

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. No. 219/2017

Judgement/Order delivered on: 12th February 2018

Coram: Hon'ble Shri RatakondaMurali, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

**IN THE MATTER OF COMPANIES ACT, 2013 AND
IN THE MATTER OF COMPANIES ACT, 1956 UNDER SECTION 621A
& UNDER SECTION 441 OF THE COMPANIES ACT, 2013
FOR COMPOUNDING OF OFFENCE UNDER SECTION
309 READWITH SECTIONS 198 & 269 OF THE COMPANIES ACT, 1956
AND
IN THE MATTER OF
AURIGENE DISCOVERY TECHNOLOGIES LIMTIED**

C.P.NO. 219/2017

1. **Aurigene Discovery Technologies Limited,
No. 39/49 (P) KIADB Industrial Area,
Electronics City Phase II,
Bangalore-560100.**
2. **Mr. Sathyanarayana Murthy Chavali - Director,
H.No. D-13/D, Road No.1, Vikrampuri colony,
Secundrerabad – 500009,
Telengana State**

- **APPLICANTS**

For the Petitioner (s) : Mr. K.Natesh, # 287, 9th Main, 26th Cross,
Banashankari 2nd Stage, Bangalore-560070,
Practicing Company Secretary and Authorised
Representative for the Applicants.

Per: **Hon'ble Shri Ashok Kumar Mishra, Member (Technical)** – Author

Heard on: 13/12/2017 & 12/01/2018.

ORDER

This Application was filed by the Applicants under Section 441 of the Companies Act, 2013, corresponding to Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of Section 309 read with Sections 198, 269 of the Companies Act, 1956.

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




The 1st Applicant Company was incorporated under the Companies Act, 1956 on 10th August 2001 as a Public Limited Company in the name and style of “**Aurigene Discovery Technologies Limited**” vide CIN No. **U24239KA2001PLC029391**. The Registered office of the company is situated at No. 39/49 (P) KIADB Industrial Area, Electronics City Phase II, Bangalore-560100.

The Authorized share capital of the 1st Applicant Company is Rs. 140,00,00,000/- (Rupees One hundred Forty Crores only) consisting of:

- a) 9,50,00,000 Equity Shares of Rs 10/- each, and
- b) 4,50,00,000 Cumulative Redeemable Preference Shares of Rs 10/- each.

The Paid-up Share Capital is Rs 90,54,41,040/- divided into 9,05,44,104 Equity Shares of Rs 10/- each.

The Main objects of the 1st Applicant Company is to engage in the business of all aspects/processes of drug (medicine) discovery including genomics, proteomics, chemistry, biology, bio-technology, bio-sciences, bio-informatics, structural biology, medicinal chemistry, organic and inorganic chemistry, synthetic chemistry, analogue chemistry, computational chemistry; to provide services and or/are products to healthcare organizations including research institutions as well as patients and consumers and to use the information technology tools and techniques to work with existing biological data and information as well as to generate information on the genomics and proteomics of living organs including human beings through research and study etc., Details of the objects of the company are mentioned in the Memorandum and Articles of Association of the Applicant Company.

It is averred in the Application that, in pursuant to provisions of Section 209A of the Companies Act, 1956, the Registrar of Companies, Karnataka had conducted an inspection of books of accounts and records of the 1st Applicant Company. The Registrar of Companies, Karnataka vide its Preliminary Findings Report No. ROCB/Insp./2010-3447 dated 19th March 2010 pointed out certain irregularities and sought clarifications that, the company had paid remuneration to Mr. Sathyanarayana Murthy Chavali who was serving as Whole-time Director (Key Managerial Personnel) during the period of the inspection, in excess of the limits prescribed under sections 309 and 198 read with Schedule XIII of the Companies Act, 1956 and the terms of approval of the Central Government dated 31st July 2009, and sought clarification from the Applicant.

Consequent to this, the Applicant vide letter dated 3rd October 2012 has submitted its reply clarifying that, the excess remuneration paid to the said Key Managerial Personnel for the month of March 2009 had been recovered from him, along with the salary to be paid to him for the month of March 2010 and the same is shown as **Annexures-4 & 5**. However, the reply given by the Applicant was not accepted and a Show Cause Notice bearing No. ROCB/MMM/SCN/29391/2017 dated 25th October 2017 was issued to the Applicant Company and the same is shown as **Annexure-6**.

It is further averred in the Application that, the company had appointed Mr. Sathyanarayana Murthy Chavali bearing DIN: 00142138, as Whole-time Director and Chief Executive Officer (CEO) for a period of 3 (three) years w.e.f. 16th August 2005 till 15th August 2008. Subsequently, he was reappointed as Whole-time Director and Chief Executive Officer (CEO) for a further period of 3 (three) years w.e.f. 16th August 2008 till 15th August 2011, with a total remuneration of Rs.1,20,00,000/- per annum, at the Extra-Ordinary General Meeting held on 9th July 2008.

