

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

**T.P NO. 22616
IN
C.A. No.278/2015**

**IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A UNDER SECTION 211(3A) & (3C) OF THE COMPANIES
ACT, 1956 AND READ WITH ACCOUNTING STANDARD-5 OF
COMPANIES (ACCOUNTING STANDARDS) RULES, 2006**

AND

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

Judgement/Order delivered on: **18th January 2018**

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

**1. Shri Gollapalli Ramaiah - Director,
B.M.M. Ispat Limited,
No.1092, Smiore Colony,
Near Fire Station, Kudligi Road,
Sandur-583119**

APPLICANT

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(3A) & (3C) of the Companies Act, 1956 and Accounting Standard-5 of Companies (Accounting Standards) Rules, 2006 and it was numbered as C.A 278/2015. 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. 226/2016.



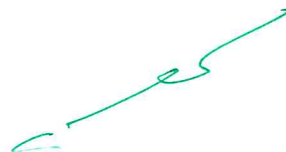
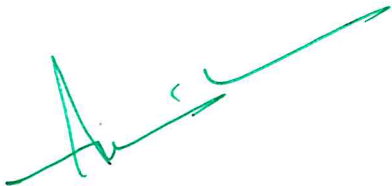
The averments made in the Company Application are briefly described hereunder:-

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.,


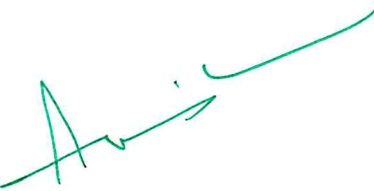
It is averred in the Company Application that, the Applicant was appointed as the Director of the Company on 4th September 2006 and resigned as Director on 24th September 2008 and presently he is the Whole Time Director of the Company.



It is further averred in the Application that, in accordance with Section 211 (3A) & (3C) of the Companies Act, 1956 read with Accounting Standard-5 of Net Profit or Loss for the period, prior period items and changes in accounting policies, prior period adjustments should be disclosed in the statement of Profit and Loss with an explanatory note in the notes to account explaining the nature of the prior period expenses. In the statement of Profit and Loss account of the company for the financial year ended 31/03/2007 no disclosure in the notes to account explaining the nature of the prior period expenses has been furnished. The provisions of Section 211 (3A) of the Companies Act, 1956 provides that, "every profit and loss account and balance sheet of the company shall comply with the Accounting Standards".

It is further averred in the Application that, the 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 found non-compliance with the provisions of the Accounting Standard-5 and consequently reported that the company violated the provisions of Section 211 (3A) & (3C) of the Companies Act, 1956. Though the Company has given reply on 23rd September 2013 stating that, it has shown prior period adjustment of Rs 1,55,61,024/- for the financial year 31/03/2007 but inadvertently failed to indicate the nature of the prior period adjustments in the statement of Profit and Loss account for the financial year ending 31/03/2017 and requested for compounding of the offence. However, the reply given by the Company was not accepted and accordingly, Registrar of Companies, Karnataka, Bengaluru issued Show Cause Notice bearing No. ROCB/MMM/SCN/SEC 211/030365/2015 dated 12th/15th June 2015.

It is further averred in the Application that, the sum of Rs 1,55,61,024/- shown as prior period expenses in balance sheet of the company for the financial year ending 31/03/2007 pertains to stock and the company has inadvertently failed to indicate the nature of the prior period adjustment in the statement of Profit and Loss account for the financial year ending 31/03/2017 and thereby contravened the provisions of Section 211 (3A) & (3C) of the Companies Act, 1956 read with Accounting Standard-5.



We have heard the Counsel for Applicant, who has filed Affidavit dated 4th October 2017 of the Managing Director of the Company along with certified copy of the statement of Profit and Loss account for the financial year ending 31/03/2017 reflecting the prior period adjustment of Rs 1,55,61,024/- but not disclosed the nature of prior period adjustment, and further stated that, prior period adjustment is due to prior period income on account of stock and further submitted that, this amount is opening stock of Rs 1,55,61,024/- of finished goods and disclosure of the nature of prior period adjustment has been made in Schedule 14 of the financial accounts for the year ending 31/03/2007. 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.

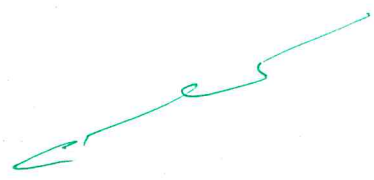
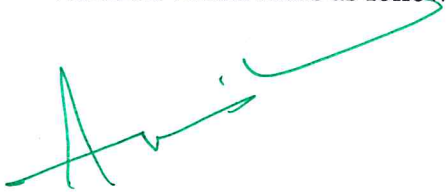
We have seen the Show Cause Notice issued by the Registrar of Companies, Karnataka, Bangalore to the applicant in which, it is clearly stated that, Company has not disclosed prior period expenses of Rs 1,55,61,024/- were deducted and nature of prior period expenses as required under 6-3-1 of the Accounting Standard 5 of Net profit or loss for the period ending 31/03/2007 and thereby contravened the provisions of section 211(3A) & (3C) of the Companies Act, 1956 and Accounting Standard-5 of Companies (Accounting Standards) Rules, 2006.

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.”

(3C) For the purposes of this section, the expression "accounting standards" means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, Page 111 of 332 1949 (38 of 1949), as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under sub-section (1) of section 210A.

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 Applicant. We have seen the preliminary report from the Ministry of Corporate Affairs dated 8th July 2013 and reply given thereon by the Company on 23rd September 2013. We have also seen 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, Bengaluru 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) of the Companies Act, 1956 and Accounting Standard-5 of Companies (Accounting Standards) Rules, 2006 on the Applicant as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.211(3A) & (3C) of Companies Act, 1956-	Grand Total Rs.
1	1 st Applicant-Director	10,000/-	10,000/-

The compounding fee levied shall be paid by the Applicant within 15 days from the date of this order and call this matter on 1st February 2018 for compliance.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL