

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

T.P.NO. 206/2016

IN

C.A.NO. 258/2015

DATED: WEDNESDAY THE 31ST DAY OF MAY 2017

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

**IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A UNDER SECTION 297 OF THE COMPANIES ACT, 1956
AND**

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

T.P.NO. 206/2016 IN C.A.NO. 258/2015

1. B.M.M. Ispat Limited,
114, Danapur Village,
Hobli Mariamanahalli,
Hospet Taluq,
Bellary District – 583222.
2. Shri Dineshkumar Singhi- Managing Director,
No.101, 1st Floor, Pride Elite, No.10,
Museum Road, Bangalore-560001.
3. Shri Mrutyunjaya Senapati- Whole Time Director,
002, Aster Block, Fantasy Gardens Apt.,
2nd Main Road, Kasturinagar,
Bangalore-560043.
4. Ms. Suman Bajoria – Company Secretary,
No.251, 1st Floor, 24th Main,
5th Phase, J.P Nagar, Bangalore-560078.

- **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, 18/01/2017, 31/01/2017,
01/03/2017 and 20/04/2017

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 297 of the Companies Act, 1956 and it was numbered as C.A 258/2015. 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. 206/2016.

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.,

It is further averred in the Company Application that, 2nd Applicant is the 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 Applicant No.3 is the Whole Time Director and the 4th Applicant is the Company Secretary of the Company during the time of default.

It is further averred that, during the period from 2007-08 to 2010-11, the Company had entered into a Related party transaction for sale of TMT bars with Kothari Steels a sole proprietorship of Mr. Manish Kothari for an amount of Rs 7,80,63,819/- Mr. Manish Kothari is the brother of Ms. Snehalata Singhi. Ms.

Snehalata Singhi is the Director of the company since 15th April 2002. The paid up capital of the Company was more than Rs. 1 crore.

It is further averred that, as per section 297 of the Companies Act, 1956, any revenue transaction entered into with any firm in which the Director or his relative is a member requires prior approval of the Central Government, if the paid capital of the company is more than Rs 1 crore. Thereby, the 1st Applicant Company has not taken the prior approval of the Central government for the above mentioned transaction.

It is further stated that, the 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 Inspection Officer noticed non-compliance of the provisions of section 297 of the Companies Act, 1956. However, the 1st Applicant Company has replied to the observations stating that, the Company has entered into transaction with M/s Kothari Steels, a partnership firm in which the relative of the Director of the Company is a Member without obtaining the prior approval of the Central Government and thereby contravened the provisions of section 297 of the Companies Act, 1956. Accordingly, the Registrar of Companies, Karnataka, Bangalore issued Show Cause Notice bearing No. ROCB/MMM/SCN/SEC 211/030365/2015 dated 5th June 2015.

However, the Applicants voluntarily admitted that, the Company has entered into transaction with M/s Kothari Steels, a partnership firm in which the relative of the Director of the Company is a Member without obtaining the prior approval of the Central Government and thereby contravened the provisions of section 297 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. During the course of hearing, he filed copy of the Affidavit of the Applicants mentioning No. of transactions entered into with the related parties during the financial years ending 31/03/2008, 31/03/2009, 31/03/2010 and 31/03/2011.



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 contravened the provisions of Section 297 of the Companies Act, 1956.

Sec. 297(1) of Companies Act, 1956 reads as follows:

(1) Except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company-

(a) For the sale, purchase or supply of any goods, materials or Services;
or

(b) After the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company: Provided that in the case of a company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government.

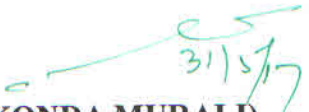
For violation of provisions of Sec. 297 the penalty is provided under 629A of the Companies Act, 1956.

“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 five thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues”.

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 297 of the Companies Act, 1956 on the Applicants as shown in the table given below:-

Sl. No.	Particulars	Violation of Sec.297(1) of the Companies Act, 1956				Total
		No. of transactions held in the respective financial year				
		2007-08 (10)	2008-09 (42)	2009-10 (47)	2010-11 (57)	
1	1 st Applicant Company	500x10 = 5,000/-	500x 42 = 21,000/-	500x47 = 23,500/-	500x57 = 28,500/-	78,000/-
2	2 nd Applicant- Managing Director	500x10= 5,000/-	500x 42 = 21,000/-	500x47 = 23,500/-	500x57 = 28,500/-	78,000/-
3	3 rd Applicant- Whole Time Director	500x10 = 5,000/-	500x42 = 21,000/-	500x47 = 23,500/-	500x57 = 28,500/-	78,000/-
4	4 th Applicant- Company Secretary	500x10= 5,000/-	500x 42 = 21,000/-	500x47 = 23,500/-	500x57 = 28,500/-	78,000/-

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


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 31st DAY OF MAY 2017