

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 204/2016
IN
C.A.NO. 256/2015

DATED: TUESDAY THE 31ST DAY OF JANUARY 2017

*PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL*

IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A UNDER SECTION 211(3A) READ WITH
ACCOUNTING STANDARD-18 OF THE COMPANIES ACT, 1956
AND

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

T.P.NO. 204/2016 IN C.A.NO. 256/2015

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

- APPLICANTS

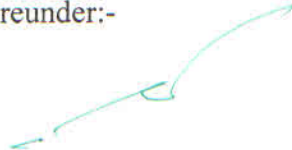
PARTIES PRESENT: Mr. A.M.Sridharan, Advocate and Authorised
representative for the Applicants.

Heard on: 28/10/2016, 22/11/2016, 14/12/2016 and 18/01/2017.

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) & 211(3C) read with AS-18 of the Companies Act, 1956 and it was numbered as C.A 256/2015. 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. 204/2016.

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



The 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 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, 1st Applicant is a promoter director of the company since 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 that, the company has invested in the capital of the partnership firm viz., M/s Bharat Mines & Minerals where in the 1st Applicant Director was also a Member of the said Partnership Firm. Therefore, the investment made by the Company in the partnership firm being a related party transaction as per AS-18 of Related Party Disclosure should be disclosed in the Balance Sheet of the Company. During the year 2007-08, the company has made a profit from its investment made in the said firm to the tune of Rs.193,43,31,812/-. The company had withdrawn a sum of Rs 173,53,63,972/- and reinvested Rs 23,82,74,198/- All

these taken together, the company had a credit balance of Rs 43,72,42,038/- in its capital account in partnership firm.

It is further averred that, in accordance with provisions of section 211(3A) and 211(3C) of the Companies Act, 1956 read with Accounting Standard-18 of Related Party Disclosures, details relating to profit made from partnership firm and reinvestments of capital should be disclosed in the Profit and Loss Account of the company by way of note under the head "Related Party Transaction". In the Balance sheet of the Company for the financial year ending 31/03/2008 no such disclosure has been made. The provisions of section 211(3A) provides that every profit and loss account and balance sheet of the company shall comply with the accounting standards.

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 found non-compliance with the provisions of Accounting Standard-18 read with section 211(3A) of the Companies Act, 1956. It was noticed by the Inspecting Officer from the Balance Sheet for the year ending 31/03/2008, the opening balance of partners' capital of the company was shown as debit of Rs 173 Crores. The company had earned the profit of Rs 193 Crores out of which a sum of Rs 173 crores has been withdrawn which has been again invested as capital formation along with further investment of Rs 23 Crore and thereby the Capital became Rs 43 Crores and thus there was no disclosure about the profit made in the partnership firm and reinvestment of capital has been made under the head "Related Party Transaction" in the Balance Sheet as at 31/03/2008. The company has replied it has inadvertently not disclosed the profit of Rs 193 crores made from partnership firm and reinvestments of Rs 23 crores, thereby violating Section 211 (3C) of the companies Act, 1956 read with AS-18 and requested for compounding of the offence. Accordingly, Registrar of Companies, Karnataka, Bangalore has issued Show Cause Notice bearing No. ROCB/MMM/SCN/SEC 211/030365/2015 dated 5th June 2015 for the above said contravention.

It is further averred that, the company has inadvertently not disclosed the profit made from partnership firm and reinvestments of capital in the Balance Sheet for the financial year ending 31/03/2008 and thereby contravened the provisions of

section 211(3A) and 211(3C) read with Accounting Standard – 18 of the Companies Act, 1956. The Applicants suo-moto filed this application for compounding which is punishable under section 211(7) 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 failed to disclosed the profit made from partnership firm and reinvestments of capital in the Balance Sheet for the financial year ending 31/03/2008 and thus not reflecting the true and fair view of the affairs of the company as required under section 211(3A) and 211 (3C) read with Accounting Standard – 18 of the Companies Act, 1956.

Section 211 (3A) and 211(3C) 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, 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)”

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 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 211(3A) and 211(3C) read with Accounting Standard – 18 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(3A) & 211(3C) of the Companies Act, 1956	Grand Total Rs.
1	1 st Applicant- Managing Director	6,000/- x 2	12,000/-
2	2 nd Applicant- Whole Time Director	6,000/- x 2	12,000/-

The compounding fee levied shall be paid by the Applicant within 15 days from the date of this order and call this matter on 16th February 2017 for compliance.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 31st DAY OF JANUARY, 2017