

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 253/2016
IN
C.A. NO. 147/621A/CB/2016

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

IN THE MATTER OF COMPANIES ACT, 1956
SECTION 621A UNDER SECTION 159 OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF M/S XELLIA PHARMACEUTICALS
PRIVATE LIMITED

C.A. NO. 147/621A/CB/2016 AND T.P. NO. 253/2016

1. M/S Xellia Pharmaceuticals Private Limited,
No. 524, Kukke Arcade,
Vijaya Bank Layout,
Bannerghatta Road,
Bilekahalli,
Bangalore-560076.
2. Ms. Bente Schmidt Nielsen
Peter Bangs Vej 78,
4th Frederiksberg 2000,
Denmark
3. Mr. Mikkel Lyager Olsen,
Ved Dammen 17,
Bagsvaerd, 2880,
Denmark.

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APPLICANTS

PARTIES PRESENTED:

Mr. B.Chandra, AG3, Ragamalika, # 26, Kumara
Colony Main Road, Vadapalani, Chennai-
600026, Practicing Company Secretary,
Authorised Representative for the Petitioners.

Heard on: 01/08/2016, 09/08/2016, 29/08/2016, 19/09/2016 and 26/09/2016.



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 159 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. 253/2016.

The averments made in the company petition are briefly described hereunder:-

The Petitioner Company was incorporated under the Companies Act, 1956 on 13/09/2010 as a Private Limited Company in the name and style of M/s XELLIA PHARMACEUTICALS PRIVATE LIMITED vide Registration No. U24230KA2010PTC055122. The Registered office of the company is situated at # 524, Kukke Arcade Vijaya Bank Layout, Bannerghatta Road, Bilekahalli, Bangalore-560076.

The Board of Directors of the Company from the date of incorporation is as follows:

Name of the Director	Date of Appointment	Date of Cessation
Mr. Natesh Kalidevapur	13/09/2010	10/03/2011
Mr. Vinod Naik	13/09/2010	10/03/2011
Mr. Mikkel Lyager Olsen	09/03/2011	-
Ms. Bente Schmidt Nielsen	09/03/2011	-
Mr. Rajeev Kumar Khurana	07/01/2014	-



The present Authorized share capital of the Petitioner company is Rs. 1,00,00,000/- (Rupees One Crores only) consisting of 10,00,000 (Ten lakhs) Equity Shares of Rs 10/- each and the issued, Subscribed and the paid up share capital of the company is Rs 1,00,000/- (Rupees one lakh only) divided into 10,000 (Ten thousand) Equity Shares of Rs. 10/- each.

The Main objects of the Petitioner Company is to carry on the business as manufacturers, developers, producers, purifiers, processors, convertors, importers, exporters, traders, buyers in relation to the pharmaceuticals; to engage in the business of providing technical support and/or corporate quality assurance function in relation to establishing policies, providing advice 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 Petition that, the 1st Applicant Company could not conduct the Annual General Meeting within the prescribed time and that Annual General Meeting was held after due date. It is further averred that 1st Applicant Company tried to complete the preparation of accounts before the due date of Annual General Meeting but due to unavoidable reasons there was delay in completing the preparation of accounts and as a result holding of Annual General Meeting was delayed and further it resulted in delay for filing of Annual Returns which was beyond 60 days from the due date of Annual General Meeting. Thus the Company and its Directors violated section 159 of the Companies Act, 1956 for not filing Annual Returns within the stipulated time.

We have heard the Practicing Company Secretary for Applicants on 01/08/2016, 09/08/2016, 29/08/2016, 19/09/2016 and 26/09/2016. The Practicing Company Secretary contended that non filing of Annual Returns within the time as per provisions of section 159 of the Companies Act, 1956 was accidental and totally inadvertent and there was no mala fide or fraudulent intention on the part of Company or its Directors for not filing of Annual Return within the prescribed time.

We have seen the documents filed by the Applicants. The Petitioner filed Memorandum and Articles of Association of the 1st Petitioner Company. Petitioner also filed Auditor Report and other connected documents and a copy of Board Resolution.



We have received the report of Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/AHN/621A/55122/2015 dated 09/03/2016. He stated that Company filed its Annual Returns for the year ended 30/09/2011 on 19/02/2013. The Registrar of Companies further stated that, Company and its Officers committed default of provisions of section 159 of the Companies Act, 1956 and violation is punishable under section 162 of the Companies Act, 1956.

As seen from the records 1st Petitioner Company was incorporated on 13/09/2010. According to Section 166 of the Companies Act, 1956 herein after referred as Act, the Company may hold its 1st Annual General Meeting within a period of 18 months from the date of its incorporation. Therefore, 1st Applicant Company may hold its 1st Annual General Meeting on or before 13/03/2012 which will be within 18 months. As per provisions of section 159 of the Companies Act, 1956 every company shall within 60 days from the day on which each of the Annual General Meetings referred to in Section 166 of the Companies Act, 1956 is held, prepare and file with the Registrar Annual Return containing the particulars.

The 1st Petitioner Company should have filed Annual Return within 60 days from the due date of Annual General Meeting. In other words, the 1st Applicant Company should have filed Annual Return on or before 13/05/2012. However, the Annual Return was filed before Registrar of Companies, Karnataka, Bengaluru on 19/02/2013. Thus there was delay of 280 days in filing Annual Return.

The contravention of Section 159 is punishable under section 162 of the Companies Act, 1956 which reads as follows:

“the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues”.

After considering the materials on record and after taking into account the submissions made by the Practicing Company Secretary that lenient view may be taken, we levy compounding fee for the violation on the 1st Petitioner Company and its 2 Directors as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.159 of Companies Act, 1956 -Delay of 280 days	Total Rs.
1	1 st Applicant Company.	280 x 50/- = 14,000/-	14,000/-
2	2 nd Applicant	280 x 50/- = 14,000/-	14,000/-
3	3 rd Applicant	280 x 50/- = 14,000/-	14,000/-

In pursuant to our Order dated 7th October 2016 mentioned herein above, the Applicants have paid the compounding fee by depositing 3 Demand Drafts of HSBC Ltd., Bengaluru and ICICI Bank, Backbay Reclamation, Mumbai 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/D.D Rs.	DD No. & Date
1	1 st Applicant Company	14,000/-	816874 dt. 04/11/2016
2	2 nd Applicant Director	14,000/-	302531 dt. 07/11/2016
3	3 rd Applicant	14,000/-	302547 dt. 08/11/2016

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, Bengaluru for appropriate action.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 10th DAY OF NOVEMBER 2016