BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 203/2016
IN
C.A.NO. 255/2015

DATED: FRIDAY THE 17TH DAY OF FEBRUARY 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(1) READ WITH SCHEDULE VI OF THE COMPANIES ACT, 1956
AND

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

T.P.NO. 203/2016 IN C.A.NO. 255/2015

1. **Shri Dineshkumar Singhi- Director,**
   No.101, 1st Floor, Pride Elite, No.10,
   Museum Road, Bangalore-560001.

2. **Shri Mrutyunjaya Senapati- 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 and 18/01/2017.

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(1) read with schedule VI of the Companies Act, 1956 and it was numbered as C.A 255/2015. 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. 203/2016.

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, 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, during the financial years 31/03/2008, the company has received unsecured loan amounting to Rs. 80,53,81,328/- from the shareholder/director of the Company. It is further averred that, in accordance with section 211 (1) read with instruction (a) of Part I of schedule VI of the Companies Act, 1956, any unsecured loan taken by the company from its directors and manager should be shown separately in the Balance Sheet of the Company. The provisions of section 211(1) provides that, every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such other form as may be approved by the Central government either generally or in any particular case;

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 at the time of inspection noticed that, the company has not disclosed the details of unsecured loan received from the director/shareholder of the company separately in the Balance Sheet for the year ending 31/03/2008. The Inspecting Officer made another observation that the opening balance of loan in the 1st Applicant ledger account for the period 01/04/2009 to 31/03/2010 was credit balance of Rs 78,97,47,210/- and that of BMM (HKT Division) was Rs 8,50,74,895/- thus aggregating to Rs 87,48,22,105/- whereas as per Balance Sheet as on 31/03/2009 the closing balance was shown as Rs 108.28 Crores. Thus the Balance sheet of the company for the financial years ended 31/03/2008 and 31/03/2009 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. Accordingly, the Registrar of Companies, Karnataka, Bangalore has issued 2 Show Cause Notices separately for two financial years bearing No. ROCB/MMM/SCN/SEC 211/030365/2015 dated 5th June 2015 for the above said contravention.

It is further averred that, the credit balance as per ledger extract of the 1st Applicant was Rs 78.97 crore and Rs 8.50 crore in Corporate office ledger and BMM Ispat (HKT Division) ledger. Singhi Finlease Private Limited has also lent and the outstanding amount was Rs 18.30 Crores. Similarly Snehfin Investment Private Limited has also lent and the outstanding amount was Rs 2.50 Crores. All these outstanding loans added together comes to Rs 108.29 Crores. However, inadvertently, after the words Directors, the word "associates/shareholders" got missed in the Balance Sheet for the financial year ending 31/03/2009. However, the Applicants voluntarily admitted that, the company has inadvertently not disclosed the details of unsecured loan received from shareholder/Director of the Company separately in the Balance Sheet as at 31/03/2008 and 31/03/2010 thereby contravened the provisions of section 211(1) read with 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 wanton and would further contend that, a lenient view may be taken while compounding the offence.

We have seen the Show Cause Notices issued by the Registrar of Companies, Karnataka, Bangalore to the applicants in which, it is clearly stated that, company has failed to disclose the Unsecured Loan received from the shareholder/Director in the Balance Sheet for the financial year ending 31/03/2008 and 31/03/2009 and thus not reflecting the 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.

Section 211 (1) of the Companies Act, 1956 reads as follows:-

> "Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such other form as may be approved by the Central government either generally or in any particular case; and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance sheet under the heading 'Notes' at the end of that Part:"

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 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(1) 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(1) of Companies Act, 1956-		Grand Total Rs
		2007-08	2009-10	
1	1st Applicant- Managing Director	6,000/-	6,000/-	12,000/-
2	2nd Applicant- Whole Time Director	6,000/-	6,000/-	12,000/-

In pursuant to our Order dated 31/01/2017 mentioned herein above, the Applicants have paid the compounding fee by depositing 2 Demand Drafts of State Bank of Hyderabad, Bangalore drawn on 13/02/2017 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	1st Applicant- Managing Director	12,000/-	365355 dt. 13/02/2017
2	2nd Applicant- Whole Time Director	12,000/-	365357 dt. 13/02/2017

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.

17/2/17 17/2/2017

(RATAKONDA MURALI)
MEMBER, JUDICIAL

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 17th DAY OF FEBRUARY 2017.