

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

C.A No.37 of 2021 in
C.P No. 44/BB/2021
C.A No.38 of 2021 in
C.P No. 45/BB/2021
C.A No.39 of 2021 in
C.P No. 46/BB/2021

Under Rule 11 r/w Rule 32 of NCLT, Rules 2016

C.P No. 44/BB/2021

Between

Mr. Ankit Bansal,
No. 3-51/70,
Flat No. A2101,
Planet S.K.S Kadri, Kuntikana Road,
Mangalore -575008

Applicant/ Petitioner

Versus

Brightflexi International Private Limited,
Door No:6-148,
Plot No 162-B,
Baikampady Industrial Area,
Baikampady, Panambur,
Mangalore - 575011
& 9 others

Respondents

C.P No. 45/BB/2021

Between

Mr. Ankit Bansal
No. 3-51/70,
Flat No. A2101,
Planet S.K.S Kadri, Kuntikana Road,
Mangalore -575004
And 2 others

Applicants/Petitioners

Versus

Bright Packaging Private Limited,
162-B, Baikampady
Industrial Area,
New Mangalore-575011
And 7 others

Respondents

C.P No. 46/BB/2021

Between

Mr. Ankit Bansal

No. 3-51/70,

Flat No. A2101,

Planet S.K.S Kadri, Kuntikana Road,

Mangalore -575008

Applicant/Petitioner

Versus

Sathyam Roller Flour Mills Private Limited,

Door No:6-148,

Plot No 162-B,

Baikampady Industrial Area,

Baikampady, Panambur,

Mangalore - KA 575011

And 4 others

Respondents

Date of Order: 4th June, 2021

Coram:

1. Hon'ble Shri Ashok Kumar Borah (Judicial)

2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (Through Video Conference):

For the Applicant/Petitioner: Shri Dyan Chinnappa Senior Counsel

For the Respondents : Shri Srinivasa Raghavan Senior Counsel
a/w Shri P.Chinnappa

COMMON ORDER

Per: Shri Ashutosh Chandra, Member (Technical)

1. C.A No. 37 of 2021 in C.P No. 44/BB/2021 is filed by Shri Ankit Bansal (Petitioner/Applicant) Under Rule 11 r/w Rule 32 of NCLT, Rules 2016 by inter-alia seeking to appoint an independent auditor/professional for conducting an audit/investigation into the affairs of the Respondent No.1 company a/w Respondent No.5 Company and Sathyam Roller Flour Mills Private Limited, for the period 2019-20 to 2020-21.
2. C.A No. 38 of 2021 in C.P No. 45/BB/2021 is filed by Shri Ankit Bansal (Petitioner/Applicant) & 2 others Under Rule 11 r/w Rule 32 of NCLT, Rules

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2016 by inter-alia seeking to appoint an independent auditor/professional for conducting an audit/investigation into the affairs of the Respondent No.1 company a/w BrightFlexi International Private Limited and Sathyam Roller Flour Mills Private Limited, for the period 2019-20 to 2020-21.

3. C.A No. 39 of 2021 in C.P No. 46/BB/2021 is filed by Shri Ankit Bansal (Petitioner/Applicant) Under Rule 11 r/w Rule 32 of NCLT, Rules 2016 by inter-alia seeking to appoint an independent auditor/professional for conducting an audit/investigation into the affairs of the Respondent No.1 company a/w Bright Packaging Private Limited Company and BrightFlexi International Private Limited, for the period 2019-20 to 2020-21.
4. Brief facts of the case, mentioned in all three applications, which are relevant to the issue in question, are as follows:

- (1) As per the above CAs, there were large scale manipulations on the accounting and financial aspects of the company, siphoning and misappropriation of funds, and manipulation of records etc. The Respondents have been resorting to huge cash transactions, removal of funds through fictitious names and fictitious transactions without actual sale/purchase of goods, self cheques showing the same towards cash expenses, manipulation of accounting entries to suit their convenience, removal of funds showing fictitious transactions, etc.
- (2) After the 06.04 2021 order passed by this Tribunal, salaries have been paid hurriedly without any explanation through self cheques, though salaries had already been paid to them, and these were got cleared from the bank through telephones. Reference is made to three self cheques amounting to Rs 15,50,000. No explanation was offered.
- (3) There has been misappropriation of and siphoning of of funds through 232 self cheques worth Rs 16.5 crore and 94 cheques worth RS 9.19 crore for which details were not furnished. Payments have been made in cash in excess of the limits provided in the Income tax Act.

- (4) Instructions have been given to the HODs for not disclosing any information to the Applicant; and they have been instigated against the Applicant/Petitioner.
 - (5) Details of fictitious transactions have not been furnished to the Applicant.
 - (6) There is manipulation of the number of employees on the rolls. While there are only 600 to 700 employees on the rolls of Bright Packaging, there are about 1400 actually working. Large part of the salaries are paid in cash, and paid below the minimum wages prescribed. Salaries of senior personnel are also declared less. Details of the same have not been provided to the Applicant.
 - (7) There is deliberate mismanagement to target the Applicant/Petitioner, such as not including him in the raw material planning to avoid excessive buying, and after overstocking prices fell.
 - (8) There has been an attempt to over reach the orders of the Tribunal dated 06.04.2021 by asking customers to credit account of another Bank which is not a party to this petition.
 - (9) There is large scale manipulation of sales quantity, receipt of huge payments in cash to avoid taxes specially GST, for which the modus operandi has been explained.
 - (10) There are fictitious transactions showing purchases without movement of goods.
 - (11) There is manipulation of records to show reduction of freight charges to avoid statutory liabilities.
 - (12) Details of the above transactions have been provided as annexures to the CA.
5. Similar allegations are made and details filed in the CA Nos 38 and 39 of 2021.
6. Heard Mr Dhyan Chinnappa, senior Advocate for the Applicants and Mr Srinivasa Raghavan Senior Counsel a/w Shri P.Chinnappa for the Respondents.

7. Mr Dhyan Chinappa, Senior Counsel for the Petitioner took us through the issues raised in the Applications. He states that with the vacation of stay vide order dated 28.05.2021, the Respondents get a free hand in their acts of misappropriation, manipulation, siphoning of funds and efforts to keep the Applicant out of the Company's affairs. This would deplete the assets of the company, and needs to be prevented by ordering a full investigation into the affairs of the Company. Alternatively, to put some observer who can monitor that no malfeasance / misappropriation takes place.
8. Mr S Raghavan, Senior Counsel for the Respondent has vehemently opposed the relief sought in these CAs. He referred to our order dated 28.05.2021 to state that when no prima facie case of oppression and mismanagement is made out against the Respondents, since the main CPs are to be taken up in a few days, and the CPs appear to be not maintainable, and after due consideration the reliefs given in the interim order of 06.04.2021 were vacated/withdrawn, these CAs seeking investigation cannot be allowed. Appointment of auditor or even observer would harm the smooth working of the Company which is a family concern and been in business for many years. He would interfere in the affairs of the family run company. It is stated that since the stay was vacated the Respondents have not done anything against the interests of the Petitioner/ Applicant. On the other hand, ever since the stay was granted on various issues on 06.04.2021, it is the Applicant here who has been interfering in the affairs of the company, wants to take over the company by raising false allegations and bringing the matters to this Tribunal.
9. We have considered the submissions of both sides. We are mindful of our orders dated 06.04.2021 and 28.05.2021. It is however seen that the main reason for vacating the stay order of 06.04.2021 was that the Respondents had not been heard, and that pleadings in the main CPs were already in progress. We also find that the present three CAs, which carry further allegations of acts of misappropriation etc., along with details, had not been listed and heard before the CPs were taken up for hearing. However, we

have to agree with the Respondents that since pleadings in the main CP are already in progress, ordering investigation as prayed for in these CAs would render the main CPs infructuous, at least to the extent of the allegations of misappropriation are concerned. This would not be in order.

10. However, we are also of the view that the issues raised in the present CAs cannot be ignored once having been brought to our notice. They are accompanied by specific details and evidences that need to be examined after giving due and fair opportunity to the Respondents. We have made it clear during the hearing today that while all the issues of oppression and mismanagement shall be taken up in the main CPs, our immediate concern is that the value of the company's assets should not suffer diminution in any way, and its income and available funds remain in and utilized only for the business. Any diversion or siphoning off would harm all the stakeholders.
11. Our other concern is that since it seems to be a family dispute and about exercising influence/control over the business, and there are allegations and counter allegations, we are deprived of an objective view of the goings on in the company's day to day affairs. For example, allegations regarding issue of self cheques, unwarranted payments without any explanation for the same, delay in issue of cheques due to the Petitioner's interference etc are allegations that have to be checked on a real time basis, as resultant losses, if any, would be difficult to recover on a subsequent date. Interest of the company is paramount and if the company suffers, all Directors and stakeholders suffer. This cannot be permitted. Hence, it is essential to get a factual report on the goings on in the company.
12. In view of the foregoing, we hereby appoint Mr. K. Dushyantha Kumar, practicing Company Secretary, having office at No.404/2, 7th Main, 9th Cross, Jayanagr 2nd Block, Bangalore 560011 (Contact No.9341223937 email id:dushyanthak@gmail.com) who has sufficient experience in company matters, and is considered fit to be appointed as Observer. His terms of reference would be as under:

- (a) He shall observe the affairs of the Company with special reference to transactions of sales, purchases, salary payments and cash payments, if any, and report if any such payment is made for other than the requirements of business. He will also report whether all business receipts are accounted for. A factual report on the same shall be sent to the Tribunal every 15 days from the receipt of this order, till the finalisation of the CPs;
- (b) His report shall cover transactions with effect from 01.04.2021;
- (c) Earlier transactions for the FYs 2019-20 and 2020-2021 shall be considered in the main CPs, after hearing both sides;
- (d) In exercise of the above functions he shall not in any way interfere in the day to day functioning/operations of the Company;
- (e) The Observer shall be eligible to receive an amount of Rs 1 lakh (Rupees one lakh only), per month, apart from expenses incurred, and the same shall be borne by the Company;
- (f) All the parties are directed to cooperate with the Observer and at the same time, the Observer shall give due opportunity to and hear the grievances of all parties.
13. In passing this order this Tribunal is not offering any opinion on the merits of the issues raised in the CPs.
14. CA Nos. 37, 38 and 39 of 2021 in CP Nos. 44/45/46/BB/2021 respectively, are disposed of as above. No order as to costs.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL
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ASHOK KUMR BORAH
MEMBER, JUDICIAL