

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 208/2016
IN
C.A.NO. 260/2015**

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 211(3A) READ WITH
ACCOUNTING STANDARD-5 OF THE COMPANIES ACT, 1956
AND**

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

T.P.NO. 208/2016 IN C.A.NO. 260/2015

1. Shri Dineshkumar Singhi- Managing Director,
No.101, 1st Floor, Pride Elite, No.10,
Museum Road, Bangalore-560001.
2. Shri Mrutyunjaya Senapati- Whole Time Director,
002, Aster Block, Fantasy Gardens Apt.,
2nd Main Road, Kasturinagar,
Bangalore-560043.

- **APPLICANTS**

PARTIES PRESENT:

Mr. A.M.Sridharan, Advocate and Authorised
representative for the Applicants.

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 211(3A) read with AS-5 of the Companies Act, 1956 and it was numbered as C.A 260/2015. 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. 208/2016.

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



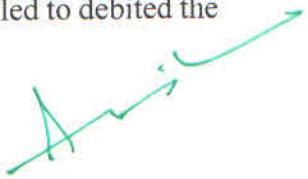


The Company was incorporated under the Companies Act, 1956 on 15th April 2002 as a Private Limited Company under the name and style of B.M.M Ironore Private Limited. Subsequently the company was converted into a Public Company on 15th December 2004 and changed its name to B.M.M. Ispat Limited vide Registration No. CIN-**U13100KA2002PLC030365**. The Registered office of the company is situated at # 114, Danapur Village, Hobli Mariamanahalli, 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., Details of the objects of the Company are mentioned in the Memorandum of Association of the Company.

It is averred in the Company Application that, Applicant No.1 was appointed as Managing Director of the Company on 30th April 2007 and he was resigned as Managing Director on 20th April 2015 and presently he is the Chairman of the Company and Applicant No.2 is the Whole Time Director of the Company during the time of default.

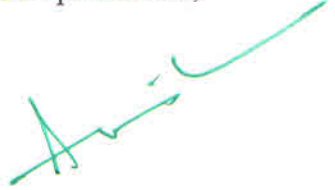

It is further averred that, during the year 2007-08, the company had supplied iron ore to Haco Minerals, ILC Industries Limited and Terapath Foods (P) Limited and later on found that the iron ore supplied was of low quality and on oral negotiations between the parties, the Company agrees to give discount to the parties. During the year 2008-09 the company had given discount to the tune of Rs 35,95,030/- to Haco Minerals. Rs 27,23,683/- to ILC Industries Limited and Rs 14,22,394/- to Terapath Foods (P) Limited but the company failed to debited the



same in the profit and loss account as prior period expenses as required under Section 211(3A) of the Companies Act, 1956 read with Accounting Standard-5 of Net profit or loss Account for the period, any adjustments made in the amount in the current financial year for sales made in the previous financial year should be debited in the profit and loss account as prior period expenses. Thereby there was non-compliance of Section 211 (3A) & (3C) read with AS-5 of the Companies Act, 1956.

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. The Inspecting Officer during the course of inspection noticed that, non-compliance of the provisions of section 211(3A) & 211(3C) of the Companies Act, 1956 read with Accounting Standard-5 by not debiting the compensation paid to three parties (Haco Minerals, ILC Industries Limited and Terapath Foods (P) Limited) during the financial year 2008-09 for sales made prior to this financial year 2007-08, in the profit and loss account for the financial year ending 31/03/2009 as prior period expenses. The company has replied to the observations made by the Inspecting Officer stating that, the materials supplied to the parties Haco Minerals, ILC Industries Limited and Terapath Foods (P) Limited during the previous year i.e., 2007-08 which was found to be of low quality and on oral negotiations between the parties, the company has given discount to them and the same is covered under paragraph 16 of Accounting Standard-5 as the adjustment is necessitated by circumstances and determined in the current period i.e., 2008-09. However, the explanation given by the Company was not accepted and accordingly, Registrar of Companies, Karnataka, Bangalore has issued Show Cause Notice bearing No. ROCB/MMM/SCN/SEC 211/030365/2015 dated 5th June 2015 for the said contravention.

However, the Applicants voluntarily admitted that, the company has inadvertently failed to indicate the nature of the prior period adjustments for the financial years ending 31/03/2009 and thereby contravened the provisions of section 211(3A) & (3C) read with Accounting Standard – 5 of the Companies Act, 1956.



We have heard the counsel for Applicants. The learned Counsel contended that, the said contravention committed by the Applicants was neither intentional nor wilful and 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 applicants in which, it is clearly stated that, company has failed to indicate the compensation paid to three parties (Haco Minerals, ILC Industries Limited and Terapath Foods (P) Limited) during the financial year 2008-09 for sales made prior to this financial year 2007-08, in the profit and loss account for the financial year ending 31/03/2009 and thereby contravened the provisions of section 211(3A) & (3C) read with Accounting Standard – 5 of the Companies Act, 1956.

Section 211 (3A) of the Companies Act, 1956 reads as follows:-

“Every profit and loss account and balance sheet of the company shall comply with the accounting standards.”

Section 211(7) of the Companies Act, 1956 is penal provision for violation which reads as follows:-

“If any such person as is referred to in sub-section (6) of section 209 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both:

This Application was filed under section 621A of the Companies Act, 1956. The provisions of section 441 of the Companies Act, 2013 came into effect from 1st June 2016. Before erstwhile Company Law Board, Southern Region, Chennai this application was filed. Therefore, this application is to be decided under the provisions of section 621A of the Companies Act, 1956.

We have perused the documents filed by the Applicants. We have seen the Show Cause Notices and after going through the Company Application under section 621A of the Companies Act, 1956 and further submissions made by the Counsel for the Applicants and the observations of the Registrar of Companies, Karnataka, Bangalore in his report bearing No. ROCB/MMM/621A/30365/2015

dated 4th September 2015, we hereby levy compounding fee for violation of provision of section 211(3A) & (3C) read with Accounting Standard – 5 of the Companies Act, 1956 on the Applicants No. 1 & 2 as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.211(3A) & (3C) of Companies Act, 1956 – 2008-09	Grand Total Rs.
1	1 st Applicant- Managing Director	6,000/-	6,000/-
2	2 nd Applicant- Whole Time Director	6,000/-	6,000/-

In pursuant to our Order dated 31/05/2017 mentioned herein above, the Applicants have paid the compounding fee by depositing 2 Demand Drafts of State Bank of India, Richmond Road, Bangalore drawn in favour of “Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Chennai” as detailed below:-

Sl. No.	Particulars of Applicant	Fee Amount/D.D Rs.	DD No. & Date
1	1 st Applicant- Managing Director	6,000/-	098313 dt. 08/06/2017
2	2 nd Applicant- Whole Time Director	6,000/-	098323 dt. 12/06/2017

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

(RATAKONDA MURALI)
MEMBER, JUDICIAL

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 19th DAY OF JUNE 2017.