

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 209/2016
IN
C.A.NO. 261/2015**

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 211(3A) READ WITH
ACCOUNTING STANDARD-14 OF THE COMPANIES ACT, 1956
AND**

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

T.P.NO. 209/2016 IN C.A.NO. 261/2015

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

- **APPLICANTS**

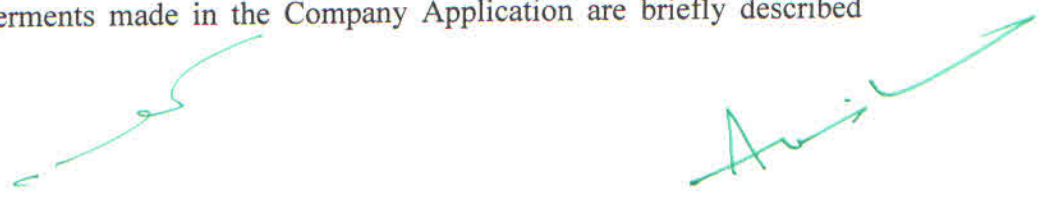
PARTIES PRESENT: Mr. A.M.Sridharan, Advocate and Authorised representative for the Applicants.

Heard on: 28/10/2016, 22/11/2016, 14/12/2016, 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 211(3A) read with AS-14 of the Companies Act, 1956 and it was numbered as C.A 261/2015. 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. 209/2016.

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



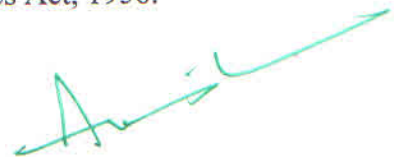
The Company was incorporated under the Companies Act, 1956 on 15th April 2002 as a Private Limited Company under the name and style of B.M.M Ironore Private Limited. Subsequently the company was converted into a Public Company on 15th December 2004 and changed its name to B.M.M. Ispat Limited vide Registration 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 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, Applicant No.1 was appointed as Managing Director of the Company on 30th April 2007 and he was resigned as Managing Director on 20th April 2015 and presently he is the Chairman of the Company and Applicant No.2 is the Whole Time Director of the Company during the time of default.

It is further averred that, during the financial year 2008-09, the company had paid a sum of Rs 1,14,183/- towards licence and renewals for its overseas subsidiaries. This amount was originally debited to licences and renewals, reversed by debiting advance to subsidiaries. A sum of Rs 7/- has been adjusted by debiting BMM Ispat Limited (HKT account) inter unit. The company has not incurred any expenses towards licence of HKT Mining Private Limited. Thereby there was non-compliance of Section 211 (3A) read with AS-14 of the Companies Act, 1956.



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. The Inspecting Officer during the course of inspection noticed from the ledger account of Advance to Subsidiaries during the period 01/04/2008 to 31/03/2009, a journal entry was based as on 31/03/2009 for an amount of Rs 1,14,176/- paid towards licences and renewals of BMM Ispat Limited (HKT A/c) inter unit. As per the order of the Hon'ble High Court of Karnataka, HKT Mining Private Limited amalgamated with effect from January 2009. Thus classification of expenses incurred towards renewal of licence of the HKT Mining Private Limited is in violation of Section 211 (3A) read with AS-14 of the Companies Act, 1956 of accounting for Amalgamation issued by the ICAI. The company has replied to the observations made stating that, it has not paid a sum of Rs 1,14,176/- towards licence and renewal on account of HKT Mining Private Limited, former subsidiary of the company and the company has paid a sum of Rs 1,14,183/- towards licence and renewals for its overseas subsidiaries. This amount was originally debited to licences and renewals, reversed by debiting advance to subsidiaries. A sum of Rs 7/- has been adjusted by debiting BMM Ispat Limited (HKT account) inter unit. Therefore, the company has not incurred any expenses towards licence of HKT Mining Private Limited. The company in its books of account has transferred the amount lying in HKT Mining Private Limited former subsidiary by creating BMM Ispat Limited (HKT A/c) inter unit meaning that the company has treated the subsidiary company as one of its division. The above said Rs 7/- has been debited only to its division and not advance to subsidiaries. Since, the amount of Rs 7/- has been debited only to BMM Ispat Limited (HKT A/c) inter unit, the same is not considered as loans and advances and further stated that, the company has not contravened the provisions of Section 211 (3A) read with AS-14 of the Companies Act, 1956. It is further averred that, 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.

However, the Applicants voluntarily admitted that, the company has inadvertently not disclosed the net balance of Rs 1,14,176/- and thus violated the provisions of section 211(3A) read with Accounting Standard – 14 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 contended 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 classification of expenses incurred towards renewal of licence of the HKT Mining Private Limited and thus not reflecting the true and fair view of the affairs of the company as required under section 211(3A) read with Accounting Standard – 14 of the Companies Act, 1956.

Section 211 (3A) of the Companies Act, 1956 reads as follows:-

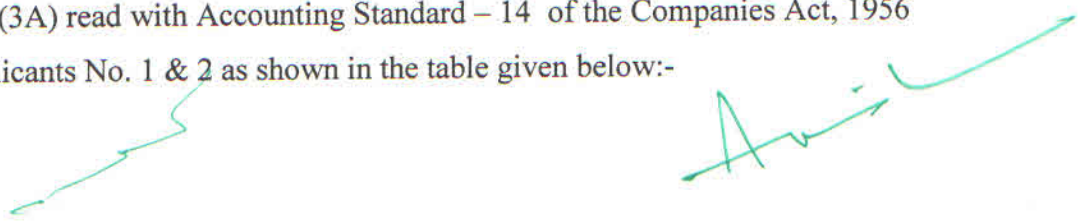
“Every profit and loss account and balance sheet of the company shall comply with the accounting standards.”

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. Before erstwhile Company Law Board, Southern Region, Chennai this application was filed. 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) read with Accounting Standard – 14 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) of Companies Act, 1956	Grand Total Rs.
1	1 st Applicant- Managing Director	6,000/-	6,000/-
2	2 nd Applicant- Whole Time Director	6,000/-	6,000/-

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