

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

TP No.66/2016  
IN  
CP No.59/2014

U/s 397 and 393 of the Companies Act, 1956

**IN THE MATTER OF  
M/s. SRI LAKSHMI NARASIMA MINING COMPANY (PVT) LTD.**

Order delivered on 19.01.2018

Coram: 1. Hon'ble Shri.RatakondaMurali, Member Judicial  
2. Hon'ble Shri.Ashok Kumar Mishra, Member Technical

**BETWEEN**

1. Mr. M.N. Pratap Reddy  
Flat No.205, 2<sup>nd</sup> Floor  
Vishwa Prakruthi Haveli  
Snehanagar Colony, Above Reliance Fresh  
Amruthahalli Main Road  
Bangalore 560 024
2. Mr. Kiran Kumar Reddy  
Sri Lakshmi Nilayam  
No.266, 2<sup>nd</sup> Block, RMV 2<sup>nd</sup> Stage  
4<sup>th</sup> Cross, 80 Feet Road, Sanjaynagar  
Bangalore 560 094

....Petitioners

**AND**

1. M/s. Sri Lakshmi Narasima Mining Company (Pvt) Ltd.  
No.83, Ground Floor  
6<sup>th</sup> Cross, AG's Layout, New BEL Road  
Bangalore 560 054
2. Mr. Swarup Reddy  
No.9, Ranjith Road  
Suryanagar, Kotturpuram  
Chennai 600 085
3. Mr. Yathin Reddy  
No.9, Ranjith Road  
Suryanagar, Kotturpuram  
Chennai 600 085




4. Ms. Jansi Reddy  
No.9, Ranjith Road  
Suryanagar, Kotturpuram  
Chennai 600 085

...Respondents

For the Petitioner(s) : Shri GV Rao, Chartered Accountant  
For the Respondent(s) : Shri R Swarup Reddy, and  
Shri Y Prasad, Advocates

**Per: Hon'ble Shri Ratakonda Murali, Member Judicial - Author**

Heard on : 10.03.2017, 20.03.2017, 04.04.2017, 21.04.2017, 12.06.2017, 18.07.2017,  
09.08.2017, 05.09.2017, 03.10.2017, 27.10.2017, 15.11.2017, 30.11.2017  
and 20.12.2017

### **ORDER**

In this matter, the fees of Auditor appointed by the then Company Law Board (CLB), is to be fixed.

Originally, the Company Petition No.59/2014 was filed before the CLB. When the matter was pending before the CLB, Auditor, M/s. Brahmayya & Co., were appointed by the Tribunal vide order dated 07.07.2015 for the purpose of auditing the books of accounts and also to investigate into the affairs of the 1<sup>st</sup> Respondent Company. A copy of the order of the then CLB dated 07.07.2015 is filed. We have seen the order of the CLB. The Petitioners in the main petition suggested the names of M/s. Brahmayya & Co. and also the name of another Company. Whereas, the Respondents have suggested the names of different Chartered Accountants' Companies. After considering the various contentions, CLB appointed M/s. Brahmayya & Co. as an Independent Auditor to audit the books of accounts of the Company including related party transactions entered at the instance of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents with M/s. Auro Logistics Limited and M/s. Trans India Shipping Services Pvt. Ltd. for the period from 01.04.2007 to 31.03.2014. It is specifically made clear that the Company shall bear the fees and the other claims of the Independent Auditor and the Auditor was at liberty to discuss with the Management on the quantum of fees/remuneration. Thus M/s. Brahmayya & Co., Auditors, were appointed for auditing of books of accounts of the Company.

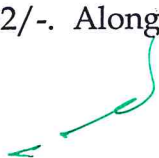
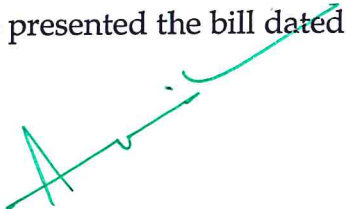
By order dated 18.07.2017, this Tribunal directed the Company to pay 50% of the total fees claimed by the Auditor pending taking further decision on the fees claimed by the Auditor. The Auditors claimed fees of Rs. 36,00,000/-. However, one of the Respondent preferred appeal to the National Company Law Appellate Tribunal (NCALT), New Delhi. By order dated 08.09.2017 in Company Appeal No.295/2017, the appeal was listed on 12.11.2017. As per the orders of NCALT, an amount of Rs. 5,00,000/- was paid to the Auditors vide interim order of the Appellate Tribunal dated 08.09.2017.

Hon'ble NCALT passed final order dated 17.11.2017 directing this Tribunal to pass final order on the fees claimed by the Auditors M/s. Brahmayya & Co. by taking into consideration the efforts of the Auditors.

The Auditors submitted final report to the Tribunal dated 13.11.2017 in a sealed cover. Thus Auditors completed the work entrusted to them by submitting final report.

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The Auditors have furnished information according to which the fees is claimed. They have also furnished information dated 14.11.2017 regarding man-days spent for the completion of work. They have stated in the information furnished to the Tribunal vide letter dated 14.11.2017 that they have audited books of accounts of Company i.e. Sri Lakshmi Narasima Mining Company Pvt. Ltd., from 01.04.2007 to 31.03.2014 and also audit of three specific transactions from 01.04.2014 till date of filing of main petition. They have investigated into the affairs of the Company including misconduct committed by B Venkatarama Reddy and verification of transactions with M/s. Auro Logistics Limited and M/s. Trans India Shipping Services Pvt. Ltd. They have furnished information about man-days spent for auditing of the books of Sri Lakshmi Narasima Mining Company Pvt. Ltd., is about 439 days. They have also furnished year-wise transactions which they have verified. They have presented the bill dated 16.01.2017 for Rs. 36,16,032/-. Along with the bill





they have given the details of days spent by Senior Audit Executives, Assistant Managers, Audit Managers and Partners. Number of days spent is 439 and number of hours spent was 3,512. The Auditors have also furnished details of work attended by each of them. All the details are given by the Auditors. The amount claimed by the Auditors is Rs. 36,16,032/-.

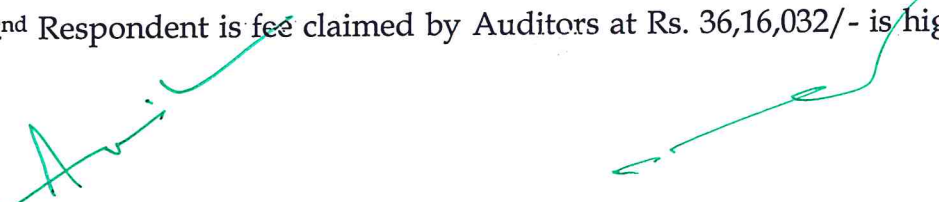
The 2<sup>nd</sup> Respondent filed objection stating that the fee claimed by the Auditor is highly excessive and that the Auditors at best are entitled for a fees of Rs. 8,00,000/- only. The contention of the 2<sup>nd</sup> Respondent is that the Auditors ought to have consulted the Company before starting the work of auditing, for fixation of fees as directed by the Company Law Board. However, the Auditors did not negotiate with the Company, for fixation of fee, before taking up the work. Thus Auditors have not adhered to the directions of the Tribunal. It is further stated the cash balance lying with the 1<sup>st</sup> Respondent Company in its bank account at M/s. Syndicate Bank is just Rs. 13,46,800/-. Further, the Company has received an order from the Assessing Authority, Income Tax Department, for payment of Rs. 12,20,149/- together with interest amounting to Rs. 14,95,120/-. It is contented that ICAI norms basing on which the Auditors claimed fee is only a recommendatory in nature. So, Auditors cannot fix the fee by merely quoting the norms of ICAI.

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The 2<sup>nd</sup> Respondent referred to the fee paid by the banks, etc. basing on the turnover and contended the fee claimed by the Auditors is too high in respect of the Company whose turnover was only Rs. 60 Crs., in its entire operation of 33 months.

It is contended that all the transactions are arising under two simple agreements and period of operation was 33 months and invoices, debit notes involved are very small in number.

The 2<sup>nd</sup> Respondent questioned the need to allot particular man-days for completing the specific work of auditing and also the fee claimed thereon. So the contention of 2<sup>nd</sup> Respondent is fee claimed by Auditors at Rs. 36,16,032/- is highly



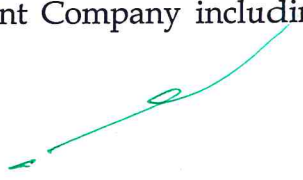
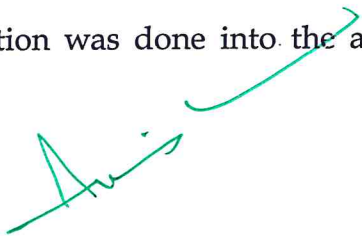
exorbitant depending upon the work that was entrusted to them for purpose of auditing.

The Counsel for Petitioners filed their objections to the objections filed on behalf of 2<sup>nd</sup> Respondent. In other words, the Petitioners in the main petition have filed objections along with the annexures supporting the stand taken by the Auditors regarding payment of fee to the Auditors. They have enclosed annual returns of M/s. Auro Logistics Limited and M/s. Trans India Shipping Services Pvt. Ltd. and summary of audit fee paid by the two Companies. It is clear from Pages 68 and 69 of the objections that the two Companies have paid around Rs. 62,00,000/- towards audit fees for the period from 2007-08 to 2013-14.

In their objections to the objections filed by 2<sup>nd</sup> Respondent to the Auditors claim, the Petitioners stated that the 1<sup>st</sup> Respondent Company is yet to recover Rs. 10 Crs. from M/s. Auro Logistics Limited and M/s. Trans India Shipping Services Pvt. Ltd. It is also stated that the amount illegally diverted to the family members of Vankatarama Reddy is more than ten times of audit fees. It is only after completing the work, the quantum of fee can be decided. It is stated that whenever money is available with the 1<sup>st</sup> Respondent Company the same can be paid to the Auditor and the Company can recover Rs. 1.50 Crs. from M/s. Trans India Shipping Services Pvt. Ltd. under FDT account.

It is also stated that the 2<sup>nd</sup> Respondent paid more than Rs. 60,00,000/- towards audit fee for auditing of accounts for a period of seven years in respect of sister concern referred above. Now also the audit assignment is seven years and eighth financial year is also included on the request of Respondents. Therefore, the Auditors are entitled to the fee claimed.

The Auditors also filed their objections to the objections filed on behalf of 2<sup>nd</sup> Respondent. They have stated in the objections that not only audit but also investigation was done into the affairs of the 1<sup>st</sup> Respondent Company including







misconduct committed by B Venkatarama Reddy for a period of seven years. At the time of commencing the work, it was not possible to estimate the number of days required for audit, etc. They have claimed fee as per ICAI norms. Turnover and profit is not at all a criteria for fixing the fees. The scope of work being audit/investigation and in-depth critical examination of books of accounts and supporting documents and therefore, it involves lot of time. They have given detailed comment on the objections filed by the 2<sup>nd</sup> Respondent. They have specifically stated that the benefits derived by the family members of B Venkatarama Reddy from M/s. Trans India Shipping Services Pvt. Ltd. is a complex area. It is further stated that the investigation is not the same as audit. The approach, procedure and reporting style followed are significantly different. It is stated that an interim bill was raised for Rs. 31,44,375/- plus service tax amount of Rs. 4,71,657/- aggregating to Rs. 36,16,032/-.

At the first instance, this Tribunal directed the Company to pay 50% of the total fee claimed by the Auditors M/s. Brahmayya & Co., against which order the 2<sup>nd</sup> Respondent preferred appeal to the NCLAT and Hon'ble Appellate Tribunal directed the Company to pay Rs. 5,00,000/- at the first instance and directed this Tribunal to decide the quantum of fee after considering the representations.

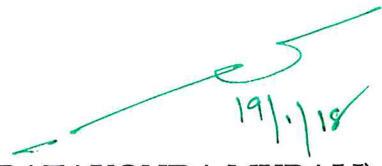
We have seen the details of man-days spent by the Auditors and also the work undertaken by each of the persons employed by the Auditor Company for the purpose of not only auditing but also investigation, particularly with reference to the transactions with the family members of B Venkatarama Reddy. The Auditors have given full details as to how this audit work was attended to, the total man-days spent and the various personnel involved in the auditing. It is also stated that the fees claimed is in accordance with the norms of ICAI. It is also pertinent to note that the 2<sup>nd</sup> Respondent has paid nearly Rs. 62,00,000/- for auditing of the sister concerns for the same period as in the case of 1<sup>st</sup> Respondent Company. The total transactions undertaken by the Auditors and the actual days spent are given in detail. When fees is claimed in accordance with the norms of ICAI, then this Tribunal cannot interfere



with the quantum of fees claimed by the M/s. Brahmayya & Co. The Tribunal is guided by the details furnished by the Auditors for auditing of the books of accounts of 1<sup>st</sup> Respondent Company for a period of seven years and one more year is also included i.e. 2013-14. Therefore considering the voluminous of work, the main-days spent the fees claimed is in accordance with the ICAI norms. Therefore, the fees as claimed by the Auditors M/s. Brahmayya & Co. is to be allowed. Already Rs. 5,00,000/- was paid out of Rs. 36,16,032/-. The balance amount is liable to be paid to Auditors M/s. Brahmayya & Co.

In the result, the 1<sup>st</sup> Respondent Company is directed to pay balance of the Auditors fees of Rs. 31,16,032/-. If the Company has no money at present, it has to realise the money which is recoverable from the two sister Companies i.e. M/s. Auro Logistics Limited and M/s. Trans India Shipping Services Pvt. Ltd., after paying the amount now available with the Company bank account.

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL

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