

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 187/2016
IN
C.A. NO. 238/2015

*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 BELOORBAYIR BIOTECH LIMITED

C.A. NO. 238/2015 AND T.P.NO. 187/2016

1. Mr. Beloor Ganapayya Bairy- Director
No. 274, 2nd Cross, Hoskere Halli,
2nd Block, 3rd Stage, Banashankari,
Bangalore-560085.
2. Mr. Bandimatta Subramanyam Rajesh, Director
No.8, 13th Main Road, Vasanthanagar West,
Bangalore-560052.
3. Mr. Ajay Ganapayya Bairy – Director
No. 274, 2nd Cross, Hoskere Halli,
2nd Block, 3rd Stage, Banashankari,
Bangalore-560085.
4. Ms. Veena Beloor Ganapayya Bairy- Director
No. 274, 2nd Cross, Hoskere Halli,
2nd Block, 3rd Stage, Banashankari,
Bangalore-560085.
5. Mr. Jagadhisha Bhat, Director
689, BTM Layout, 1st Phase, 2nd Stage,
29th Main Road, Bangalore-560076.
6. Mr. Bandimatta Subramanyam, Director
No.8, 13th Main Road, Vasanthanagar West,
Bangalore-560052.

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: 27/07/2016, 03/08/2016, 11/08/2016, 26/08/2016, 08/09/2016,
27/09/2016 and 21/10/2016.

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. 187/2016.

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 March 2005 as a Public Limited Company in the name and style of "Beloorbayir Biotech Limited" vide CIN No. U73100KA2005PLC035741. 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.65,00,00,000/- (Rupees Sixty five Crores only) consisting of 1999900 Equity Shares of Rs 100/- each and 45001000 Compulsory Convertible Preference Shares of 10 each. The paid up share capital of the Company is Rs 56,29,55,040/- (Rupees Fifty Six Crores Twenty Nine Lakhs Fifty Five Thousand and Forty only) 1129483 Equity Shares of Rs. 100/- each and 45000674 Compulsory Convertible Preference shares of Rs 10/- each.

The Main objects of the Petitioner Company is to carry on in India or elsewhere, any and all business in the field of Biotechnology, Life Sciences, biomedicines, bioinformatics, pharmaceuticals,, including developing, testing, manufacturing, producing, all and any kinds and types of drugs; in the field of marketing, distribution, promoting, selling, commercializing various drugs and medicines; to takeover, acquire, joint venture collaborations with all any kind of companies engaged in business in the field of biotechnology; to carry on the business of processing, canning, bottling, preserving, cultivating, collecting, and food preparations of every kind and descriptions 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 3	Bayir Chemical	Loan received	Advance received	7,66,06,004	3,14,02,604
1 Line 4	Bayir Chemical	Loan repaid	Advance returned	4,93,64,197	1,81,03,206
2 line 7	Bayir Extract P.L	Loan received	Advance received	2,85,77,123	2,91,74,259
2 line 8	Bayir Extract P.L	Loan repaid	Advance returned	5,95,15,366	2,98,90,952
3 line 11	Sneha natura	Loan received	Advance received	1,02,09,974	14,24,905
3 line 12	Sneha natura	Loan repaid	Advance returned	18,67,956	81,78,785
4 line 14	Sneha Herbals	Loan received	Advance received	12,82,269	31,63,556
4 line 15	Sneha Herbals	Loan repaid	Advance returned	1,57,280	40,08,450
5 line 16	Ganapayya Bairy	Loan received	Contract received	7,50,005	26,99,286
5 line 17	Ganapayya Bairy	Loan repaid	Advance returned	18,81,925	13,82,950
6 line 18	Veena G. Bairy	Loan received	Contract received	-	1,29,000
6 line 19	Veena G. Bairy	Loan repaid	Advance returned	1,00,000	7,00,000

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	Beloor Ganapayya Bairy	Director
2	Veena Beloor Ganapayya Bairy	Director
3	Jagadhisha Bhat	Director
4	Ajay Ganapayya Bairy	Director
5	Bandimatta Subramanyam Rajesh	Director
6	Bandimatta Subramanyam	Additional 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 27/07/2016, 03/08/2016, 11/08/2016, 26/08/2016, 08/09/2016, 27/09/2016 and 21/10/2016. 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 is only due to oversight. The Practicing Company Secretary for Applicants has filed written submissions signed by the Managing 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**.

We have heard the Practicing Company Secretary for Applicants and further we have considered the documents filed by the Petitioners 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 31/03/2013. 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/PS/621A/035741/2015 dated 25/08/2015, wherein he has stated that the company had not filed balance sheet as at 31/03/2014. As seen from the records, the applicants filed copy of balance sheet for the year ending 31/03/2014 in Form No. 23AC-XBRL which is marked as Annexure-II as additional documents. The applicants also filed copy of Notice of 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 of the Companies Act, 1956 which is punishable under sub section 8 of section 211 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 sub-section 8 of section 211 of the Companies Act which reads as follows:-

“If any person, not being a person referred to in sub-section (6) of section 209, having been charged by the Managing Director or Manager or Board of Directors as the case may be, with the duty of seeing that the provisions of this section and the other requirements aforesaid are complied with, makes default in doing so, 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 Rs 10,000/-, or with both:”

Considering the submissions made by the Practicing Company Secretary for Applicants, report of the Registrar of Companies, Karnataka at Bengaluru and the documents filed by Applicants. Compounding fee is levied on Applicants No. 1 to 6 as follows:-

Sl. No.	Particulars	Violation of Sec.211 of 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/-
5	5 th Applicant Director	5,000/-	5,000/-
6	6 th Applicant Director	5,000/-	5,000/-

In pursuant to our Order dated 03/11/2016 mentioned herein above, the Applicants have paid the compounding fee by depositing Demand Draft bearing No. 007442 dated 17/11/2016 for Rs. 30,000/- of Axis Bank Ltd., 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, Bengaluru for appropriate action.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 25th DAY OF NOVEMBER 2016