

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

C.A. No.273/15
T.P. No. 221/2016

**IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A UNDER SECTION 211(2) READ WITH SCHEDULE VI
OF THE COMPANIES ACT, 1956
AND**

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

Judgement/Order delivered on: 31st July 2017

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

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**

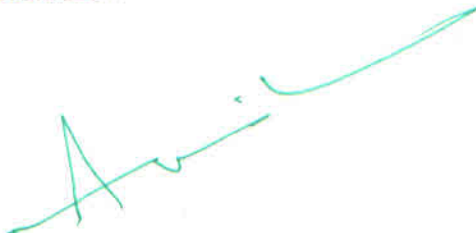
For the Petitioners: Mr. A.M.Sridharan, Advocate and Authorised
representative for the Applicants.

Per: **Hon'ble Shri Ashok Kumar Mishra, Member (Technical) – Author**

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(2) read with schedule VI of the Companies Act, 1956 and it was numbered as C.A 273/2015. 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. 221/2016.

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 further averred in the Company Application that, 1st 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.2 is the Whole Time Director of the Company during the time of default.

It is further averred that, in accordance with the Section 211(2) read with Part II 3(xi)(a) of Schedule VI of the Companies Act, 1956, the amount of income from investments, distinguishing between trade investments and other investments and the amount of income tax deducted, should be disclosed separately in the profit and loss account. that, every profit and loss accounts of a company shall give a true and fair view of the profit or loss of the company for the financial year and



shall, subject to the provisions of this section, comply with the requirements of Part II of Schedule VI, so far as they are applicable thereto.

It is further averred that Ministry of Corporate Affairs had 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 Profit and Loss Account for the financial year 2009-10 under Schedule 22 of Sl.No.12 statement of investment purchased and sold during the year was provided from where the following details were seen:-

Rs. In Million

Sl. No.	Particulars	Quantity	Value
1	UTI Advantage Fund Purchased Sold	314,9371,156,494	3151157
2	UTI Liquid Cash Plan Institutional Purchased Sold	375,694,441,46	38345
3	Pramerica Ultra Short Term Purchased Sold	159,994,160,527	160161
4	DSP Black Rock Liquidity Fund Purchased Sold	79,97580,240	8080
5	SBI Debt Fund Series Purchased Sold	5,00,000 Nil	5 Nil

However, the profit and loss account for the year 2009-10 did not disclose the income from the above transaction. Thereby, the company has violated section 211(2) of part II of 3 of (xi)(a) and Part II of 3 of (xi)(b) of Schedule VI of the Companies Act, 1956. However, the company has replied and stated that, it has not derived any income from non-trade investments, the dividend income shown in Schedule 15 in entirety is only from trade investments. Therefore, the company has not classified the dividend income as trade and non-trade and thereby not violated section 211(2) of part II of 3 of (xi)(a) and Part II of 3 of (xi)(b) of Schedule VI of the Companies Act, 1956. The reply given by the company was not accepted. Accordingly, the Registrar of Companies, Karnataka, Bangalore has issued Show Cause Notice bearing No. ROCB/MMM/SCN/ SEC.211/030365/ /2015 dated 12th June 2015 for the above said contravention.




However, the Applicants voluntarily admitted that, the company has not derived any income from non-trade investments, the dividend income shown in Schedule 15 of the Profit and Loss account for the financial year 2009-10 is entirely from trade investments and the Applicants voluntarily admitted that, the company has not classified the dividend income as trade and non-trade.

We have heard the counsel for Applicants. He has filed written submissions giving clarification about the violation stating that, the Company had shown the income as per the new schedule VI in the Balance sheet as at 31/03/2012 and contended that, the said contravention committed by the Applicants was neither intentional nor willful and further 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, the amount of income from investments, distinguishing between trade investment and other investment and the amount of income tax deducted, should have been disclosed and the same has not been disclosed by the company in the Profit and Loss account for the financial year 31/03/2010 and thus not reflecting the true and fair view of the affairs of the company as required under provisions of Section 211(2) read with Part II 3(ii)(a)(1) and 3(ii)(a)(2) of Schedule VI of the Companies Act, 1956 in the Notes of Profit and Loss account for the financial year ending 31/03/2009.

Section 211 (2) of the Companies Act, 1956 reads as follows:-

“every profit and loss accounts of a company shall give a true and fair view of the profit or loss of the company for the financial year and shall, subject to the provisions of this section, comply with the requirements of Part II of Schedule V, so far as they are applicable thereto:”

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(2) 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(2) of Companies Act, 1956 2009-10	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 as above shall be paid by the Applicants within 15 days from the date of this order and call this matter on 14th August 2017 for compliance.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL