

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

**T.P NO. 223/16
IN
C.A. No.275/2015**

**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: **18th January 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, Thambaiiah Reddy
Road, West Mambalam, Chennai-600033-
Counsel and Authorised Representative for the
Petitioner.

Per: **Hon'ble Shri Ratakonda Murali, Member (Judicial)– 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 275/2015. 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. 223/2016.




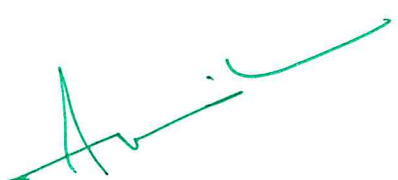
The averments made in the Company Application are briefly described hereunder:-

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.


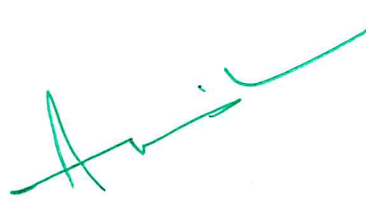
The Main objects of the Company is to carry on the business of prospecting, exploring and developing, opening and working of mines for minerals and ores and to obtain mining licenses and lease for ores and minerals from Government or any local body; to purchase, take on lease or in exchange, hire or 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 is a manufacturing company and manufactures billets, sponge iron, TMT bars etc., the company is not engaged in production of coal, but engaged in production of various steel products and the coal is the raw material for manufacturing the steel products. 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 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, and during the course of inspection the Inspecting Officer noticed that, in the Profit and Loss Account and Balance Sheet for the year ending 31/03/2009, at Schedule 22, B Notes to Accounts Clause 16E, the consumption of coal was given as 451,235 MT valued at Rs. 2736.43 million and whereas in Form A in respect of conservation of energy attached to Board of Directors report stated that, total coal consumed 487,268.23 tons and the total amount was 2956.59 million. Thus the Balance Sheet did not reflect a true and fair view of the affairs of the company and thereby the company violated Section 211(1) read with Schedule VI of the Companies Act, 1956. The company has replied on 23rd September 2013 stating that, in the Form A annexed to the Board of Director's report under conservation of energy, the company has shown total purchase of coal made by it instead of coal consumed by it. The company has shown coal purchase as because it honestly believed in the same Form A under electricity the same requires furnishing the units of electricity purchased. The Company led by the words electricity purchased and furnished the quantity of coal purchased in above said form. 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.



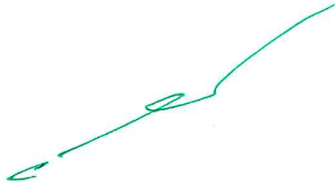
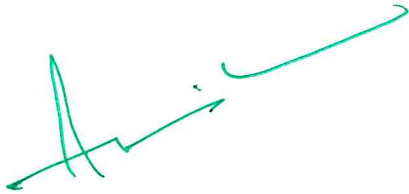
However, the Applicants voluntarily admitted that, the company has unintentionally shown total purchase of coal made by it instead of coal consumed by it in Form-A annexed to the Board's Report for the financial year ending 31/03/2009 and thereby contravened the provisions of section 211(1) read with Schedule VI of the Companies Act, 1956.

We have heard the Counsel for Applicants. 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 applicants in which, it is clearly stated that, company has wrongly mentioned in the Profit and Loss Account and Balance Sheet for the year ending 31/03/2009, at Schedule 22, B Notes to Accounts Clause 16E, the consumption of coal was given as 451,235 MT valued 2736.43 million and whereas in Form A in respect of conservation of energy attached to Board of Directors report stated that, total coal consumed 487,268.23 tons and the total amount was 2956.59 million and thereby contravened the provisions of 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 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 Applicants 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(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.
1	1 st Applicant- Managing Director	10,000/-	10,000/-
2	2 nd Applicant- Whole Time Director	10,000/-	10,000/-

The compounding fee levied shall be paid by the Applicants 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