BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 190/2016
IN
C.A.NO. 242/2015

DATED: MONDAY THE 19TH DAY OF JUNE 2017

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

IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A UNDER SECTION 227(3) (a) OF THE COMPANIES ACT, 1956
AND

IN THE MATTER OF B.M.M. ISPAT LIMITED

T.P.NO. 190/2016 IN C.A.NO. 242/2015

1. **Sri Pradip Kumar Jain- Chartered Accountant,**
   No.11/1, RASHAK,
   1ST Floor, North Public Square Road,
   Basavanagudi,
   Bangalore-560004. - **APPLICANT**

PARTIES PRESENT: Mr. A.M.Sridharan, Advocate and Authorised representative for the Applicant.

Heard on: 28/10/2016, 22/11/2016, 14/12/2016, 18/01/2017, 31/01/2017, 01/03/2017 and 20/04/2017.

ORDER

The Application 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 227(3)(a)of the Companies Act, 1956 and it was numbered as C.A 242/2015. 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 re-numbered as T.P No. 190/2016.

The averments made in the Company Application are briefly described hereunder:-

The Company was incorporated under the Companies Act, 1956 on 15th April 2002 as a Private Limited Company under the name and style of B.M.M Iron ore Private Limited. Subsequently the company was converted into a Public Company on 15th December 2004 and changed its name to B.M.M. Ispat Limited vide Registration No. CIN-**U13100KA2002PLC030365.** The Registered office of the company is situated at # 114, Danapur Village, Hobli Marriamanahalli, Hospet Taluq, Bellary District – 583222.

The present Authorized share capital of the Company is Rs. 160,00,00,000/- (Rupees One Hundred and Sixty Crores only) consisting of 16,00,00,000 Equity Shares of Rs 10/- each. The issued, subscribed and paid up capital is Rs. 104,06,18,460/- consisting of 10,40,61,846 equity shares of Rs 10/-each.

The Main objects of the Company is to carry on the business of prospecting, exploring and developing, opening and working of mines for minerals and ores and to obtain mining licenses and lease for ores and minerals from Government or any local body; to purchase, take on lease or in exchange, hire or otherwise acquire, any movable property; to act as agents, Managers, selling agents transport contractors for mineral ores and other allied products; to promote, take over or set up sponge iron plants, mini steel plants, and alloys and is currently doing the business in manufacturing of pellets, sponge iron, TMT bars and generation of power etc.,

It is averred in the Company Application that, the Applicant was appointed as Statutory Auditor of the company for financial year 2007-08 and resigned on 24th September 2008.

It is averred in the Application that, the Ministry of Corporate Affairs has ordered inspection of the books and records of the Company under section 209A of the Companies Act, 1956, and during the course of inspection the Inspecting Officer noticed from Clause 5(a) of the Auditor's Report attached to the Balance Sheet for the financial year ending 31st March 2008 that, the Applicant has wrongly reported that the contracts that need to be entered in the register maintained under section 301 of the Companies Act, 1956 have been entered. Whereas it was noticed from the Accounting Standard-18 of Balance sheet as at 31/03/2008 that, the company has entered into contract in respect of lease rental charges of value Rs 48.00 lakhs, sale of scrap value of Rs 1 Crore and sale of coal of value Rs 2.03 crore, for which no entry was made in the Register of contract and no prior approval of Central

Government was obtained as required under section 297 of the Companies Act, 1956. Thereby, the Applicant has made incorrect statement. Thus, the applicant violated section 227(3)(a) of the Companies Act, 1956 by stating that, the contracts that need to entered in the Register maintained under section 301 of the Companies Act, 1956 have been entered. Accordingly, Registrar of Companies, Karnataka, Bangalore issued Show Cause Notice bearing No. ROCB/MMM/SCN/SEC 227(3)(a)/030365/2015 dated 15th June 2015.

However, the Applicant voluntarily admitted that, in his Report he had inadvertently stated that, the entries in the register required under section 301 of the Companies Act, 1956 have been entered.

We have heard the counsel for Applicant. The learned Counsel contended that, the said contravention committed by the Applicant was neither intentional nor willful and would contended that, a lenient view may be taken while compounding the offence.

We have seen the Show Cause Notice issued by the Registrar of Companies, Karnataka, Bangalore to the Applicant made incorrect statement that, the entries in the register as required under section 301 of the Companies Act, 1956 have been entered and reported in the Auditor's Report attached to the Balance Sheet of the Company for the financial year 2007-08 and thereby contravened the provisions of section 227(3)(a) the Companies Act, 1956.

Section 227(3)(a) of the Companies Act, 1956 reads as follows:-

> "whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit;"

Section 233 of the Companies Act, 1956 is penal provision for violation reads as follows:-

> "If any auditor's report is made, or any document of the company is signed or authenticated, otherwise than in conformity with the requirements of section 227 and 229, the auditor concerned, and the person, if any, other than the auditor who signs the report or signs or authenticates the document, shall., if the default is wilful, be punishable with fine which may extend to Rs 10,000/-"

We have perused the documents filed by the Applicant. We have seen the Show Cause Notice and after going through the Company Application under section 621A of the Companies Act, 1956 and further submissions made by the Counsel for the Applicant and the observations of the Registrar of Companies, Karnataka, Bangalore in his report bearing No. ROCB/MMM/621A/2015 dated 4th September 2015, we hereby levy compounding fee for violation of provision of section 227(3)(a) of the Companies Act, 1956 on the Applicant as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec. 227(3)(a) of Companies Act, 1956- 2007-08	Total
1	Applicant- Chartered Accountant	3,000/-	3,000/-

In pursuant to our Order dated 31/05/2017 mentioned herein above, the Applicant have paid the compounding fee by depositing Demand Draft bearing No. 002553 dated 07/06/2017 for Rs. 3,000/- (Rupees Three Thousand only) of HDFC Bank Ltd., V.V.Puram, Bangalore drawn in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai".

As the compounding fee has been remitted by the Applicant, the offence stated in the petition is compounded. A copy of this Order be sent to Registrar of Companies, Karnataka at Bangalore for appropriate action.

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(RATAKONDA MURALI)
MEMBER, JUDICIAL

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 19th DAY OF JUNE, 2017