

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

C.A. No.270/15
T.P. No. 218/2016

**IN THE MATTER OF COMPANIES ACT, 2013
SECTION 621A UNDER SECTION 211(1) 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(1) read with Part I schedule VI of the Companies Act, 1956 and it was numbered as C.A 270/2015. 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. 218/2016.

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, the 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 at the time of inspection found that, the company not complied with the provisions of Section 211(1) read with Part I of Schedule VI, in respect of fixed assets which requires distinguishing as far as possible between expenditure upon a) goodwill b) land c) building d) leasehold e) railway sliding f) plant and fittings h:develop of property i) patent, trademarks and design j) livestock and vehicle, under each head the original cost and the additions

there to and deductions there from during the financial year and total depreciation written off or provided up to the end of the year to be stated. It was also noticed from the Schedule VI of Fixed Asset attached to Balance sheets as at 31/03/2010 and 31/03/2011, the closing balance as on 31/03/2009 and 31/03/2010 is not carried over to 01/04/2009 and 01/04/2010 respectively as opening balance. Hence, the balance sheet of the company as at 31/03/2010 was not reflecting true and fair view of the assets of the company. However, the company has replied that, the inspecting officer has compared the opening balance (gross block) on 01/04/2009 and 01/04/2010 with closing balance (net block) on 31/03/2009 and 31/03/2010 (which is otherwise the opening balance on 01/04/2009 and 01/04/2010). The company has furnished gross block of fixed assets is the closing balance of gross block of fixed assets as at 31/03/2010 and 31/03/2011. From this closing balance of gross block of fixed assets, if the accumulated depreciation upto 31/03/2010 and 31/03/2011, fourth column of the head depreciation is deducted, then net block of fixed assets as on 31/03/2010 and 31/03/2011, which is the penultimate column of the fixed asset schedule, can be arrived at and further stated that, the company has inadvertently not disclosed the railway siding at Danapur separately in the fixed assets schedule for the financial year 31/03/2011. It is further averred that, due to printing error the penultimate column of fixed assets of the schedule for the financial year 31/03/2010 has been wrongly printed under the head depreciation instead of printing under the head net block and requested to condone the printing error. Accordingly, the Registrar of Companies, Karnataka, Bangalore issued two Show Cause Notices bearing No. ROCB/MMM/SCN/SEC 211/030365/2015 dated 11th June 2015 and 15th June 2015.

However, the Applicants voluntarily admitted that, the company has inadvertently not classified railway siding as fixed asset and thereby contravened the provisions of section 211(1) read with Part 1 of Schedule VI of the Companies Act 1956 and they are willing to compound the offence.

We have heard the counsel for Applicants. He has filed written submissions giving clarification about the violation stating that, in the Balance Sheet as at 31/03/2010, the opening balance is mentioned "as at 01/04/09" which is nothing but the balance as at 31/03/09. In the Balance Sheet as at 31/03/2011, the opening balance is mentioned "as at 01/04/10" which is nothing but the balance as at 31/03/10, However, in the Balance Sheet as at 31/03/2010, the Net Block column




was drawn before “as at 31/03/09” instead of before as at 31/03/10. However, the company has not shown the “Railway sidings” separately under Fixed Assets. As per the new schedule VI notified on 28/02/2011, the railway sidings need not be shown separately and further 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 classified fixed assets as per the part I of schedule VI in the Balance Sheet as at 31/03/2010 and thus not reflecting the true and fair view of the affairs of the company as required under section 211(1) read with schedule VI of the Companies Act 1956.


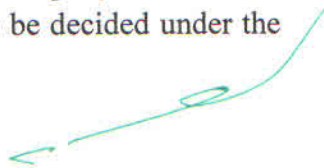
Section 211 (1) of the Companies Act, 1956 reads as follows:-

“Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such other form as may be approved by the Central government either generally or in any particular case; and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance sheet under the heading ‘Notes’ at the end of that Part:”

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(1) 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(1) of Companies Act, 1956		Grand Total Rs.
		2009-10	2010-11	
1	1 st Applicant- Managing Director	6,000/-	6,000/-	12,000/-
2	2 nd Applicant- Whole Time Director	6,000/-	6,000/-	12,000/-

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