

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 265/2016**

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

**IN THE MATTER OF COMPANIES ACT, 1956
SECTION 621A UNDER SECTION 210 OF THE COMPANIES ACT, 1956
AND**

**IN THE MATTER OF M/S XELLIA PHARMACEUTICALS
PRIVATE LIMITED**

T.P. NO. 265/2016

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.

- **APPLICANTS**

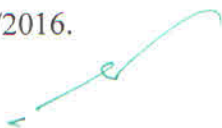
PARTIES PRESENT:

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

Heard on: 19/09/2016, 26/09/2016, 26/10/2016 and 9/11/2016.

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 210 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. 265/2016.




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

The Petitioner Company was incorporated under the Companies Act, 1956 on 13th September 2010 as a Private Limited Company in the name and style of 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 Crore 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 1st Applicant 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 Application that, the 1st Applicant company could not conduct its Annual General Meeting within the prescribed time limit for the period commencing from 13th September 2010 upto 30th September 2011 and

the Annual General Meeting was held after its prescribed due date. The 1st Applicant Company had earnestly tried to complete the accounts on or before due date and with that hope, the 1st Applicant Company did not apply to the Registrar of Companies, Karnataka at Bangalore for extension of time to hold Annual General Meeting. However, due to unavoidable reasons the completion of accounts was delayed. The 1st Applicant Company got its accounts finalized and audited but after due date of holding the Annual General Meeting and as a result there was failure to place and adopt the Audited Annual Accounts and Balance sheet of the company before its Annual General Meeting. However, the Company convened Annual General Meeting on 18th June 2012 and accounts were adopted. Thus there was violation of provisions of section 210 of the Companies Act, 1956. The violation was purely accidental and totally inadvertent and there was no mala fide or fraudulent intention on the part of the Directors in not placing of the audited annual accounts of the company before the Annual General Meeting.

We have heard the Practicing Company Secretary for Applicants on 19/09/2016, 26/09/2016, 26/10/2016 and 9/11/2016. The Practicing Company Secretary contended that, it was purely an accidental and totally inadvertent for not placing the audited annual accounts before the Annual General Meeting within the stipulated time and there was no mala fide or fraudulent intention on the part of the Directors. The Practicing Company Secretary further contend that, this is a suo-moto application filed by the Company for compounding of violation.

The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/AHN/621A/055122/2016 dated 09/03/2016 has stated in his report that, 2 Directors Mr. Kalidevapur Ashwathagowda Natesh and Mr. Vindo Gajanan Naik who were the first Directors but they have not moved the application. According to the Practicing Company Secretary for Applicants there, they cease to be Directors w.e.f. 10/03/2011. Applicant Nos. 2 & 3 were the Directors at the time of default. Section 166 of the Companies Act, 1956, provides that the company may hold its 1st Annual General Meeting within the period of not more than 18 months from the date of incorporation and if such General Meeting is held within that period, it was not be necessary for the company to hold any Annual General Meeting in the year of its incorporation or in the following year.

Section 166 of the Companies Act, 1956 which reads 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 accompany 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.”

From this it is clear the Company is entitled to conduct Annual General Meeting within 18 months from the date of its incorporation and if it is held within that period then 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. It is clear from the records that Annual General Meeting was held on 18th June 2012. The Company could have conducted the Annual General Meeting within 18 months from the date of incorporation i.e., on or before 13/03/2012, but it was held on 18th June 2012 thus there was delay in holding the Annual General Meeting.

The company could not hold its 1st Annual General Meeting within the due date of incorporation. Admittedly the company held its Annual General Meeting on 18th June 2012. Thus there was violation of provisions of section 210 of the Companies Act, 1956.

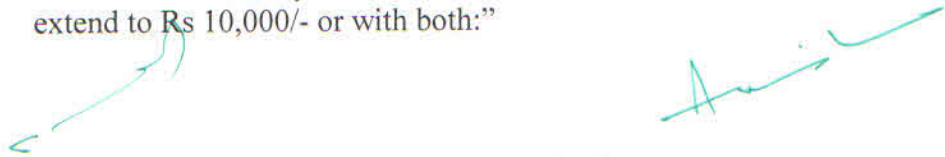
Section 210(1) of the Companies Act, 1956, provides that:-

At every annual general meeting of a company held in pursuance of section 166, the Board of directors of the company shall lay before the company –

- (a) a balance sheet as at the end of the period specified in sub-section (3); and
- (b) a profit and loss account for that period.

For the violation of section 210(1) of the Companies Act, 1956 the punishment is provided under sub-section (5) of section 210 of the Companies Act, 1956 which reads as follows:-

“If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section, 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:”



This Application was filed under section 621A of the Companies Act, 1956. The provisions of section 441 of the Companies Act, 2013 came into effect from 1st June 2016. Before erstwhile Company Law Board, Southern Region, Chennai this application was filed. Therefore, this application is to be decided under the provisions of section 621A of the Companies Act, 1956.

We have seen the Memorandum and Articles of Association of the Company. We have seen the certified true copy of financial statements for the period ending 30/09/2011. We have seen 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 under sub-section 5 of section 210 of the Companies Act, 1956 for the delay in non-submission of audited annual accounts before the Annual General Meeting on the 2 Directors, the Applicant Nos.2 and 3 as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.210 of the Companies Act, 1956	Total Rs.
1	2 nd Applicant Director	Rs. 6,000/-	6,000/-
2	3 rd Applicant Director	Rs. 6,000/-	6,000/-

In pursuant to our Order dated 23rd November 2016 mentioned herein above, the Applicants have paid the compounding fee by depositing 2 Demand Drafts of 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	2 nd Applicant Director	6,000/-	303750 dt. 13/12/2016
2	3 rd Applicant Director	6,000/-	304001 dt. 13/12/2016




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.

16.1.16
(RATAKONDA MURALI)
MEMBER, JUDICIAL

16/12/2016
(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

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DATED THIS THE *16* DAY OF DECEMBER 2016