

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

**T.P.NO. 150/2016**

**IN**

**C.A. NO. 162/621A/CB/2015**

***PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL***

**IN THE MATTER OF COMPANIES ACT, 1956  
UNDER SECTION 81(1A) READ WITH SECTION 621A  
OF THE COMPANIES ACT, 1956  
AND**

**IN THE MATTER OF M/S SYNGENE INTERNATIONAL LIMITED**

**C.A. NO. 162/621A/CB/2015 & T.P.NO. 150/2016**

1. M/S Syngene International Limited,  
Biocon SEZ, Biocon Park,  
Plot No.2 & 3,  
Industrial Area,  
V Phase, Jigani Link Road,  
Bommasandra,  
Bangalore-560099.
2. Mrs. Kiran Mazumdar Shaw,  
Glenmore, Survey No.58,  
Goolimangala Village,  
Sarjapur Hobli,  
Anekal Taluk,  
Bangalore-560100.
3. Mr. John Mccaallum Marshall Shaw,  
Glenmore, Survey No.58,  
Goolimangala Village,  
Sarjapur Hobli,  
Anekal Taluk,  
Bangalore-560100.

**APPLICANTS**


**PARTIES PRESENTED:**

Mr. Pradeep B.Kulkarni, M/s V.Sreedharan & Associates, # 32/33, First Floor, G.N.R Complex, 8<sup>th</sup> Cross, Wilson Garden, Bangalore-560027, Practicing Company Secretary and Authorised Representative for the Applicants.

Heard on: 30/08/2016, 07/09/2016, 23/09/2016 and 19/10/2016.

**ORDER**

The Petition was originally filed before the Company Law Board, Southern Region, Chennai under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of section 81(1A) of the Companies



Act, 1956. 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 numbered as T.P No. 150/2016.

The averments made in the company application are briefed hereunder:-


The 1<sup>st</sup> Applicant Company was incorporated under the Companies Act, 1956 on 18<sup>th</sup> November 1993 as a Private Limited Company in the name and style of "SYNGENE INTERNATIONAL LIMITED" vide Registration No. 14937. The 1<sup>st</sup> Applicant Company became a Public Limited Company on 19<sup>th</sup> April 2007. The Registered office of the company is situated at # Biocon SEZ, Biocon Park, Plot No. 2 & 3, Industrial Area, IV Phase, Jigani Link Road, Bommasandra, Bangalore-560099.

The Authorized share capital of the 1<sup>st</sup> Applicant company is Rs.250,00,00,000/- (Rs. Two hundred and Fifty Crores ) consisting of 25,00,00,000 (Twenty Five Crore) Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid-up capital of the Company as on 31/03/2015 was Rs 200,00,00,000/- (Rupees Two Hundred Crores) divided into 20,00,00,000 (Twenty Crores) Equity Shares of Rs 10/- each fully paid up.

The Main objects of the 1<sup>st</sup> Applicant Company is to carry on, undertake, set up, establish, pursue, develop, deal, trade, use, assist, advice, consult, facilitate, Contract Research and Manufacturing Services (CRAMS) and Clinical research services in the field of drug discovery, biotechnology, pharmaceuticals, nutritional products, bio-pharmaceutical, bio-informatics, medicinal sciences, life sciences and clinical data management; to carry on research and development of new products, new delivery systems, new routes of administrations; to engage in the business of design and development of software and related products for special applications in the field of Biotechnology etc., Details of the objects of the company are mentioned in the Memorandum of Association of the Petitioner Company.

The contents of the Company Petition in brief are:-

The 1<sup>st</sup> Applicant is a Company, the 2<sup>nd</sup> Applicant is the Managing Director and 3<sup>rd</sup> Applicant is the Director.





It is stated that, they conducted Extra Ordinary General Meeting on 14<sup>th</sup> December 2011 to discuss among other to issue shares to Allegro Capital Private Limited. The 1<sup>st</sup> Applicant Company in the Extra Ordinary General Meeting approved the allotment of Preferential shares of 6,25,000 shares to Allegro Capital Private Limited. The 1<sup>st</sup> Applicant Company issued Notice for the Extra Ordinary General Meeting on 11<sup>th</sup> November 2011. According to Rule 6 of Unlisted Public Companies (Preferential Allotment) Rules, 2003, the 1<sup>st</sup> Applicant Company had to disclose the following particulars in the Notice issued calling for Extra Ordinary General Meeting:-

- (i) The price or price band at which the allotment is proposed;
- (ii) The relevant date on the basis of which price has been arrived at;
- (iii) The object/s of the issue through preferential offer;
- (iv) The class or classes of persons to whom the allotment is proposed to be made;
- (v) Intention of promoters/directors/key management persons to subscribe to the offer;
- (vi) Shareholding pattern of promoters and others classes of shares before and after the offer;
- (vii) Proposed time within which the allotment shall be complete;
- (viii) Whether a change in control is intended or expected.

It is stated that the 1<sup>st</sup> Applicant Company had disclosed only certain details in the notice. Some of the details are not included.

The information as required to be disclosed as per Rule 6 of Unlisted Public Companies (Preferential Allotment) Rules, 2003, in respect of Resolution is as follows:

The Company has reviewed the investment proposal from Allegro Capital Private Limited. Based on discussions and considering the business/management expertise of the Company, the Directors have identified Allegro Capital Private Limited ("Investor") as a suitable investor in the Company.

