

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

T.P NO. 224/16

IN

C.A. No.276/2015

**IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A UNDER SECTION 211(1) OF THE COMPANIES ACT, 1956
AND**

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

Judgement/Order delivered on: **1st February 2018**

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

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

- **APPLICANTS**

For the Petitioner (s): Sri A.M.Sridharan, II Floor, 24, Thambaiah Reddy
Road, West Mambalam, Chennai-600033-
Counsel and Authorised Representative for the
Petitioner.

Per: **Hon'ble Shri Ashok Kumar Mishra, Member (Technical) – Author**

Heard on: 28/10/2016, 22/11/2016, 14/12/2016, 18/01/2017, 31/01/2017,
01/03/2017, 20/04/2017, 22/06/2017, 25/07/2017, 10/08/2017,
30/08/2017, 22/09/2017, 09/10/2017, 31/10/2017, 23/11/2017
& 18/12/2017

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 276/2015. 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. 224/2016.



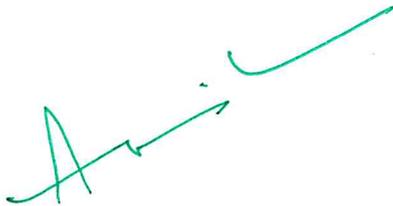

The averments made in the Company Application are briefly described hereunder:-

The Company was originally 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 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 its 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 in the Application that, the company had three foreign subsidiaries viz., BMM Overseas Pt. Ltd, BMM Brazil Mining & Metal Corporation and BMM Global Resources Ltd., out of which 2 were struck off/delicensed. BMM Overseas Pt. Ltd was struck off on 5th September 2009 and BMM Brazil was struck off on 28th October 2009 vide letter issued by Liquidator of BMM Brazil on 4th March 2010. Therefore, only one foreign subsidiary BMM Global Resources Ltd and another subsidiary Ranjitpura Infrastructure Pvt. Ltd. were in existence as at 31/03/2011. As per section 212 of the Companies Act, 1956 there shall be attached to the balance sheet of a holding company having a subsidiary or subsidiaries at the end of the financial year at which the holding company's balance sheet is made out, a copy of the annual accounts and other related documents in respect of such subsidiary or of each such subsidiary as the case may be. Further 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.

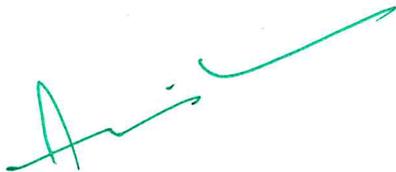
It is further averred that Ministry of Corporate Affairs has ordered inspection of the books and records of the Company under section 209A of the Companies Act, 1956, and during the course of inspection the Inspecting Officer noticed that, in the Balance Sheet for the year ending 31/03/2009 under the unquoted long term investment under investment in subsidiary companies, 1) BMM Brazil Mining & Metal Corporation 100, ordinary equity share of One Reais; 2) BMM Global Resources Ltd., Hongkong 3) BMM Energy Private Limited and 4) Ranjitpura Infrastructure Pvt. Ltd. were mentioned whereas, in the statement pursuant to Section 212 of the Companies Act, 1956 relating subsidiary companies the signatories of Balance Sheet has stated that, only Ranjitpura and BMM Global Resources Ltd., were subsidiaries of the company. Thus the Balance Sheet of the company did not reflect true and fair view of the company as required under Section 211(1) of the Companies Act, 1956. However, the company has replied that, it had three subsidiaries BMM Overseas Pt. Ltd, BMM Brazil Mining & Metal Corporation and BMM Global Resources Ltd., out of which 2 were struck off/delicensed. BMM Overseas Pt. Ltd was struck off on 5th



September 2009 and BMM Brazil was struck off on 28th October 2009 vide letter issued by Liquidator of BMM Brazil on 4th March 2010. Therefore, only one foreign subsidiary BMM Global Resources Ltd and another subsidiary Ranjitpura Infrastructure Pvt. Ltd. were in existence as at 31/03/2011 and the statement of subsidiaries have been furnished as per section 212 of the Companies Act, 1956. BMM Energy Private Limited is not subsidiary of the company and hence required information under 212 of the Companies Act, 1956 has not been given and consequently not violated under Section 211(1) of the Companies Act, 1956. In these circumstances, the company has not contravened the provision of Section 211(1) of the Companies Act, 1956. However, the reply given by the Company was not accepted and accordingly, Registrar of Companies, Karnataka, Bangalore issued Show Cause Notice bearing No. ROCB/MMM/SCN/SEC 211/030365/2015 dated 12th /15th June 2015.

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 in pursuant to Section 212 of the Companies Act, 1956 relating to subsidiary companies the signatories of Balance sheet have stated that only Ranjitpura and BMM Global Resources Ltd., were subsidiaries of the Company and thereby contravened the provisions of section 211(1) read with Schedule VI of the Companies Act, 1956.

We have heard the Counsel for Applicants, who has filed Affidavit dated 4th October 2017 of the applicant No.1 herein stating that, BMM Brazil Mining & Metal Corporation was struck on 28/10/2009 vide letter issued by Liquidator of BMM Brazil on 4th March 2010 and as such it is not a subsidiary as on 31/03/2011 alongwith certified copy of the letter is enclosed. It is further stated that, BMM Energy Limited is not a subsidiary. Its paid-up capital was Rs 1,00,000/- divided into 10000 shares of Rs 10 each and the company held 2000 equity shares of Rs 10/- each. Thus, there were only two subsidiaries viz., BMM Global Resources Ltd.,and Ranjitpura Infrastructure Pvt. Ltd. It is further stated that, BMM Global Resources Ltd., was deregistered with effect from 09/11/2012 and the certified copy of the letter is enclosed and inadvertently BMM Global



Resources Ltd., was not shown in the statement made under Section 212 (1) of the Companies Act, 1956. The learned Counsel contended that, the said contravention committed by the Applicants was neither intentional nor willful and would further contend that, a lenient view may be taken while compounding the offence.

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:”

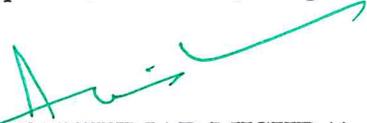
For the said violation, this Tribunal by order dated 18th January 2018 imposed compounding fee on the Applicants as detailed hereunder:-

Sl. No.	Particulars	Violation of Sec.211(1) of Companies Act, 1956-	Grand Total Rs.
1	1 st Applicant- Managing Director	10,000/-	10,000/-
2	2 nd Applicant- Whole Time Director	10,000/-	10,000/-

In pursuant to our Order dated 18/01/2018 mentioned herein above, the Applicants have paid the compounding fee by depositing 2 Demand Drafts of Kotak Mahindra Bank Limited, Langford Road, Bangalore drawn on 29/01/2018 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	10,000/-	431236 dt. 29/01/2018
2	2 nd Applicant- Whole Time Director	10,000/-	431243 dt. 29/01/2018

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.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL