

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 195/2016
IN
C.A.NO. 247/2015**

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(4A) OF THE COMPANIES ACT, 1956
AND**

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

T.P.NO. 195/2016 IN C.A.NO. 247/2015

1. Shri Tarachand Devichand Jain- Chartered Accountant,
No.34, Keshava Nivas, 3rd Floor,
1st Main, Gandhinagar,
Bangalore-560009.

- **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(4A) of the Companies Act, 1956 and it was numbered as C.A 247/2015. 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. 195/2016.

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



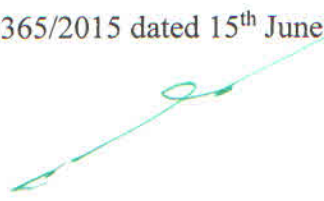
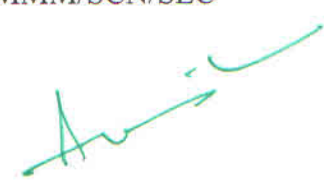
The Company was incorporated under the Companies Act, 1956 on 15th April 2002 as a Private Limited Company under the name and style of B.M.M Iron ore Private Limited. Subsequently the company was converted into a Public Company on 15th December 2004 and changed its name to B.M.M. Ispat Limited vide Registration 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 years 2008-09, 2009-10 and 2010-11 and continues as Statutory Auditors of the Company.

It is further averred that, 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 observed that in clause 9(a) of the Annexure to the Auditor's Report attached to the Balance Sheet for the financial years ending 31/03/2009, 31/03/2010 and 31/03/2011, the Applicant has not mentioned in respect of deposit of undisputed statutory dues of service tax, which is required to be furnished under section 227(4A) of the Companies Act, 1956 read with clause 4(ix) (a) of the Companies (Auditor's Report) Order, 2003 and thereby violated section 227(4A) of the Companies Act, 1956. Accordingly, Registrar of Companies, Karnataka, Bangalore issued Show Cause Notice bearing No. ROCB/MMM/SCN/SEC 227(4A)/030365/2015 dated 15th June 2015.

However, the Applicant voluntarily admitted that, in his Report he had inadvertently stated that, the company has no service tax dues. By and large the words statutory dues used in the said para also include service tax and thereby contravened the provisions of section 227(4A) of the Companies Act, 1956.

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 further urged 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 in which, it is clearly stated that, the Applicant did not mention in the Auditor's Report attached to the Balance Sheet of the Company for the financial years ending 31/03/2009, 31/03/2010 and 31/03/2011 in respect of deposit of undisputed statutory dues of service tax, which is required to be furnished under section 227(4A) of the Companies Act, 1956 read with clause 4(ix) (a) of the Companies (Auditor's Report) Order, 2003 and thereby contravened the provisions of section 227(4A) the Companies Act, 1956.

Section 227 (4A) of the Companies Act, 1956 reads as follows:-

“the Central Government may, by general or special order, direct that, in the case of such class or description of companies as may be specified in the order, the auditor's report shall also include a statement on such matter as may be specified therein:

Provided that before making any such order the Central Government may consult the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), in regard to the class or description of companies and other ancillary matters proposed to be specified therein unless the government decides that such consultation is not necessary or expedient in the circumstances of the case.”

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(4A) of the Companies Act, 1956 on the Applicant as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.227(4A) of Companies Act, 1956-			Total
		2008-09	2009-10	2010-11	
1	1 st Applicant-Chartered Accountant	3,000/-	3,000/-	3,000/-	9,000/-

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. 164886 dated 07/06/2017 for Rs. 9,000/- (Rupees Nine Thousand only) of Indian Overseas Bank, 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.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 19th DAY OF JUNE, 2017