

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

T.P No. 197/16

IN

C.A. No.249/2015

**IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A UNDER SECTION 396A 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)

T.P.NO. 197/2016 IN C.A.NO. 249/2015

1. B.M.M. Ispat Limited,
114, Danapur Village,
Hebali Marriamanahalli,
Hospet Taluq – 583222, Bellary District.
2. Shri Laxmi Pat Dudheria, Director
No.7, II Floor, Shravanee Pride,
Market Road, Basavangudi,
Bangalore-560004.
3. Shri Saibal Kanti Gupta-Director
No.14, Singapore Gardens
Kanakapura Road, Doddakallasandra (PO) Bangalore-560062.
4. Ms. Snehalata Singhi –Director,
19, Norris Road, Richmond Town, Bangalore- 560025.
5. Shri Dineshkumar Singhi- Director,
No.101, 1st Floor, Pride Elite, No.10,
Museum Road, Bangalore-560001.
6. Shri Mrutyunjaya Senapati- Director,
002, Aster Block, Fantasy Gardens Apt.,
2nd Main Road, Kasturinagar,
Bangalore-560043.
7. Shri Subramanyam Pratapgiri-Director,
10-28, Patel Nagar, P & T Colony,
Dilsukhnagar,
Hyderabad-500060

- **APPLICANTS**

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

Heard on: 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

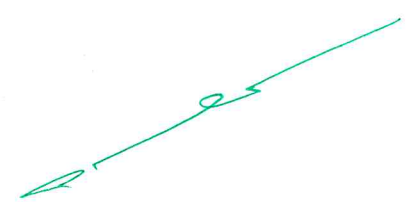
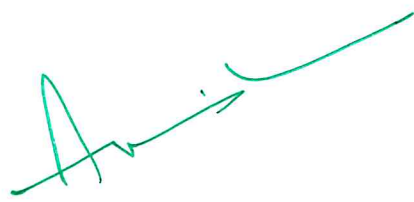
The Application was originally filed before the Company Law Board, Southern Region, Chennai under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of Section 396A of the Companies Act, 1956 and it was numbered as C.A 249/2015. Consequent upon the establishment 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. 197/2016.

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

The 1st Applicant 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 1st Applicant 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 1st Applicant 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.,

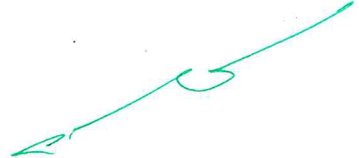
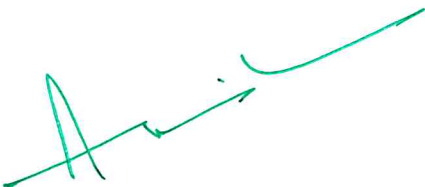


It is further averred in the Company Application that, Applicants 2,4,5,6,7 are the Directors of the 1st Applicant Company and Applicant No.3 is former Director of the Company.

It is further averred that, HKT Mining Private Limited was a subsidiary of the 1st Applicant Company and it was amalgamated with the 1st Applicant Company during the year 2009 as per the order of the Hon'ble High Court, Karnataka dated 9th January 2009. The financial statement of the 1st Applicant Company was prepared by Pooling of Interest Method.

It is further averred that, Section 396A of the Companies Act, 1956 provides that the books and papers of the company which was amalgamated, or whose shares have been acquired by another company shall not be disposed off without the prior permission of the Central Government and in case of granting permission the Central Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence with the promotion or formation, or the management etc.,

It is further averred that, HKT Mining Private Limited (amalgamated company) has maintained the minutes book of Board Meeting and General Meetings, books of accounts, fixed asset register and other statutory records. 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 in the course of inspection, the Inspecting Officer called for minutes and Fixed Asset Register of HKT Mining Private Limited and gave findings that, 1st Applicant Company has not furnished the documents of HKT Mining Private Limited and further observed that, the 1st Applicant Company has not preserved books and papers relating to HKT Mining Private Limited as per provisions of section 396A of the Companies Act, 1956. However, the 1st Applicant Company gave answers to the queries that, it had maintained all the books connected to HKT Mining Private Limited (amalgamated company).



It is further averred that, in the course of inspection, the Inspecting Officer has asked for production of lots of documents and inadvertently 1st Applicant Company have not produced those books and in fact 1st Applicant Company has not asked permission from Central Government for destruction of records of Amalgamated Company. However, it is further averred that, Registrar of Companies, Karnataka, Bangalore issued Show Cause Notice bearing No.ROCB/MMM/SCN/396A/030365/2015 dated 10th April 2015 under section 629A for violation of section 396A of the Companies Act, 1956.

It is further averred that, the 1st Applicant Company did not seek permission from the Central Government for destruction of records and in case permission is granted the Central Government will appoint a person for the said purpose and thereby the 1st Applicant Company not contravened the provisions of section 396A of the Companies Act, 1956.

However, the Applicants are voluntarily moving this Application for compounding. Applicants 2,3,4,6 and 7 are the Directors and 5th Applicant is the Managing Director of the 1st Applicant Company during the period of inspection who are at default.

We have heard the counsel for Applicant. The learned Counsel contended that, HKT Mining Private Limited was a subsidiary of the 1st Applicant Company which was amalgamated with the 1st Applicant Company on the orders of Hon'ble High Court of Karnataka. The learned Counsel would contend that, Ministry of Corporate Affairs ordered inspection and Inspecting Officer at the time of inspection asked lot of documents and inadvertently 1st Applicant Company could not have produced the Minutes and Fixed Asset Register of HKT Mining Private Limited. Learned Counsel would contend that Applicants are accepting the default and moving this Application for compounding.

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 failed to produce the Minutes and Fixed Asset Register of HKT Mining Private Limited (Amalgamated Company) at the time of inspection by the Inspecting Officer.

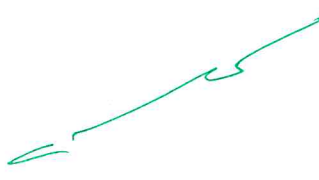

Section 396A of the Companies Act, 1956 provides as follows:-

“The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter shall not be disposed off without the prior permission, of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the first-mentioned company or its amalgamation or the acquisition of its shares.”

Violation of provisions of section 396A is punishable under Section 629A of the Companies Act, 1956 which reads as follows:-

“If a company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person, shall be punishable with fine which may extend to Rs 5,000/-and where the contravention is a continuing one, with a further fine which may extend to Rs 500/- for every day after the first during which the contravention continues”.

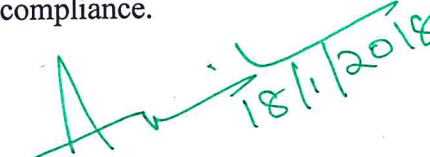
We have perused the documents filed by the Applicants and it is averred on behalf of Applicants that, the 1st Applicant Company has maintained the minutes book, board meeting, general meetings, books of accounts, fixed assets register and other statutory records of M/s HKT Mining Private Limited, and that they have neither asked for the destruction of the statutory books of the subsidiary M/s HKT Mining Private Limited and that the Central Government have also not appointed any person in this regard and therefore, the 1st Applicant Company not contravened the provisions of 396A of the Companies Act, 1956 and that the Inspecting Officer has wrongly concluded in his report that, the Company has not preserved the books and records of the Amalgamated Company. However this is not accepted.



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, 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 396A of the Companies Act, 1956 on the 1st Applicant Company and its 6 Directors, the Applicant Nos.2 to 7 as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.396A of Companies Act, 1956	Total Rs.
1	1 st Applicant Company	1,000/-	1,000/-
2	2 nd Applicant-Director	1,000/-	1,000/-
3	3 rd Applicant-Director	1,000/-	1,000/-
4	4 th Applicant-Director	1,000/-	1,000/-
5	5 th Applicant-Director	1,000/-	1,000/-
6	6 th Applicant-Director	1,000/-	1,000/-
7	7 th Applicant-Director	1,000/-	1,000/-

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