

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH  
T.P.NO. 255/2016  
IN  
C.A. NO. 149/621A/CB/2016

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

IN THE MATTER OF COMPANIES ACT, 1956  
SECTION 220 READ WITH SECTION 621A OF THE COMPANIES ACT, 1956  
AND

IN THE MATTER OF M/S XELLIA PHARMACEUTICALS  
PRIVATE LIMITED

C.A. NO. 149/621A/CB/2016 & T.P. NO. 255/2016

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,  
4<sup>th</sup> Frederiksberg 2000,  
Denmark
3. Mr. Mikkel Lyager Olsen,  
Ved Dammen 17,  
Bagsvaerd, 2880,  
Denmark.

-  
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 220 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. 255/2016.

The averments made in the company petition are briefed 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 are 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 of Association of the Petitioner Company.

It is averred in the Company Petition that, the company could not hold Annual General Meeting within the due date. Consequently, the provisions of section 220 of the Companies Act, 1956 were violated for not filing of the financial statements with the Registrar of Companies, Karnataka, Bengaluru within the stipulated time.

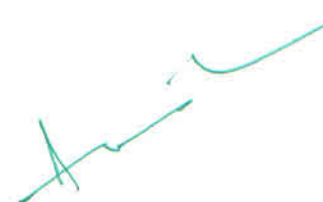

Section 220(1) of the Companies Act, 1956 reads as follows:

"After the balance sheet and the profit and loss account have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar within thirty days from the date on which the balance sheet and the profit and loss account were so laid, or where the annual general meeting of a company for any year has not been held, there shall be filed with the Registrar within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act."

The proviso to section 166(1) of the Companies Act, 1956 is as follows:

"Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that a company may hold its first annual general meeting within a period of not more than eighteen months from the date of its incorporation; and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year;"





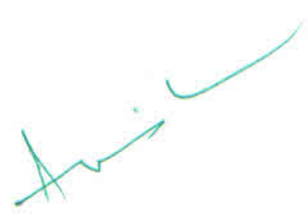

The Company was incorporated on 13/09/2010. The company may hold its annual general meeting within the period of 18 months from the date of incorporation. The company should have held annual general meeting on or before 13/03/2012 but Annual General Meeting was held on 18/06/2012. The 1<sup>st</sup> Applicant Company filed balance sheet, profit and loss account with Registrar of Companies, Karnataka, Bengaluru on 19/02/2013.

According to section 220 (1) of the Companies Act, 1956, where annual general meeting for any year has not been held the balance sheet and profit & loss account shall be filed with the Registrar within 30 days from the latest day or before which that meeting should have been held in accordance with the provisions of this Act. So the 1<sup>st</sup> Applicant Company should have filed balance sheet and profit & loss account within 30 days from the due date of annual general meeting. The 1<sup>st</sup> Applicant Company should have held annual general meeting on or before 13/03/2012. However annual general meeting was held on 18/02/2013. The financial statements were filed on 19/02/2013 so there was delay in filing financial statements i.e., balance sheet, profit & loss account.

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, it was purely an accidental and totally inadvertent in not filing the financial statements i.e., balance sheet and profit and loss account with the Registrar of Companies, Karnataka, Bengaluru within the stipulated time and there was no mala fide or fraudulent intention on the part of Company or its Directors. The Practicing Company Secretary for Applicants would further contend that, this is a suo-moto application by the Company for compounding of violation.

As per the applicable provisions of section 220(3) of the Companies Act, 1956 which makes a reference to section 162 which reads as follows:

“if a Company fails to comply with any of the provisions contained in section 159, 160 or 161, 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 after the first during which default continues”.



We have seen the Memorandum and Articles of Association of the Company. We have also seen the Auditors Report and Balance sheet of the Company. 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 and section 220 of the Companies Act, 1956 for the delay in not filing financial statements i.e., balance sheet and profit & loss account on the 1<sup>st</sup> Applicant Company and its 2 Directors, the Applicant Nos.2 and 3 as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.220 of Companies Act, 1956 Delay of 322 days	Total Rs.
1	1 <sup>st</sup> Applicant Company	322 x 100/- = 32,200/-	32,200/-
2	2 <sup>nd</sup> Applicant	322 x 100/- = 32,200/-	32,200/-
3	3 <sup>rd</sup> Applicant	322 x 100/- = 32,200/-	32,200/-

In pursuant to our Order dated 7<sup>th</sup> 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 <sup>st</sup> Applicant Company	32,200/-	816876 dt. 04/11/2016
2	2 <sup>nd</sup> Applicant Director	32,200/-	302550 dt. 08/11/2016
3	3 <sup>rd</sup> Applicant	32,200/-	302551 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.

*10.11.16*  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL

*10.11.16*  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

*10*  
DATED THIS THE 10 DAY OF NOVEMBER 2016