

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 198/2016
IN
C.A.NO. 250/2015

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 49(6) OF THE COMPANIES ACT, 1956
AND

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

T.P.NO. 198/2016 IN C.A.NO. 250/2015

1. B.M.M. Ispat Limited,
114, Danapur Village,
Hobli Marriamanahalli,
Hospet Taluq - 583222
Bellary District.
2. Shri Laxmi Pat Dudheria, Director
No.7, II Floor, Shrivane 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

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

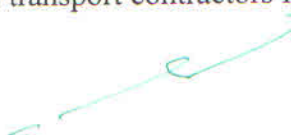
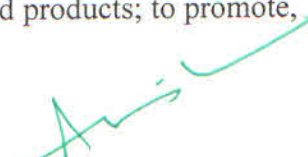
The Application was originally filed before the Company Law Board, Southern Region, Chennai under Section 621A of the Companies Act, 1956 for the purpose of compounding for violation of provisions of Section 49(6) of the Companies Act, 1956 and it was numbered as C.A 250/2015. Consequent upon the establishment 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. 198/2016.

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 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 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., Details of the objects of the Company are mentioned in the Memorandum of Association of the 1st Applicant Company.

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, 1st Applicant Company during the year 2009, 2010 and 2011 had made investments in other Indian companies and three foreign Subsidiary Companies. The 1st Applicant Company received the share certificates for the shares held in Indian Companies. However, the 1st Applicant Company has not received the share certificates of Foreign Companies towards investment of one share each in BMM Oversees Pte. Ltd., Singapore and BMM Global Resource Ltd., Hongkong and 100 shares in BMM Brazil & Minerals, Brazil. Further, it is averred that the three Foreign Companies in which the 1st Applicant Company had made investments are already struck off from the Registrar of Companies maintained by the Registrars of Companies of respective countries.

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 the share certificate or the letter of allotment in respect of the investments made by the 1st Applicant Company during the year 2008-09, 2009-10 and 2010-11 and the 1st Applicant Company has furnished the share certificates in respect of the investments made by it in the Indian Companies. However, the 1st Applicant Company could not produce the share certificate / letter of allotment for the shares held in three foreign subsidiaries viz., BMM Overseas Pte. Ltd., BMM Global Resource Ltd., BMM Brazil & Minerals as required under Section 49(6) of the Companies Act, 1956 that the certificate or letter of allotment relating to the shares or securities in which investments have been made by a company shall be in the custody of the Company and the Inspecting Officer gave findings that, 1st Applicant Company has not furnished the share certificate / letter of allotment for the shares held in three Foreign subsidiaries.



It is further averred that, Registrar of Companies, Karnataka, Bangalore issued Show Cause Notice bearing No.ROCB/MMM/SCN/SEC 49/030365/2015 dated 10th April 2015 under section 49(9) for violation of section 49 (6) 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 Applicants. The learned Counsel contended that, 1st Applicant Company could not produce the share certificate/letter of allotment for the shares held in three foreign subsidiaries companies, as the subsidiaries of 1st Applicant Company were already struck off from Registrar of Companies of respective countries. The learned Counsel would contend that, Ministry of Corporate Affairs ordered inspection and Inspecting Officer while inspection asked the share certificate/letter of allotment for the shares held in three foreign subsidiaries companies. Learned Counsel would contend that the said contravention was neither intentional nor wanton and Applicants are accepting the default and moving this Application for compounding.

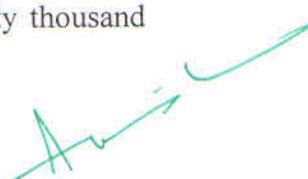

We have seen the Show Cause Notice issued by the Registrar of Companies, Karnataka, Bangalore to the applicants in which, it is clearly stated that, company has failed to produce the share certificate/letter of allotment for the shares held in three foreign subsidiaries companies at the time of inspection by the Inspecting Officer.

Section 49 (6) of the Companies Act, 1956 provides as follows:-

“The certificate or letter of allotment relating to the shares or securities in which investments have been made by a company shall be in the custody of the company.”

Violation of provisions of section 49 (6) is punishable under Section 49 (9) of the Companies Act, 1956 which reads as follows:-

“If default is made in complying with any of the requirements of sub-sections (1) to (8), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees.”



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 49 (6) of the Companies Act, 1956 on the 1st Applicant Company and its 6 Directors, the Applicants No.2 to 7 as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.49 (6) of Companies Act, 1956			Total Rs.
		2009	2010	2011	
1	1 st Applicant Company	5,000/-	5,000/-	5,000/-	15,000/-
2	2 nd Applicant-Director	5,000/-	5,000/-	5,000/-	15,000/-
3	3 rd Applicant-Director	5,000/-	5,000/-	5,000/-	15,000/-
4	4 th Applicant-Director	5,000/-	5,000/-	5,000/-	15,000/-
5	5 th Applicant-Director	5,000/-	5,000/-	5,000/-	15,000/-
6	6 th Applicant-Director	5,000/-	5,000/-	5,000/-	15,000/-
7	7 th Applicant-Director	5,000/-	5,000/-	5,000/-	15,000/-

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