

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

T.P.NO. 188/2016

IN

C.A. NO. 239/2015

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

**IN THE MATTER OF COMPANIES ACT, 1956
UNDER SECTION 198 READ WITH SECTION 309
AND SCHEDULE XIII OF THE COMPANIES ACT, 1956
AND**

IN THE MATTER OF BELOORBAYIR BIOTECH LIMITED

C.A. NO. 239/2015 AND T.P.NO. 188/2016

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. Rajesh Kumar Srivastava – Nominee Director
S-376, Ground Floor, Panchshila Park, New Delhi.
8. Mr. Suneet Gupta, Nominee Director
A-63, Block A, Defence Colony, New Delhi-110024.
9. Ms. Rachana P.V – Company Secretary
630, 'Sowrabha' 2nd A Main, 11th Block, 2nd Stage,
Nagarbhavi, Bangalore-560072

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, 02/09/2016,
22/09/2016 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. 188/2016.

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 1st Applicant 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 1st Applicant 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 petition that, during the financial year 2012-13, the 1st Applicant Company did not give salary to the managerial personal whereas the turnover was Rs. 36,49,44,844/- against which profit before tax was Rs 8,57,29,075/- and in the financial year 2013-14 the 1st Applicant Company performed better than its previous year by increasing turnover to Rs 55,39,22,621/- but the profit before tax of the 1st Applicant Company was reduced to Rs 3,32,64,820/- due to change in market conditions.

However, the 1st Applicant Company paid the salary to the managerial personals considering the previous year turnover and Profit. Even though the turnover of the 1st Applicant Company was more than previous year but profit had gone down due to market condition and 1st Applicant Company was able to complete its preparation of accounts and audit very late. So the 1st Applicant Company could not realise the excess payment made to the managerial persons which was more than 10% of the profit of 1st Applicant Company.

It is averred that, the 1st Applicant Company paid total remuneration of Rs 65,00,000/- to managerial personal for the financial year 2013-14. It is stated that, by virtue of provisions of section 309 of the Companies Act 1956 read with section 198 and Schedule XIII, the 1st Applicant Company was eligible to pay upto Rs 46,00,426/-. Hence company has paid excess remuneration of Rs 18,99,574/- (Rs. Eighteen lakhs Ninety Nine Thousand Five Hundred Seventy Four only) and has not taken prior approval of Central Government.

It is further stated that, when the excess of amount arose for the financial year 2013-14, the Directors on the Board of the 1st Applicant Company are as follows:-



Sl. No.	Name	Designation
1	Rajesh Kumar Srivastava	Nominee Director
2	Ajay Ganapayya Bairy	Whole time Director
3	Beloor Ganapayya Bairy	Managing director
4	Veena Beloor Ganapayya Bairy	Director
5	Suneet Gupta	Nominee Director
6	Rachana P.V	Secretary

Hence, this suo-motto application is filed under section 621A of the Act for compounding the violation of section 198, 309 read with Schedule XIII of the Act. It is averred the default was neither intentional nor with a mala fide intentions. It is prayed for compounding the violation.

During the course of enquiry, the Practicing Company Secretary appeared for the Applicants has filed Explanatory Note signed by Mr. Beloor Ganapayya Bairy, the Managing Director to the effect that the Company had obtained the refund of excess remuneration to the extent of Rs 18,99,574/- by way of Cheque bearing No.615041 dated 01/08/2016, copy of the cheque was enclosed. It is stated in the explanatory note that the 1st Applicant Company paid excess remuneration over and above 10% of the profit to its Managing Director.

We have head Practicing Company Secretary for Applicants who submitted that the 1st Applicant Company had paid more than 10% of the profit to Mr. Beloor Ganapayya Bairy, the Managing Director which is in excess of 10% of the profit of the company, it is in violation of provisions under section 309 read with section 198 and Scheduled XIII of the Act. It is also contended that the company had recovered the excess payment of Rs 18,99,574/-. He urged lenient view may be taken while compounding the violation.

We have seen the records filed by the Applicants, certified copy of Explanatory Notes, Directors report, Audit report and Memorandum of Association of the company. We have seen the Board Resolution authorizing the company to make suo-moto application for compounding.

Section 198 of the Act deals with overall maximum managerial remuneration etc., sub-section 3 of section 198 of the Act, reads as follows:

“within the limits of the maximum remuneration specified in sub-section (1), a company may pay a monthly remuneration to its managing or whole-time director in accordance with the provisions of section 309 or to its manager in accordance with the provisions of section 387.”

Section 309 of the Act deals with remuneration of Directors, sub-section 3 of section 309 of the Act reads as follows:

“A director who is either in the whole-time employment of the company or a managing director may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other: Provided that except with the approval of the Central Government such remuneration shall not exceed five per cent, of the net profits”

“Provided that except with approval of the Central Government such remuneration shall not exceed five per cent of the net profits for one such director, and if there is more than one such director, ten per cent for all of them together.”

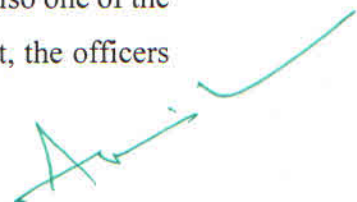
Sub-section 5(A) of section 309 of the Act further reads as follows:-

“If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.”

Thus it is clear, if any excess payment is made over the limit prescribed and without prior approval of the Central Government the same shall be refund to the company.

In this case, report from Registrar of Companies, Karnataka at Bengaluru have been received wherein it was stated that the Company has not recovered the excess amount and that a letter was also addressed to the Company. Now the Company had recovered the excess amount vide copy of cheque filed by the company through its Managing Director. Thus offence is subsequently made good.

Section 5 of the Act, deals with officer who is in default. under this provisions, the Managing Director, Whole Time Director, Manager, Secretary and others. So far this application is concerned the excess remuneration was paid to the Managing Director who is an Applicant. The Company Secretary is also one of the Applicants apart from the Company. Relying on section 5 of the Act, the officers

who are in default are the Managing Director, Whole Time Director and Secretary besides the company. Section 629A of the Companies Act, 1956 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 500/- for every day after the first during which the contravention continues”.

On 3rd November 2016, the Practicing Company Secretary for the Applicants has filed clarification submission stating that, there was delay in remitting the excess salary received by the Managing Director to the Company. According to him there was delay of 853 days. The Practicing Company Secretary has also filed bank statement that, the amount covered by the cheque issued in favour of the Company towards refund of excess salary received was adjusted to the account of the Company. Thus it is clear the excess salary paid to the Managing Director was repaid to the Company.

Considering the submissions made by the Practicing Company Secretary and relying on the documents filed, we are levying the compounding fee on the Applicants 1,2,4 and 9 who are the Company, Managing Director, Whole Time Director and the Secretary, for the financial year 2013-14 ended by 31st March 2014. The excess amount was remitted to the Company by way of cheque dated 1st August 2016, there was delay of 853 days in remitting the excess amount i.e., from 1st April 2014 to 31st July 2016. The above 4 Applicants are liable to pay compounding fee for main violation of Section 309 read with section 198 of Schedule XIII of the Companies Act, 1956. Detail of compounding fee levied is given below:-



Sl. No.	Particulars	Violation of Sec.309 read with sec. 198 of the Companies Act, 1956	Delay of 853 days	Total Rs.	Grand Total Rs.
1	1 st Applicant Company	2,000/-	853 x 25	21,325	23,325/-
2	2 nd Applicant- Managing Director	2,000/-	853 x 25	21,325	23,325/-
3	4 th Applicant- Whole Time Director	2,000/-	853 x 25	21,325	23,325/-
4	9 th Applicant- Company Secretary	2,000/-	853 x 25	21,325	23,325/-

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