It is further averred in the Application that, the aforesaid appointment and subsequent reappointment of Mr. Sathyanarayana Murthy Chavali, Key Managerial Personnel and remuneration payable to him was subject to approval of the Central Government pursuant to the provisions of Sections 269, 309 read with Schedule XIII of the Companies Act, 1956. Accordingly, the Company had made Applications seeking approval of the Central Government and got approval as under:

| Date of Approval | Approval Ref. No. | Period | Amount (in Rs.) |
|------------------|---------------------------|--------------------------|-----------------|
| 21/07/2006 | 1/489/2005-CL VII | 16/08/2005 to 31/03/2006 | 42,00,000/- |
| 10/09/2007 | 12/452/2007-CL VII | 01/04/2006 to 31/03/2007 | 57,66,667/- |
| 11/06/2008 | 12/207/2008-CL VII | 01/04/2007 to 15/08/2008 | 85,00,000/- |
| 31/07/2009 | SRN A55663207/-CL VII | 16/08/2008 to 31/03/2010 | 90,00,000/- |
| 29/10/2010 | SRN A90441163/2010-CL VII | 01/04/2010 to 15/08/2011 | 130,00,000/- |

It is further averred in the Application that, the Central Government vide its letter dated 31st July 2009 approved the appointment of the said Whole-time Director by fixing maximum remuneration payable at Rs 90,00,000/- (Rupees Ninety Lakh only) per annum. However, during the financial year 2008-09 and more specifically for the month of March 2009 the Company has paid excess remuneration to the Whole-time Director which exceeds the limits approved by the Central Government of Rs. 4,97,000/- (Rupees Four Lakh Ninety Seven Thousand only).

It is further averred that, the aforesaid excess remuneration paid was recovered by the Company during the financial year 2010, alongwith the salary payable for the month of March 2010 and the period of default is from 1st March 2009 to 31st March 2010 and delay is 365 days. Thereby, the Applicants contravened the provisions of the Section 309 read with Sections 269,198 of the Companies Act, 1956.

Hence, this suo-motu application is filed under section 621A of the Act for compounding the violation of section 309 read with Sections 269 and 198 of the Companies Act, 1956. It is prayed for compounding the violation.

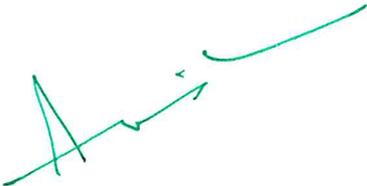
Section 198 of the Companies Act, 1956 deals with overall maximum managerial remuneration etc., sub-section 3 of section 198 of the Act, reads as follows:

“within the limits of the maximum remuneration specified in sub-section (1), a company may pay a monthly remuneration to its managing or whole-time director in accordance with the provisions of section 309 or to its manager in accordance with the provisions of section 387.”

Section 309 of the Act deals with remuneration of Directors, sub-section 3 of section 309 of the Companies Act 1956 reads as follows:

“A director who is either in the whole-time employment of the company or a managing director may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other:”

“Provided that except with approval of the Central Government such remuneration shall not exceed five per cent of the net profits for one such director, and if there is more than one such director, ten per cent for all of them together.”



Section 629A of the Companies Act, 1956 reads as follows:-

“If a company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to Five Thousand Rupees and where the contravention is a continuing one, with a further fine which may extend to Five Hundred Rupees for every day after the first during which the contravention continues”.

For the said violation, this Tribunal by order dated 29th January 2018 imposed compounding fee on the Applicants as detailed hereunder:-

| Sl. No. | Particulars | Violation of Sec. 309 read with sec. 198 of the Co. Act, 1956 | Delay of 365 days | Total Rs. | Grand Total Rs. |
|---------|--|---|-------------------|-----------|-----------------|
| 1 | 1 st Applicant Company | 2,000/- | 365 x 50 | 18,250 | 20,250/- |
| 2 | 2 nd Applicant- Whole Time Director | 2,000/- | 365 x 50 | 18,250 | 20,250/- |

In pursuant to our Order dated 29th January 2018 mentioned herein above, the Applicants have paid the compounding fee by depositing 2 Demand Drafts drawn on 02/02/2018 in favour of “Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai” as detailed below:-

| Sl. No. | Particulars of Applicant | Fee Amount Rs. | DD No. & Date | Name of the Bank |
|---------|--|----------------|-----------------------|---|
| 1 | 1 st Applicant Company | 20,250/- | 797679 dt. 02/02/2018 | Hongkong & Shanghai Banking Corporation Limited, Mumbai |
| 2 | 2 nd Applicant- Whole Time Director | 20,250/- | 769257 dt. 02/02/2018 | State Bank of India, Bengaluru |

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, Bangalore for appropriate action.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL