

**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: 18<sup>th</sup> 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, 1<sup>st</sup> Floor, Pride Elite, No.10,  
Museum Road, Bengaluru-560001.
2. Shri Mrutyunjaya Senapati- Director,  
# 002, Aster Block, Fantasy Gardens Apt.,  
2<sup>nd</sup> Main Road, Kasturinagar,  
Bengaluru -560043.

- APPLICANTS

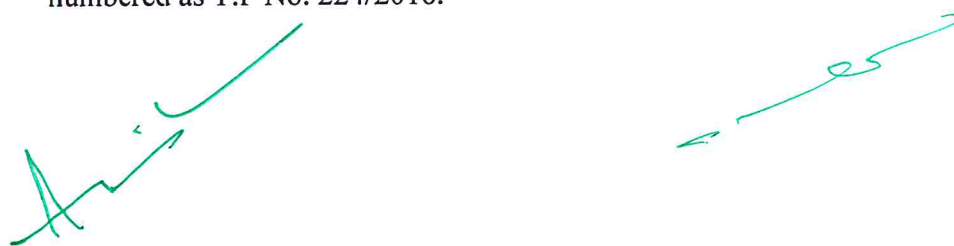
For the Petitioner (s): Sri A.M.Sridharan, II Floor, 24, Thambaiah Reddy  
Road, West Mambalam, Chennai-600033-  
Counsel and Authorised Representative for the  
Petitioner.

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 15<sup>th</sup> 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 15<sup>th</sup> 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.

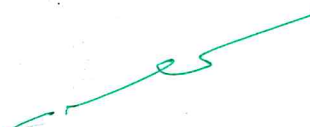
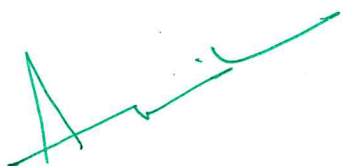
The Main objects of the Company is to carry on the business of prospecting, exploring and developing, opening and working of mines for minerals and ores and to obtain mining licenses and lease for ores and minerals from Government or any local body; to purchase, take on lease or in exchange, hire or 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, 1<sup>st</sup> Applicant is a promoter Director of the Company since its incorporation and was appointed as Managing Director of the Company on 30<sup>th</sup> April 2007 and resigned as Managing Director on 20<sup>th</sup> April 2015 and presently he is the Chairman of the Company and 2<sup>nd</sup> 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 5<sup>th</sup> September 2009 and BMM Brazil was struck off on 28<sup>th</sup> October 2009 vide letter issued by Liquidator of BMM Brazil on 4<sup>th</sup> 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 5<sup>th</sup>





September 2009 and BMM Brazil was struck off on 28<sup>th</sup> October 2009 vide letter issued by Liquidator of BMM Brazil on 4<sup>th</sup> 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 12<sup>th</sup> /15<sup>th</sup> 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 4<sup>th</sup> 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 4<sup>th</sup> 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.”

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 1<sup>st</sup> 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 8<sup>th</sup> July 2013 and reply given thereon by the Company on 23<sup>rd</sup> 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 4<sup>th</sup> 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 <sup>st</sup> Applicant- Managing Director	10,000/-	10,000/-
2	2 <sup>nd</sup> 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 **1<sup>st</sup> February 2018** for compliance.

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL