

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 186/2016
IN
C.A. NO. 237/2015

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

IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 297 READ WITH SECTION 621A
OF THE COMPANIES ACT, 1956
AND

IN THE MATTER OF BELOORBAYIR BIOTECH LIMITED

C.A. NO. 237/2015 AND T.P.NO. 186/2016

1. Beloorbayir Biotech Limited,
4112, Utkarsha, K.R.Road,
Banashankari 2nd Stage,
Bangalore-560070.
2. Mr. Beloor Ganapayya Bairy- Managing Director
No. 274, 2nd Cross, Hoskere Halli,
2nd Block, 3rd Stage, Banashankari,
Bangalore-560085.
3. Mr. Bandimatta Subramanyam Rajesh, Director
No.8, 13th Main Road, Vasanthanagar West,
Bangalore-560052.
4. Mr. Ajay Ganapayya Bairy – Whole Time Director
No. 274, 2nd Cross, Hoskere Halli,
2nd Block, 3rd Stage, Banashankari,
Bangalore-560085.
5. Ms. Veena Beloor Ganapayya Bairy- Director
No. 274, 2nd Cross, Hoskere Halli,
2nd Block, 3rd Stage, Banashankari,
Bangalore-560085.
6. Mr. Jagadhisha Bhat, Director
689, BTM Layout, 1st Phase, 2nd Stage,
29th Main Road, Bangalore-560076.
7. Mr. Bandimatta Subramanyam, Director
No.8, 13th Main Road, Vasanthanagar West,
Bangalore-560052.
8. Mr. Raghupati Thimanna Hegde. Director
No. 37, 1st Floor, Central Street,
Between 8th and 9th Cross, Kumara Park West,
Bangalore-560020

APPLICANTS

PARTIES PRESENTED:

Mr. Naman G.Joshi, No.12, Champaka Nivasa,
1st Floor, 72nd Cross, 5th Block, Rajajinagar,
Bangalore-560010 -Practicing Company Secretary
& Authorised Representative for the Applicants.

Heard on: 27/07/2016, 03/08/2016, 11/08/2016, 26/08/2016, 08/09/2016,
27/09/2016 and 21/10/2016.

ORDER

This Company Application was originally filed before the Company Law Board, Southern Region, Chennai. 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 it was taken on file and numbered as T.P No. 186/2016.

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 2nd March 2005 as a Public Limited Company in the name and style of "Beloorbayir Biotech Limited" vide CIN No. U73100KA2005PLC035741. The Registered office of the company is situated at # 4112, Utkarsha, K.R Road, Banashankari 2nd Stage, Bangalore-560070.

The Authorized share capital of the Petitioner company is Rs.65,00,00,000/- (Rupees Sixty five Crores only) consisting of 1999900 Equity Shares of Rs 100/- each and 45001000 Compulsory Convertible Preference Shares of 10 each. The paid up share capital of the Company is Rs 56,29,55,040/- (Rupees Fifty Six Crores Twenty Nine Lakhs Fifty Five Thousand and Forty only) 1129483 Equity Shares of Rs. 100/- each and 45000674 Compulsory Convertible Preference shares of Rs 10/- each.

The Main objects of the Petitioner Company is to carry on in India or elsewhere, any and all business in the field of Biotechnology, Life Sciences, biomedicines, bioinformatics, pharmaceuticals,, including developing, testing, manufacturing, producing, all and any kinds and types of drugs; in the field of marketing, distribution, promoting, selling, commercializing various drugs and medicines; to takeover, acquire, joint venture collaborations with all any kind of


companies engaged in business in the field of biotechnology; to carry on the business of processing, canning, bottling, preserving, cultivating, collecting, and food preparations of every kind and descriptions 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, during the financial year 2008-09, the 1st Applicant Company has entered into purchase, sale and service contracts with Bayir Extracts Pvt. Ltd., Bayir Chemicals, Sneha Natura, Sneha Herbals consisting of interested directors and that no approval was obtained for the agreement. It is also averred that, in the financial year 2010-11 the 1st Applicant Company has entered into construction agreement dated 01/05/2010 with Mr. Beloor Ganapayya Bairy and Mrs. Veena Beloor Ganapayya Bairy to construct the industrial structure in the land owned by them for the company. Further agreement was revisited through addendum on 09/01/2014 and no approval was obtained for the above agreement.

It is also averred in the financial year 2012-13, the 1st Applicant Company had entered into purchase and sale contracts with Bayir Extracts Pvt. Ltd., Bayir Chemicals, Sneha Natura, Sneha Herbals consisting of interested directors and approval of the board was obtained on 05/03/2013 to enter into agreement but Central Government approval was not obtained for the agreement.

It is also averred that, for the financial year 2013-14, the 1st Applicant Company entered into service agreement with Sneha Natura and Bayir Chemicals consisting of interested directors and approval of the board was obtained on 18/06/2015 to enter into agreement but Central Government approval was not obtained for the agreement.

It is averred that, 1st Applicant Company had entered into purchase, sale and service contracts with Bayir Extracts Pvt. Ltd., Bayir Chemicals, Sneha Natura, Sneha Herbals and Mr. Beloor Ganapayya Bairy and Mrs. Veena Beloor Ganapayya Bairy consisting of interested directors and Directors themselves entered into transaction for which there was board approval but without consent of Central Government. Thus there was violation of provisions of section 297 of the Companies Act, 1956. This suo-motto application is filed by the 1st Applicant Company and its Directors under section 621A of the Companies Act, 1956 for



compounding the violation of section 297 of the Companies Act, 1956 which is punishable under section 629A of the Act.

According to the petitioners the following were Directors on the Board of the 1st Applicant Company at the time of transactions.

1. Transaction for the year 2008-09:

Sl. No.	Name	Designation
1	Beloor Ganapayya Bairy	Director
2	Veena Beloor Ganapayya Bairy	Director
3	Jagadhisha Bhat	Director
4	Ajay Ganapayya Bairy	Director
5	Bandimatta Subramanyam Rajesh	Director

2. Transaction for the year 2010-11:

Sl. No.	Name	Designation
1	Beloor Ganapayya Bairy	Director
2	Veena Beloor Ganapayya Bairy	Director
3	Jagadhisha Bhat	Director
4	Ajay Ganapayya Bairy	Director
5	Bandimatta Subramanyam Rajesh	Director

3. Transaction for the year 2012-13:

Sl. No.	Name	Designation
1	Beloor Ganapayya Bairy	Director
2	Veena Beloor Ganapayya Bairy	Director
3	Jagadhisha Bhat	Director
4	Ajay Ganapayya Bairy	Director
5	Bandimatta Subramanyam Rajesh	Director
6	Raghupati Thimanna Hegde	Additional Director
7	Bandimatta Subramanyam	Additional Director

4. Transaction for the year 2013-14:

Sl. No.	Name	Designation
1	Ajay Ganapayya Bairy	Whole time Director
2	Beloor Ganapayya Bairy	Managing Director
3	Veena Beloor Ganapayya Bairy	Director
4	Bandimatta Subramanyam Rajesh	Director
5	Jagadhisha Bhat	Director
6	Bandimatta Subramanyam	Director
7	Raghupati Thimanna Hegde	Director

During the course of enquiry, the Practicing Company Secretary has filed affidavit of Mr. Beloor Ganapayya Bairy, the Managing Director of the 1st Applicant Company giving details of transactions during the respective years at arms length basis as per market value and further giving details of the Board Meeting held for passing of resolution for execution of agreement between related parties. He has also enclosed the copies of Board Resolutions approving the transactions.

The Practicing Company Secretary also filed written submissions and contended that violation can be compounded under section 621A of the Companies Act, 1956. The Practicing Company Secretary further contended that all transactions are at arms length and based on market value. The Practicing Company Secretary relied on resolutions dated 30/11/2008, 30/04/2010, 05/03/2013, 18/06/2015, 30/06/2014, 31/07/2015. These Resolutions are passed to the effect for approving the related transactions.

We have heard Practicing Company Secretary for Applicants who urged that transactions are within the arms length and based on market value. He urged that board has approved the transactions by way of resolution, but approval from the Central Government was not obtained. The volume of transaction is given by the Managing Director in the affidavit. He prayed to take lenient view while compounding the violation.

We have seen the documents filed alongwith application viz., Notice given for 8th Annual General Meeting; Annual Return for the financial year 2012-13 of the 1st Applicant Company, Memorandum and Articles of Association, agreement dated 31/12/2008 entered with Bayir Extracts Pvt. Ltd., Bayir Chemicals, Sneha Natura, Sneha Herbals; construction agreement with Mr. Beloor Ganapayya Bairy and Mrs. Veena Beloor Ganapayya Bairy. We have seen Board Resolution dated 05/03/2013 for renewing the agreement with Bayir Extracts Pvt. Ltd., Bayir Chemicals, Sneha Natura, Sneha Herbals and also Board Resolution dated 18/06/2015.

Section 297 (1) of the Companies Act, 1956 reads as follows:-

“Except with the consent of the Board of Directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company –

(a) for the sale, purchase or supply of any goods, materials or services, or

(b) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the Company”.

Prior approval of the Central Government was not obtained in entering into agreement. Thus there was violation of section 297 of the Companies Act, 1956 which is punishable under section 629A which 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 Rs 5,000/- and where the contravention is a continuing one, with a further fine which may extend to Rs 5,000/- for every day after the first during which the contravention continues”.

Report from the Registrar of Companies, Karnataka at Bengaluru was received vide letter No. ROCB/PS/621A/035741/2015 dated 25/08/2015. He has furnished information regarding No. of transactions held in each year i.e., 2008-09 (4), 2010-11 (2), 2012-13 (4) and 2013-14(2). The Registrar of Companies, Karnataka at Bengaluru recommended for imposing maximum penalty for compounding for each transaction separately.

Considering the submissions of the Practicing Company Secretary compounding fee is levied on the Company and Applicants No. 2 to 8 who are the Directors as follows:-

Sl. No.	Particulars	Violation of Sec.297(1) of the Companies Act, 1956				Total Rs.
		No. of transactions held in the respective financial year				
		2008-09 (4)	2010-11 (2)	2012-13 (4)	2013-14 (2)	
1	1 st Applicant Company	4 x 1000 = 4000	2 x 1000 = 2000	4 x 1000 = 4000	2 x 1000 = 2000	12,000/-
2	2 nd Applicant- Managing Director	4 x 1000 = 4000	2 x 1000 = 2000	4 x 1000 = 4000	2 x 1000 = 2000	12,000/-
3	3 rd Applicant- Whole Time Director	4 x 1000 = 4000	2 x 1000 = 2000	4 x 1000 = 4000	2 x 1000 = 2000	12,000/-
4	4 th Applicant- Director	4 x 1000 = 4000	2 x 1000 = 2000	4 x 1000 = 4000	2 x 1000 = 2000	12,000/-
5	5 th Applicant- Director	4 x 1000 = 4000	2 x 1000 = 2000	4 x 1000 = 4000	2 x 1000 = 2000	12,000/-
6	6 th Applicant- Director	4 x 1000 = 4000	2 x 1000 = 2000	4 x 1000 = 4000	2 x 1000 = 2000	12,000/-
7	7 th Applicant- Director	-	-	4 x 1000 = 4000	2 x 1000 = 2000	6,000/-
8	8 th Applicant- Director	-	-	4 x 1000 = 4000	2 x 1000 = 2000	6,000/-

The compounding fee levied shall be paid by the Petitioners within 15 days from the date of this order and call this matter on 18th November 2016 for compliance.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 3rd DAY OF NOVEMBER, 2016