

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 212/2016
IN
C.A.NO. 264/2015**

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(2) READ WITH SCHEDULE VI
OF THE COMPANIES ACT, 1956
AND**

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

T.P.NO. 212/2016 IN C.A.NO. 264/2015

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**

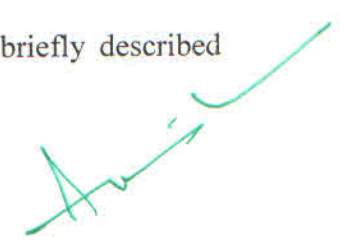
PARTIES PRESENT: Mr. A.M.Sridharan, Advocate and Authorised
representative for the Applicants.

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(2) read with schedule VI of the Companies Act, 1956 and it was numbered as C.A 264/2015. 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. 212/2016.

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.,

It is averred in the Company Application that, 1st Applicant is a promoter director of the company since incorporation and was appointed as Managing Director of the Company on 30th April 2007 and resigned as Managing Director on 20th April 2015 and presently he is the Chairman of the Company and 2nd Applicant is the Whole Time Director of the Company during the time of default.

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 reported that, as per para 3 (i) (a) of Part II of Schedule VI of the Companies Act, 1956, in the profit and loss account of a company the details of turnover shall disclose the aggregate amount for which sales are affected by the company, giving the amount of sales in respect of each of the class of goods dealt by the company and indicating the quantities of such sale for each class separately and further

noticed from the profit and loss account for the period ending 31/03/2008 the sales were indicated as Rs 82,41,73,680/- whereas under 10D of Schedule 18 Notes of accounts and accounting policies, the sales of each class goods were furnished as under:-

Iron Ore	62,95,49,653/-
Iron ore concentrate	1,94,62,427/-
Generation power	38,50,43,124/-
Total	103,40,55,204/-

Whereas the disclosure of breakup of turnover does not conform to the gross sales/turnover mentioned in the Profit and Loss Account. Thus the balance sheet of the company as on 31/03/2008 did not reflect true and fair view of the affairs of the company as required under section 211(1) read with Schedule VI of the Companies Act, 1956. However, the company has replied to the observations made stating that, in the profit and loss account for the year ended 31/03/2008 under the head income, sale of Rs 82,41,73,680/- is shown which comprises of sale of iron ore of Rs 62,95,49,653/- and sale of iron ore concentrate of Rs 19,46,24,027/-. This sale of iron ore and iron ore concentrate is shown in page 30 under the head D sales, closing and opening stock under notes to accounts. The figure sale of iron ore concentrate, however while printing wrongly printed as Rs. 1,94,62,427/- missing the zero in hundredth place. If the figures of Rs 62,95,49,653/- and Rs 19,46,24,027/- are added, the same will come to Rs 82,41,73,680/- which is shown in profit and loss account. The generation of power of Rs 38,50,43,124/- which is given in page 31 under the head B class of item. Generation of power is not at all included in sales figure of Rs 82,41,73,680/- in profit and loss account, but included in other income under the head income given in the profit and loss account and therefore, the Applicants regretted the printing error in case of figure of sale of iron ore concentrate in notes to accounts. It is also averred that, the reply given by the Applicants was not accepted and accordingly, the Registrar of Companies, Karnataka, Bangalore has issued Show Cause Notice bearing No. ROCB/MMM/SCN/SEC.211/030365/2015 dated 11th June 2015 for the above said contravention.

However, the Applicants voluntarily admitted that, due to printing error the company has inadvertently shown in case of figure of sale of iron ore concentrate in notes to accounts in the balance sheet of the company as on 31/03/2008 and thereby contravened the provisions of section 211(2) read with Part II 3 (i) (a) of the Schedule VI 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 willful and contended that, a lenient view may be taken while compounding the offence.

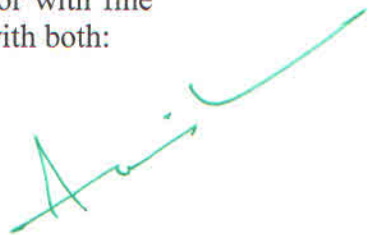
We have seen the Show Cause Notice issued by the Registrar of Companies, Karnataka, Bangalore to the applicants in which, it is clearly stated that, the disclosure of breakup of turnover does not conform with the gross sales /turnover mentioned in the Profit and Loss account and thus not reflecting the true and fair view of the affairs of the company as required under section 211(2) read with schedule VI of the Companies Act 1956.

Section 211 (2) of the Companies Act, 1956 reads as follows:-

“Every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year and shall, subject as aforesaid, comply with the requirements of Part II of Schedule VI, so far as they are applicable thereto”.

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, this application was filed before erstwhile Company Law Board, Southern Region, Chennai. Therefore, this application is to be decided under the provisions of section 621A of the Companies Act, 1956.

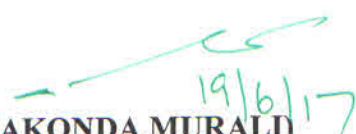
We have perused the documents filed by the Applicants. We have seen the Show Cause Notice and after going through the Company Application under section 621A of the Companies Act, 1956 and further submissions made by the Counsel for the Applicants and the observations of the Registrar of Companies, Karnataka, 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(2) 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(2) of Companies Act, 1956	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/-	098316 dt. 08/06/2017
2	2 nd Applicant- Whole Time Director	6,000/-	098326 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.