum penalty of prescrib or with Rs.5000/- vide its ed under both Order No. Compani 9/(193)/Telangana/RD es Act, (ACR)/621A2016/746 1956 dated 27.05.2016.

Company Appeals (AT) Nos. 247 to 254 of 2017 3-F Synopsis of Company Appeal (AT) No. 252 of 2017 Company Compou- Violat Violatio Penalty Maximum Penal Status of No. of Nature of Pleadings Prayer Appeal nding ion n for under Penalty Provision the Appellan Offence (AT) Application under the year Section s Compoundi ts No. No. sectio ng n Applications at NCLT, Compa CA-34/ 211(3A 2006-07 Sec- Under Section Allowed. 3 Non- Maximum Penalty is The ny 621A/) of the 211(7) of Section 211(7) of However, Director Preparati Rs. 10,000 for the said Hon'ble Appeal HDB/201 Compa the 211(7) the Maximum s i.e. 3 on of violation under Section Appellat (AT) 6 at nies Compani for Compani Penalty is Appella Cash 211(7) the National e 252 NCLT, Act, es Act, violation es Act Rs. nts in Flow Company Law Tribunal of Hyderabad 1956 1956 of doesn't 10,000/- the said Statemen Tribunal, Hyderabad may be 2017 d Section prescribe where as case. t and had allowed the pleaded 211(3A) any NCLT non- Compounding to set of the continui levied a disclosur application but had aside the Compani ng compounding e of levied exemplary order es Act- penalty ng fee of Related compounding fee of Rs. passed 1956 is as the Rs. Party 1,00,000 per director. by NCLT, Imprison offence is 1,00,000 Transactio However, the offence is Hyderabad

-ment for a One- per ns a one time offence and ad and a term, Time Director the Appellants are not have a which Offence, liable to pay any lenient may there is continuing penalty. view and extend to no impose 6 continui However, the Hon'ble compou months ng Regional Director nding fee OR with default (SER), for the said non subject fine, in the compliance has been to which said compounded U/s minimu may case. 227(3) (d) and levied m extend to maximum penalty of penalty Rs. Rs. 5000/- vide its as 10,000/- Order. No. 9/(197)/ prescrib or with Telangana/RD(ACR)/6 ed under both 21A2016/753 dated Compani 27.05.2016. es Act, Company Appeals (AT) Nos. 247 to 254 of 2017 3-G Synopsis of Company Appeal (AT) No. 253 of 2017 Company Compou- Violat Violatio Penalty Maximum Penal Status of No. of Nature of Pleadings Prayer Appeal nding ion n for under Penalty Provision the Appellan Offence (AT) Application under the year Section s Compoundi ts No. No. sectio ng n Applications at NCLT, Compa CA-36/ 211(3B 2006-07 Sec- Under Section Allowed. 3 Non- Maximum Penalty is The ny 621A/) of the 211(7) of Section 211(7) of However, Director Preparati Rs. 10,000 for the said Hon'ble Appeal HDB/201 Compa the 211(7) the Maximum s i.e. 3 on of violation under Section Appellat (AT) 6 at nies Compani for Compani Penalty is Appella Cash 211(7) the National e 253 NCLT, Act, es Act, violation es Act Rs. nts in Flow Company Law Tribunal of Hyderabad 1956 1956 of doesn't 10,000/- the said Statemen Tribunal, Hyderabad may be 2017 d Section prescribe where as case. t and had allowed the pleased 211(3B) any NCLT non- Compounding to set of the continui levied a disclosur application but had aside the Compani ng compoundi e of levied exemplary order es Act- penalty ng fee of Related compounding fee of Rs. passed 1956 is as the Rs. Party 1,00,000 per director. by NCLT, Imprison offence is 1,00,000 Transactio However, the offence is Hyderab

-ment for a One- per ns a one time offence and ad and a term, Time Director the Appellants are not have a which Offence, liable to pay any lenient may there is continuing penalty. view and extend to no impose 6 continui However, the Hon'ble compou months ng Regional Director nding fee OR with default (SER), for the said non subject fine, in the compliance has been to which said compounded U/s minimu may case. 227(3) (d) and levied m extend to maximum penalty of penalty Rs. Rs. 5000/- vide its as 10,000/- Order. No. 9/(197)/ prescrib or with Telangana/RD(ACR)/6 ed under both 21A2016/753 dated Compani 27.05.2016. es Act, Company Appeals (AT) Nos. 247 to 254 of 2017 3-H Synopsis of Company Appeal (AT) No. 254 of 2017 Company Compou- Violat Violatio Penalty Maximum Penal Status of No. of Nature of Pleadings Prayer Appeal nding ion n for under Penalty Provision the Appellan Offence (AT) Application under the year Section s Compoundi ts No. No. sectio ng n Applications at NCLT, Compa CA-38/ 217(2A 2006-07 Sec- Under Section Allowed. 3 Non- Maximum Penalty with The ny 621A/ A) of 217(5) of Section 217(5) of However, Director Preparati respect to this violation Hon'ble Appeal HDB/201 the the 217(5) the Maximum s i.e. 3 on of is Rs.20,000 for the Appellat (AT) 6 at Compa Compani for Compani Penalty is Appella Cash said violation under e 254 NCLT, nies es Act, violation es Act Rs. nts in Flow Section 217(5) the Tribunal of Hyderabad Act, 1956 of doesn't 20,000/- the said Statemen National Company Law may be 2017 d 1956 Section prescribe where as case. t and Tribunal, Hyderabad pleased 217(2AA) any NCLT non- had allowed the to set of the continui levied a disclosur Compounding aside the Compani ng compoundi e of application but had order es Act- penalty ng fee of Related levied exemplary passed 1956 is as the Rs. Party compounding fee of Rs. by NCLT, Imprison offence is 2,00,000 Transactio 2,00,000 per director. Hyderab

-ment for a One- per ns However, the offence is ad and a term, Time Director a one time offence and have a which Offence, the Appellants are not lenient may there is liable to pay any view and extend to no continuing penalty. impose 6 continui compou months ng However, the Hon'ble nding fee OR with default Regional Director subject fine, in the (SER), for the said non to which said compliance has been minimu may case. compounded U/s m extend to 227(3) (d) and levied penalty Rs. maximum penalty of as 20,000/- Rs. 5000/- vide its prescrib or with Order. No. 9/(197)/ ed under both Telangana/RD(ACR)/6 Compani 21A2016/753 dated es Act, 27.05.2016. 1956 Company Appeals (AT) Nos. 247 to 254 of 2017

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 30th 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 25th 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.

Company Appeals (AT) Nos. 247 to 254 of 2017

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 Company Appeals (AT) Nos. 247 to 254 of 2017 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.

Company Appeals (AT) Nos. 247 to 254 of 2017 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 Company Appeals (AT) Nos. 247 to 254 of 2017 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 1st March, 2017 and perusal of the same has shown that the authorised Company Appeals (AT) Nos. 247 to 254 of 2017 share capital and issued share capital of the Company for the year ending 31st 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 31st 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 31st 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.

Company Appeals (AT) Nos. 247 to 254 of 2017 Looking to the above factors, we find that even in this matter also, it would be appropriate to set aside the impugned order dated 5th 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 Company Appeals (AT) Nos. 247 to 254 of 2017 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 Company Appeals (AT) Nos. 247 to 254 of 2017 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 28th 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:-

Company Appeals (AT) Nos. 247 to 254 of 2017 "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."

Company Appeals (AT) Nos. 247 to 254 of 2017 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."

Company Appeals (AT) Nos. 247 to 254 of 2017 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 Company Appeals (AT) Nos. 247 to 254 of 2017 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 Company Appeals (AT) Nos. 247 to 254 of 2017 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 28th June, 2017 is quashed and set aside. Compounding is allowed. Each of the appellants are directed to pay compounding fee of Rs. 10,000/-

Company Appeals (AT) Nos. 247 to 254 of 2017 (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 28th 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 5th 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 5th 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 Company Appeals (AT) Nos. 247 to 254 of 2017 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 28th 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 28th 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 28th 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 Company Appeals (AT) Nos. 247 to 254 of 2017 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 28th 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 20th December, 2017.

/ng/nn Company Appeals (AT) Nos. 247 to 254 of 2017