

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

C.P. No. 48/2017

**IN THE MATTER OF COMPANIES ACT, 2013
UNDER SECTION 441 FOR COMPOUNDING OF OFFENCE
UNDER SECTION 203 READ WITH SECTION 203(5)
OF THE COMPANIES ACT, 2013
AND**

**IN THE MATTER OF
M/s KEMWELL BIOPHARMA PRIVATE LIMITED**

Judgement/Order delivered on: 14th July 2017

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)

- 1) **M/s Kemwell Biopharma Private Limited,
Kemwell House, 11, Tumkur Road,
Bengaluru-560022.**
- 2) **Mr. Anurag Bagaria - Managing Director,
Ramasadan 758/21, 7th Main,
Mahalakshmi Layout,
Bengaluru-560080.**

- **APPLICANTS**

For the Petitioner (s) Mr. R.M Uday Shanakar, M/s Uday Shankar Associates, Fortune Chambers, 1st Floor, No.8, Lalbagh Road, Rcihmond Circle, Bangalore-560027 Counsel and Authorised representative for the Applicants.

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial) – Author

O R D E R

This Petition is filed under Section 203 of the Companies Act, 2013 read with Rule 8A of the companies (Appointment and Remuneration of Managerial Personals) Rules, 2014 with a prayer for compounding of the violation committed under provisions of 441 of the Companies Act, 2013.

The averments made in the Company Application are briefed hereunder:-


The 1st Applicant i.e., **M/s Kemwell Biopharma Private Limited** is the Company; Mr. Anurag Bagaria is the 2nd Applicant /Managing Director. This suo-moto Application is filed by the Applicants for compounding for violation of provisions of Section 203 of the Companies Act, 2013 read with Rule 8A of the companies (Appointment and Remuneration of Managerial Personals) Rules, 2014.

The 1st Applicant Company was incorporated under the Companies Act, 1956 on 7th May 2008 as a Private Limited Company under the name and style of "Kemwell Biopharma Private Limited" vide Registration No. CIN **U24232KA2008PTC046341**. The Registered office of the company is situated at Kemwell House, 11, Tumkur Road, Bengaluru-560022.

The Authorized share capital of the 1st Applicant Company is Rs. 20,00,00,000/- divided into 2,00,00,000 of Equity Shares of Rs 10/ each and 2,20,00,000 – 6% Redeemable Non-cumulative Non-Participating Preference Shares of Rs. 100/- each amounting to Rs 22,00,00,000/- The Issued, Subscribed and paid up share capital of the Company is Rs.14,25,00,000/- divided into 1,42,50,000 of Equity Shares of Rs 10/ each and 2,18,50,000 - 6% Redeemable Non-cumulative Non-Participating Preference Shares of Rs. 100/- each amounting to Rs 218,50,00,000/-.

The Main objects of the 1st Applicant Company is to manufacture, carry on research and Development, develop, formulate, prepare, procure buy market, distribute, operate as commission agents, warehouse agents in all kinds of biotechnology products; to carry on in India and abroad the business in bioinformatics, biopharmaceuticals and biotechnology and development activities and services related to all types of electrical, electronic and telecommunication and to do all incidental acts and things for attainment of above objects and Biotechnology and biopharmaceuticals research in agriculture, horticulture and seeds production to extract biopharmaceutical substances in India and Abroad etc., Details of the objects of the Applicant Company are mentioned in the Memorandum and Articles of Association of the Applicant Company.

It is averred that, the 1st Applicant Company could not appoint its full time Company Secretary as required under the provisions of Section 203 of the Companies Act, 2013 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personals) Rules, 2014 and it is mandatory to appoint Company Secretary in case if the paid up capital of a Company crosses Five crores or more. It is further averred that, the 1st Applicant Company has a paid up capital of more than Rs. 5 Crores on the date of commencement of the Companies Act, 2013 i.e., from 1st April 2014 and thereby there was a default for non-compliance



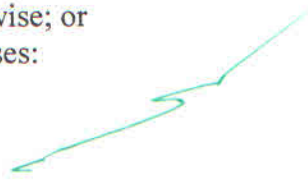
of the provisions of Section 203 of the Companies Act, 2013 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. It is further averred that, the non-appointment of company secretary is mainly due to the Company has been making regular efforts to identify and appoint suitable candidate for the position, however no professional company secretary was interested in joining the Company, since being a private limited Company, the scope of work available was very minimal which did create any interest for potential Company Secretaries. However, the 1st Applicant Company on 24th October 2016 appointed Mr. Suresh Ganachari as the Company Secretary and necessary E-form No.DIR-12 and the SRN Challan bearing No. SRN: G19915156 dated 05/11/2016 was filed with the Registrar of Companies, Karnataka, Bangalore to that effect with a delay of 818 days.

It is further averred that, non-appointment of the Company Secretary to the 1st Applicant Company as required under Section 203 of the Companies Act, 2013 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 was neither deliberate nor intentional and it was due to reasons which were beyond the control of the Applicants. The 1st Applicant Company and its Director suo-moto filed this application admitting violation and prayed for compounding by taking a lenient view. Thus there was violation of provisions of Section 203 of the Companies Act, 2013 which reads as follows:-

“(1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—

- (i) Managing Director, or Chief Executive Officer or manager and in their absence, a whole-time director;
- (ii) Company Secretary; and (iii) Chief Financial Officer:

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

- (a) the articles of such a company provide otherwise; or
 - (b) the company does not carry multiple businesses:
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Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.”

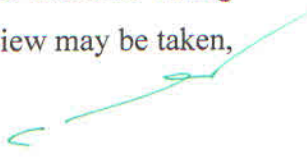
For violation of provisions of section 203 is punishable under section 203(5) of the Companies Act, 2013 which reads as follows:-

“If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.”

I have heard the Counsel for Applicants on 10/07/2017. The Counsel contended that, the default occurred due to unavoidable circumstances and totally inadvertent for non-appointment of Company Secretary within the stipulated time and there was neither deliberate nor intentional on the part of Company or its Directors. The Counsel for Applicants further contend that, this is a suo-moto application filed by the Company and its Director for compounding of violation.

The Registrar of Companies, Karnataka, Bangalore vide its letter bearing No. ROCB/PS/441/46341/2017 dated 5th May 2017 has stated in his report that, the Company has admitted the violation suo-moto and made good the offence and has offered to compound the offence and the Compounding Application may be decided on merits.

I have seen the Memorandum and Articles of Association of the Applicant Company, Certified copy of the Board Resolution dated 24th November 2016 of the 1st Applicant Company wherein the Board of Directors resolved for filing compounding Application, Certified copy of the Board Resolution dated 24th October 2016 of the 1st Applicant Company for appointing the Company Secretary. Certified copy of the E-form No.DIR-12 and the SRN Challan bearing No. SRN: G19915156 dated 05/11/2016 filed with the Registrar of Companies, Karnataka, Bangalore. After considering the materials on record and after taking into account the submissions made by the Counsel that lenient view may be taken,



I hereby levy compounding fee under section 203 of the Companies Act, 2013 for non-appointment of Company Secretary on the Applicants as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.203 of Companies Act, 2013	Delay of 818 days	Total Rs.
1	1 st Applicant Company	Rs. 1,50,000/-	818x 100/- =81,800/-	2,31,800/-
2	2 nd Applicant- Managing Director	Rs. 20,000/-	818x 100/- =81,800/-	1,01,800/-

The compounding fee levied shall be paid by the Applicants within 15 days from the date of this order and call this matter on 28th July 2017 for compliance.

14.7.17
(RATAKONDA MURALI)
MEMBER, JUDICIAL