SL. No.9

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 06.06.2024 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	**Company Petition/02/2023**
NAME OF THE COMPANY	
NAME OF THE PETITIONER(S)	**Manthan Educational Solutions Pvt Ltd**
NAME OF THE RESPONDENT(S)	**Registrar of Company**
UNDER SECTION	**131**

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this Company Petition is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Vamsi

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, COURT-II

C.P. No. 2/131/HDB/2023

[U/s.131 and Section 134 and other applicable provisions of the Companies Act, 2013 r/w Rule 7 of the NCLT Rules, 2016]

In the matter of
M/s. MANTHAN EDUCATIONAL SOLUTIONS PRIVATE LIMITED

Between:

1. M/s.Manthan Educational Solutions Private Limited
   CIN: U80904TG2009PTC064403
   Regd. Office: Flat No.D1703, H.No.1-100
   Aparna Sarovar Grande Nallagandla
   Lingampalli, K.V.Ranga Reddy
   Hyderabad, Telangana – 500 019

2. Mr. Rajesh Gummadapu
   S/o. Buchi Rama Rao Buchi Rama
   Director, DIN:01778297
   J-607, Rajapushpa Atria
   Gandipet Mandal, Kokapet
   K.V.Rangareddy-500 075, Telangana

3. Ms. Shalini Reddy Chamakura
   D/o. Sathinder Reddy Chamakura
   Director, DIN: 06501931
   Flat No.D 1703, H.No.1-100
   Aparna Sarovar Grande
   Nallagandla, Lingampalli
   K.V.Ranga Reddy, Hyderabad – 500 019

4. Mr. Ramakrishna Reddy Dasari
   S/o. Veeraraghava Reddy Dasari
   Director, DIN:00705185
   Flat No. D 1703, H.No.1-100
   Aparna Sarovar Grande
   Nallganda, Lingampalli, K.V.Rangareddy
   Hyderabad – 500 019

… Applicants

A N D

The Registrar of Companies,
2nd floor, Corporate Bhavan,
GSI Post, Tattiannaram,
Nagole, Bandlaguda,
Hyderabad – 500068.

...Respondent

Date of Order: 06.06.2024

Coram:

Shri Rajeev Bhardwaj, Hon'ble Member, Judicial

Shri Sanjay Puri, Hon'ble Member, Technical

Counsel present:

For the Applicant : Mr. Racharla Ramakrishna Gupta, PCS

For the Respondent: Ms. D. Pallavi, CGSC

[PER: BENCH]

ORDER

I. The present Joint Application filed on behalf of the Applicants under Section 131 and Section 134 and other applicable provisions of the Companies Act, 2013 praying the Adjudicating Authority to permit -

a. the Applicants to make revisions in the Directors Report with respect to the disclosures relating to the related party transactions in terms of provisions of Section 134 r/w sub-rule (2) of Rule 8 of Companies (Accounts) Rules, 2014 for the Financial Years 2018-19 and 2019-20;

b. the Applicants to make any necessary or consequential alternation as may be required in relation to alterations sought in prayer (a) above;

c. the Applicants to conduct the General Meeting for Applicant No.1 Company and to approve the Revised Directors Report with necessary disclosures regarding Related Party Transactions in terms of provisions of Section 134 r/w sub-rule (2) of Rule 8 of Companies (Accounts) Rules, 2014 for the Financial Years 2018-19 and 2019-20; and

d. the Applicant No.1 Company to file the revised Directors Report with the Registrar of Companies, Hyderabad after its adopting in the General Meeting.

II. The gist of the Petition is –

a) M/s. Manthan Educational Solutions Private Limited, for short '**Applicant/MESPL/Company'**, bearing CIN:U80904TG2009PTC064403, was incorporated on 16.07.2009 under the Companies Act, 1956. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Company is Rs.2,00,00,000/- (Rupees Two Crores only) divided into 20,00,000 equity shares of Rs.10/- each. The Company is engaged in the business to provide learning, education, teaching solutions through use of modern technology and to establish, manage, maintain and run educational centres.

A copy of the Memorandum and Articles of Association of the Company is filed as Annexure-A3 at pg. nos.33 to 63 of the application.

b) The Company has entered into various Service Agreements with M/s. Manthan Educational Society, for short 'Society', and rendered services to the Society during the financial years 2018-19 and 2019-20. Since the Society is a related party to the Company, the arrangements entered into between them is considered as Related Party Transactions in accordance with the provisions of Section 188(1) of the Companies Act.

c) Pursuant to the provisions of Section 134(3) of the Companies Act, 2013, r/w Rule 8(2) of Companies (Accounts) Rules, 2014, the Directors Report shall contain the particulars of contracts or arrangements with related parties referred to in Section 188(1) in the Form AOC-2.

d) It is averred that the Board of Directors in their report under the related party transactions, for the Financial Years 2018-19 and 2019-20, have reported as follows:

"PARTICULARS OF RELATED PARTY TRANSACTIONS:

Pursuant to Section 188(1) of the Companies Act, 2013 read with rules made thereunder, Company has entered into contracts or arrangements with related parties which are at Arm's length basis during the Financial Year under review. Hence Form No.AOC-2 is not required"

Copies of the Audited Financial Statements alongwith the Directors Report for the Financial Years 2018-19 and 2019-20 are filed at pg. nos.94-181 of the application.

e) It is averred that the Company has inadvertently failed to disclose the details due to the following reasons:

i. The particulars were required to be entered only when the Company has entered into transactions with related party which are not at Arm's length price.

ii. The disclosure is not applicable to the company as the provisions of Section 188(1) of the Act is not applicable to any of the transactions entered into by the Company in its ordinary course of business other than transactions which are not on an arm's length basis.

Hence, the applicant filed the instant suo moto application seeking revisions in the Directors Report of the Applicant Company for the Financial Years 2018-19 and 2019-20.

Copies of the Audited Financial Statements alongwith the Directors Report for the Financial Years 2018-19 and 2019-2020 are filed as Annexure A-6 at pg. nos. 94 to 181 of the application; and also a copy of the latest Audited Financial Statement for the Financial Year ended 31.03.2022 as Annexure A-5 at pg. nos.65 to 93 of the application.

III. The Assistant Director, O/o. Regional Director (SER) had filed a Memo dated 23.01.2024 on behalf of the Central Government stating as follows:

"....Hon'ble NCLT vide order dated 19-01-2024 directed to file a copy of the ROC Report which has been sent to the Ministry, otherwise costs will be imposed on the Assistant Director.

In compliance with the above directions, I am enclosing a copy of the draft report of ROC which has been sent to the Ministry seeking instructions to ROC for filing affidavit before the Hon'ble NCLT vide Annexure-A, it is respectfully submitted that report of the Registrar of Companies is not the conclusive one as the powers under Section 131 of the Companies Act, 2013 are delegated with Ministry (Central Government) only and hence, draft report has been forwarded to Ministry seeking necessary approval vide email dated 2-11-2023 followed by reminders 6-12-2023 and 11-01-2024 (copies enclosed vide Annexure-B). However, instructions in the subject matter are awaited".

IV. It is averred that the instant application is a suo-moto application and none of the applicants received any notices from the Central Government or Regional Director or Registrar of Companies. The Applicant undertakes that the Company is in compliance with all other aspects and the company has not filed any application and the matter is not pending in any court.

V. The ROC filed its report by filing an affidavit on behalf of the Central Government on 08.02.2024, stating as follows:

i. The Petitioner Company has entered into various Service Agreements with M/s. Manthan Educational Society, which falls under the definition of Related Party as per the provisions of Section 2(76) of the Companies Act, 2013.

ii. The Company has rendered services to the Society during the financial years 2018-19 and 2019-20. Since the Society is a related party to the Company, the arrangements entered into between them is considered as Related Party Transactions in accordance with the provisions of Section 188(1) of the Companies Act. The related party transactions were duly accounted for and disclosed in the financial statements for the financial years 2018-19 and 2019-20 in terms of Accounting Standard-18 (Related Party Disclosures) issued by the institute of Chartered Accountants of India.

iii. During the Financial Years 2018-19 and 2019-20, the Company has entered into Related Party Transactions with M/s.Manthan Educational Society.

iv. The Company under Section 134 of the Companies Act, 2013 with regard to Related Party Transactions shall contain particulars of contracts and arrangements with related parties to in section 188(1) in the Form AOC-2. The extant provisions of sub (2) of Rule 8 of Companies (Accounts) Rules, 2014 is reproduced as follows:

"The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.

v. However, the Company in its Directors Report during Financial Years 2018-19 and 2019-20 under the particulars of related party transactions clause have reported the following:

<u>For Financial Years 2018-19 & 2019-20:</u>

"Pursuant to Section 188(1) of the Companies Act, 2013, r/w rules made thereunder, the Company has entered into contracts or arrangements with related parties which are at Arm's length basis during the financial year under review. Hence, Form No.AOC-2 is not required".

vi. The Company has inadvertently failed to disclose the particulars of the related party transactions in Form AOC-2 in the Directors Report for the financial years 2018-19 and 2019-20 due to the following reasons:

a) The transactions entered by the Applicant company with the Society were in ordinary course of business and at Arm's length price and the Board of Directors of the Company were of the view that the particulars were required to be entered only when the Company has entered into

transactions with related party which are not at Arm's length price.

b) The Board of Directors were of the view that the said disclosure is not applicable to the company as the provisions of Section 188(1) of the Act is not applicable to any of the transactions entered into by the Company in its ordinary course of business other than transactions which are not on an Arm's Length basis.

c) The Board of Directors had not properly interpreted the provisions of law.

vii. The Board of Directors of the Company resolved to revise the Directors Report to make the default good for the financial years 2018-19 and 2019-20, vide its Board Resolution dated 08.12.2022. M/s.Manohar Chowdhry & Associates, Chartered Accountants, at 7-1-58, Concourse Complex, 204A, Opposite Lal Bungalow, Greenlands Road, Above SBI, Ameerpet, Hyderabad, Telangana is the auditor of the Petitioner Company for the Financial Year 2019-20 and still continuing as the auditor of the Petitioner Company and there is no change of the auditor of the company.

viii. The revision of accounts suggested by the company is not on account of changes in rules nor due to fresh facts noticed by the company after the preparation of accounts or directors report. Hence, ROC reserves the right to proceed against the company and its directors for the disclosure violation reported by the company in its application, if approved, shall be subject to the liability of the company and officers in default for not preparing the financial statements in compliance with Section 129 and 134 of the Companies Act at the first instance.

VI. In compliance to the Order of the Adjudicating Authority dated 01.03.2024, the Applicant filed a Memo dated 20.04.2024 furnishing the Acknowledgement copy of Notice served to the Income Tax Authority; Copies of revised text of Directors Report alongwith the copies of Disclosures of Related Party Transactions in Form AOC-2 for the F.Y.2018-'19 and 2019-'20 and a copy of complete Financial statements for the F.Y.2021-22.

VII. It is noted that despite service of notice, none appeared on behalf of the Income Tax Authorities during the hearing held on 26.04.2024.

VIII. We have heard both the parties and perused the record.

i. We find that, as recorded hereinabove, the Registrar of Companies has submitted its report furnishing the observations with regard to the prayer made by the Petitioner.

ii. According to the Ld. Counsel, the present application is a suo-moto application to make good the Law and none of the applicants received any notices from the statutory authorities.

iii. We have gone through the record and the Petitioner intends to revise the Director's Report and the reason thereof are found to be bonafide.

iv. It is noted that the ROC in its report stated that "The revision of accounts suggested by the company is not on account of changes in rules nor due to fresh facts noticed by the company after the preparation of accounts or directors report. Hence, ROC reserves the right to proceed against the company and its directors for the disclosure violation reported by the company in its application, if approved, shall be subject to the liability of the company and officers in default for not preparing the financial statements in compliance with Section 129 and 134 of the Companies Act at the first instance".

v. The existing text in the Directors Reports for the F.Y.2018-'19 and 2019-'20 and the revised text are submitted as follows:

EXISITING TEXT OF THE DIRECTORS REPORT FOR THE FY 2018-19:

PARTICULARS OF RELATED PARTY TRANSACTIONS:

Pursuant to Section 188(1) of the Companies Act, 2013, read with rules made there under, Company has entered into contracts or arrangements with related parties which are at Arm's length basis during the Financial Year under review. Hence Form No. AOC-2 is not required.

REVISED TEXT OF THE DIRECTORS REPORT FOR THE FY 2018-19:

PARTICULARS OF RELATED PARTY TRANSACTIONS:

During the Financial Year under review, your Company in its ordinary course of business has entered into various transactions with its related party at arm's length basis.

The particulars of contracts or arrangements with related party is disclosed in Form AOC-2, which is enclosed herewith as *Annexure-II*.

MANTHAN EDUCATIONAL SOLUTIONS PVT. LTD. HYDERABAD

Annexure-I

FORM NO. AOC-2

(Pursuant to clause (h) of sub-section (3) of Section 134 of the Act and Rule 8(2) of the Companies (Accounts) Rules, 2014)

Form for disclosure of particulars of contracts/arrangements entered into by the company with related parties referred to in sub-section (1) of Section 188 of the Companies Act, 2013 including certain Arm's Length Transactions under third proviso thereto.

1. Details of contracts or arrangements or transactions not at arm's length basis:

S.No	Name(s) of the related party and nature of relationship	Nature of contracts /arrangement / transaction	Duration of the contract / arrangement / transaction	Salient terms of the contracts or arrangement or transaction including the value, if any	Date of approval by the Board	Amount paid as advance (if any)	Date on which the special resolution was passed in general meeting as required under first proviso to Section 188
Not Applicable							

2. Details of material contracts or arrangement or transactions at arm's length basis:

S.No	Name(s) of the related party and nature of relationship	Nature of contracts /arrangement / transaction	Duration of the contract / arrangement / transaction	Salient terms of the contracts or arrangement or transaction including the value, if any	Date of approval by the Board	Amount paid as advance (if any)
1.	**Manthan Educational Society** **Nature of relationship:** Directors are the members of the Executive Committee of the Society	Addendum Agreement dated 01st June, 2018 the following: 1. Canteen Management Services; 2. Transport Services; 3. Housekeeping Services; 4. Publishing and Printing of Workbooks Services; 5. Assessment Services.	12 months commencing from 01st June, 2018 to 31st May, 2019	As per the addendum agreement entered between the parties the transaction value aggregating to Rs.12, 06,50,290/-	01st April, 2018	N.A.

MANTHAN EDUCATIONAL SOLUTIONS PVT. LTD. HYDERABAD

EXISITING TEXT OF THE DIRECTORS REPORT FOR THE FY 2019-20:

PARTICULARS OF RELATED PARTY TRANSACTIONS:

Pursuant to Section 188(1) of the Companies Act, 2013, read with rules made there under, Company has entered into contracts or arrangements with related parties which are at Arm's length basis during the Financial Year under review. Hence Form No. AOC-2 is not required.

REVISED TEXT OF THE DIRECTORS REPORT FOR THE FY 2019-20:

PARTICULARS OF RELATED PARTY TRANSACTIONS:

During the Financial Year under review, your Company in its ordinary course of business has entered into various transactions with its related parties at arm's length basis.