The present and post allotment Shareholding pattern of the Company are summarized as below:



Registered Shareholders	Present Shareholding Pattern as on December 14, 2011			Post Allotment Shareholding Pattern	
	No. of Equity Shares of Rs 10/- each	No. of Equity Shares of Rs 5/- each and after bonus issue	% to paid up capital	No. of Equity Shares	% to paid up capital
Biocon Limited and Nominees	28,74,830	4,74,97,525	99.994	4,74,97,525	94.99
Other shareholders	170	2,475	0.005	2,475	0.01
Syngene Employees Welfare Trust		0	0.00	18,75,000	3.75
Allegro Capital Private Limited	0	0	0.00	6,25,000	1.25
<b>Total</b>	<b>28,75,000</b>	<b>4,75,00,000</b>	<b>100.00</b>	<b>5,00,00,000</b>	<b>100.00</b>

In addition, the shareholders may note the following:-

1. The price per equity share proposed to be paid for by the Investors: Rs. 80/- (Rupees Eighty only)
2. The relevant date on the basis of which the price has been determined is September 30, 2011.
3. Objects of the issue: The proceeds will be utilized by the Company for capital expenditure and for general corporate purposes, in accordance with applicable Law or such other purposes as may be agreed upon between the Company and the Investors.
4. The equity shares of the Company are proposed to be allotted to Allegro Capital Private Limited having its principal place of business at No.2, 9<sup>th</sup> Floor, "The Residency", Residency Road, Bangalore-560025.
5. The promoters/key management/directors have no intention to subscribe to any Equity Shares as part of the preferential allotment.
6. The allotment of the securities will be completed within 60 days from the date of receipt of the application money from the Investor.
7. No change of control is envisaged pursuant to the above preferential allotment.

None of the Directors of the Company is in any way concerned or interested in the Resolution.





Thus there was violation of provisions of section 81 (1A) of the Companies Act, 1956 which is punishable under section 629A of the Act which reads as under:-


“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.”

The 1<sup>st</sup> Applicant Company, the Managing Director and the Director who are default have filed suo-moto for compounding this application. The Practicing Company Secretary has filed an application giving details to the effect that Mr. Prateek Hiremath, who was the Company Secretary has resigned from the Company w.e.f. 24<sup>th</sup> January 2012.

We have heard Company Petition on 30/08/2016, 07/09/2016, 23/09/2016 and 19/10/2016. The Practicing Company Secretary made submissions that the 1<sup>st</sup> Applicant Company failed to disclose details as required under Rule 6 of Unlisted Public Companies (Preferential Allotment) Rules, 2003, in the notice of Extra Ordinary General Meeting held on 14<sup>th</sup> December 2011. Thus there was delay of 1340 days and thereby there was violation of provisions of section 81 (1A) of the Companies Act, 1956. Hence, prayed for Compounding the violation with minimum compounding fees.

The Practicing Company Secretary has stated that the offence committed was purely inadvertent and the default was not willful or deliberate or with any mala fide intentions and hence lenient view may be taken in this case. This suo-moto application is filed by the Company, the Managing director and the Director.

We have perused the documents filed by the Petitioners. We have seen the certified extract copy of the Board Resolution dated 31<sup>st</sup> March 2015 wherein the Board has passed a resolution to file necessary Compounding Application. We have seen the Memorandum and Articles of Association of the company, copy of Financial Statements for the year ended 31/03/2012 and copy of Form 32 and Challan for the cessation of Mr. Prateek Hiremath as the Company Secretary w.e.f.



24/01/2012. We have received report from Registrar of Companies, Karnataka at Bangalore vide letter No. ROCB/SVK/14937/621A/2015 dated 3<sup>rd</sup> August 2015 and after going through the Company Petition under section 621A of the Companies Act, 1956 and further submissions made by the Practicing Company Secretary for the Petitioner and the observations of the Registrar of Companies, we hereby propose to levy the compounding fee on the Petitioners as set out in the table given hereunder:-

Sl. No.	Particulars	Violation of Sec.81(1A) of the Companies Act, 1956	Delay of days	Total Rs.	Grand Total Rs.
1	1 <sup>st</sup> Applicant Company	Rs. 5,000/-	1340 x 50/-	67,000/-	72,000/-
2	2 <sup>nd</sup> Applicant Managing Director	Rs. 5,000/-	1340 x 50/-	67,000/-	72,000/-
3	3 <sup>rd</sup> Applicant Director	Rs. 5,000/-	1340 x 50/-	67,000/-	72,000/-

In pursuant to our Order dated 28/10/2016 mentioned herein above, the Applicants have paid the compounding fee by depositing the following 3 Demand Drafts of The Hongkong and Shanghai Banking Corporation, Bangalore drawn 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
1	1 <sup>st</sup> Applicant Company	72,000/-	816870 dt. 04/11/2016
2	2 <sup>nd</sup> Applicant Managing Director	72,000/-	816871 dt. 04/11/2016
3	3 <sup>rd</sup> Applicant Director	72,000/-	816872 dt. 04/11/2016

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.

15/11/16  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL

DATED THIS THE 15<sup>th</sup> DAY OF NOVEMBER 2016.