

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 175/2016
IN
C.A. NO. 225/621A/CB/2015

*PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL*

IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 211 READ WITH SECTION 621A
OF THE COMPANIES ACT, 1956
AND

IN THE MATTER OF BAYIR EXTRACTS PRIVATE LIMITED

C.A. NO. 225/621A/CB/2015 AND T.P.NO. 175/2016

1. Mr. Ajay Ganapayya Bairy – Director
No. 274, 2nd Cross, Hoskere Halli,
2nd Block, 3rd Stage, Banashankari,
Bangalore-560085.
2. Mr. Beloor Ganapayya Bairy- Director
No. 274, 2nd Cross, Hoskere Halli,
2nd Block, 3rd Stage, Banashankari,
Bangalore-560085.
3. Ms. Veena Beloor Ganapayya Bairy- Director
No. 274, 2nd Cross, Hoskere Halli,
2nd Block, 3rd Stage, Banashankari,
Bangalore-560085.
4. Mr. Jagadhisha Bhat, Director
689, BTM Layout, 1st Phase, 2nd Stage,
29th Main Road, Bangalore-560076. -

APPLICANTS

PARTIES PRESENTED: Mr. Naman G.Joshi, No.12, Champaka Nivasa,
1st Floor, 72nd Cross, 5th Block, Rajajinagar,
Bangalore-560010 -Practicing Company Secretary
& Authorised Representative for the Applicants.

Heard on: 03/08/2016, 11/08/2016, 26/08/2016, 08/09/2016,
27/09/2016, 21/10/2016 and 03/11/2016.

ORDER

This Company Application was originally filed before the Company Law Board, Southern Region, Chennai. Consequent upon the establishment of National Company Law Tribunal Bench at Bengaluru, the said case was transferred to this Tribunal on abolition of Company Law Board, Southern Region, Chennai Bench and it was taken on file and numbered as T.P No. 175/2016.

The averments in the Company Application filed under section 621A of the Companies Act, 1956 are briefly stated hereunder:-

The Company was incorporated under the Companies Act, 1956 on 2nd February 1994 as a Private Limited Company in the name and style of "Bayir Extracts Private Limited" vide CIN No. U24111KA1994PTC015193. The Registered office of the company is situated at # 4112, Utkarsha, K.R Road, Banashankari, 2nd Stage, Bangalore-560070.

The Authorized share capital of the Petitioner company is Rs.3,00,00,000/- (Rupees Three Crores only) consisting of 3,00,000 Equity Shares of Rs 100/- each and the paid up share capital of the Company is Rs 52,00,000/- (Rupees Fifty Two Lakhs only) consisting of 52,000 Equity Shares of Rs. 100/- each.

The Main objects of the Petitioner Company is to carry on the business of manufacture, processing, purchase and sale or otherwise deal in all kinds of oleoresins and Natural Colours and all kinds of chemicals; to carry on the business of processing, canning, bottling, preserving, cultivating, collecting purchasing, marketing, transporting and dealing in all kinds of fruit vegetables herbs, spices, flowers, drinks, fluids; and to manufacture, produce, develop, sale, import export and otherwise deal in all kinds of herbal medicines, allopathic pharmaceutical formulations etc., Details of the objects of the company are mentioned in the Memorandum and Articles of Association of the Petitioner Company.

It is averred in the Company Application that, for the financial year ending 31/03/2013, the company had laid before the shareholders the financial statements disclosing all the financial facts of the company. However in some of the statements were misstated in the financial disclosures notes to accounts point No.7 due to oversight and inadvertently as **loan received and loan repaid** whereas it was supposed to be shown as **advance paid and returned**. The transaction details are shown in the table below:-

Sl. No.	Particulars of the party	Transaction mentioned as per Notes 7	Transaction supposed to be disclosed as	Amount 2012-13	Amount 2011-12
1 Line 2	Bayir Chemical	Loan received	Advance received	2,73,02,076	2,80,04,593
1 Line 3	Bayir Chemical	Loan repaid	Advance returned	1,19,55,760	2,45,47,791
2 line 6	Beloorbayir Biotech Ltd.	Loan received	Advance received	5,42,80,238	2,99,90,951
2 line 7	Beloorbayir Biotech Ltd.	Loan repaid	Advance returned	2,86,91,997	2,82,74,257
3 line 9	Sneha Natura	Loan received	Advance received	8,60,000	4,39,335
3 line 10	Sneha Natura	Loan repaid	Advance returned	2,14,130	6,71,703
4 line 13	Sneha Herbals	Loan received	Advance received	23,51,562	19,55,697
4 line 14	Sneha Herbals	Loan repaid	Advance returned	2,28,047	7,205
5 line 15	Ganapayya Bairy	Loan received	Contract received	25,70,266	5,41,000
5 line 16	Ganapayya Bairy	Loan repaid	Advance returned	-	7,83,000
6 line 17	Veena G. Bairy	Loan received	Contract received	-	33,000
6 line 18	Veena G. Bairy	Loan repaid	Advance returned	-	1,00,000

It is averred that, the company had thus committed default in compliance of provisions of section 211 of the Companies Act, 1956. It is stated that, as per section 211 of the Companies Act, 1956 – every company has to give true and fair view of state of affairs of the Company at the end of each financial year. It is stated that the Company however has misstated in the financial disclosures notes to accounts point No.7 due to oversight and inadvertently as **loan received and loan repaid** instead of **advance paid and returned**. It is further stated that at the time of default the following persons were the Directors on the Board.

Sl. No.	Name	Designation
1	Ajay Ganapayya Bairy	Director
2	Beloor Ganapayya Bairy	Director
3	Veena Beloor Ganapayya Bairy	Director
4	Jagadhisha Bhat	Director

Thus the company and the Directors have filed this application under section 621A of the Companies Act, 1956 on suo-moto to compound the violation committed under section 211 of the Companies Act, 1956.

We have heard Practicing Company Secretary for Applicants on 03/08/2016, 11/08/2016, 26/08/2016, 08/09/2016, 27/09/2016, 21/10/2016 and 03/11/2016. He has contended that, the mistake had occurred due to oversight and inadvertently. He contended there was no mala fide intention behind this and it was only due to oversight. The Practicing Company Secretary for Applicants has filed written submissions signed by the Director, stating that company identified the mistake occurred in the disclosure financial statements as **loans given / loans returned** instead of **advance given / returned** in the financial year 2012-13 and the same was corrected and ratified in the financial year 2013-14 with appropriate words of **advance given and returned**. On a query the Practicing Company Secretary clarified that it was only Advance receipt and return transactions and no interest or other provisions were made in Accounts.

We have heard the Practicing Company Secretary for Applicants and further we have considered the documents filed by the Applicants viz., the certified true copy of notice, Directors report and annual accounts (balance sheet and profit and loss account) for the period ended 31/03/2013. We have seen the certified true copy of the annual returns filed with the Registrar of Companies, Karnataka at Bengaluru for the financial year ending 31/03/2014. We have seen the Memorandum and Articles of Association.

We have received report from the Registrar of Companies, Karnataka at Bengaluru vide letter bearing No.ROCB/SVK/15193/621A/2015 dated 28/08/2015, wherein he has stated that the company has filed balance sheet as at 31/03/2014, The applicants also filed copy of Notice of 19th Annual General Meeting which is marked as Annexure-I. They have also filed copy of Annual Return for the year

ending 31/03/2014 in Form No.20B which is marked as Annexure-IV. The Registrar of Companies, Karnataka at Bengaluru has stated in his report that, there was violation of provisions of section 211(1) of the Companies Act, 1956 which is punishable under section 211 (7) of the Companies Act, 1956.

This Application was filed under section 621A of the Companies Act, 1956, before the then Company Law Board, Southern Region, Chennai. Section 441 of the Companies Act, 2013 came into effect from 1st June 2016. Hence provisions of 621A of the Companies Act, 1956 would apply. This application is therefore decided under the provisions of section 621A of the Companies Act, 1956.

Section 211 (1) of the Companies Act, 1956 reads as follows:-

“Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such other form as may be approved by the Central government either generally or in any particular case; and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance sheet under the heading ‘Notes’ at the end of that Part:”

The main contention of the Practicing Company Secretary for Applicants is that, the mistake had occurred inadvertently in financial disclosure notes to accounts point No.7 as **loans received and loan repaid** instead of **advance paid and returned**. So in the circumstances, the violation can be compounded by levying compounding fee.

Penal provisions is under section 211 (7) of the Companies Act which reads as follows:-

“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 Rupees ten thousand, or with both.

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence 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.”

Considering the submissions made by the Practicing Company Secretary for Applicants and after going through the report of the Registrar of Companies, Karnataka at Bengaluru and the documents filed by Applicants, the violation can be compounded by levying compounding fee on Applicants No. 1 to 4 as follows:-

Sl. No.	Particulars	Violation of Sec.211 of the Companies Act, 1956	Total Rs.
1	1 st Applicant Director	5,000/-	5,000/-
2	2 nd Applicant Director	5,000/-	5,000/-
3	3 rd Applicant Director	5,000/-	5,000/-
4	4 th Applicant Director	5,000/-	5,000/-

In pursuant to our Order dated 11/11/2016 mentioned herein above, the Applicants have paid the compounding fee by depositing Demand Draft bearing No. 007418 dated 16/11/2016 for Rs. 20,000/- (Rupees Twenty thousand only) of Axis Bank Ltd., Basavanagudi Branch, Bangalore drawn in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai".

As the compounding fee has been remitted by the Applicants, the offence stated in the petition is compounded. A copy of this Order be sent to Registrar of Companies, Karnataka at Bangalore for appropriate action.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 25th DAY OF NOVEMBER 2016