The particulars of contracts or arrangements with related parties is disclosed in Form AOC-2, which is enclosed herewith as ***Annexure-III***.

MANTHAN EDUCATIONAL SOLUTIONS PVT. LTD. ★ HYDERABAD

Annexure-I

FORM NO. AOC-2

(Pursuant to clause (h) of sub-section (3) of Section 134 of the Act and Rule 8(2) of the Companies (Accounts) Rules, 2014)

Form for disclosure of particulars of contracts/arrangements entered into by the company with related parties referred to in sub-section (1) of Section 188 of the Companies Act, 2013 including certain Arm's Length Transactions under third proviso thereto.

1. Details of contracts or arrangements or transactions not at arm's length basis:

S.No	Name(s) of the related party and nature of relationship	Nature of contracts /arrangement / transaction	Duration of the contract / arrangement / transaction	Salient terms of the contracts or arrangement or transaction including the value, if any	Date of approval by the Board	Amount paid as advance (if any)	Date on which the special resolution was passed in general meeting as required under first proviso to Section 188
Not Applicable							

2. Details of material contracts or arrangement or transactions at arm's length basis:

S. No	Name(s) of the related party and nature of relationship	Nature of contracts /arrangement / transaction	Duration of the contract / arrangement / transaction	Salient terms of the contracts or arrangement or transaction including the value, if any	Date of approval by the Board	Amount paid as advance (if any)
1.	Manthan Educational Society Nature of relationship: Directors are the members of the Executive Committee of the Society	Addendum Agreement dated 01st June, 2019 the following: 1. Canteen Management Services; 2. Transport Services; 3. Housekeeping Services; 4. Publishing and Printing of Workbooks Services; 5. Assessment Services.	12 months commencing from 01st June, 2019 to 31st May, 2020	As per the agreements entered between the parties the total transaction value aggregating to Rs. 14,37,13,320/-	22nd March, 2019	N.A.

MANTHAN EDUCATIONAL SOLUTIONS PVT. LTD. HYDERABAD

IX. In view of the facts and circumstances mentioned above, we are of the opinion that this Petition deserves to be allowed.

X. By exercising the powers conferred on this Tribunal, under Section 131 of the Act, 2013, read with Rule 77 of the NCLT Rules, 2016, the Petition is disposed of, with the following directions:

a) The Petitioner is permitted to revise the Directors Report with respect to the disclosures relating to the related party transactions for the Financial Years 2018-19 and 2019-2020 and make necessary alteration including conducting of General Meeting for Applicant Company and filing the revised Directors Report with ROC. The Auditor is permitted to issue the Auditor's Report on the revised Financial Statements for the Financial Years 2018-19 and 2019-2020.

b) The certified copy of this order shall be filed with the Registrar of Companies (RoC) within thirty days from the date of receipt of this order, under Rule 77(6) of the NCLT, Rules, 2016.

c) The Company is directed to place the revised financial statements, statement of directors and the statement of auditors for consideration of shareholders before a decision is taken on adoption of the revised Directors Report, financial statements, as per the provisions of Rule 77(8) of the NCLT, Rules, 2016.

d) To facilitate the above, the Petitioner is directed to convene the meeting of its shareholders for approving the revision of Directors Report and the notice of meeting, along with reasons for the change in the Directors Report, shall be published in the English Daily Newspaper and the Telugu Daily Newspaper, both in the Hyderabad edition, as mandated under Rule 77(7) of the NCLT, Rules, 2016.

e) On approval of the General Meeting, the Petitioner is directed to file the revised report of the Board of Directors, financial statements, along with the statement of Auditors with the Registrar of Companies within thirty days from the date of approval by the general meeting, according to Rule 77(9) of the NCLT Rules, 2016.

XI. We may add here that this order shall not preclude any person or authority from approaching this Tribunal in the future, for any directions as may be necessary, with respect to the revisions permitted to be made in the said financial statements.

XII. With the above observations, this Company Petition is disposed of.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

Syamala