

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**I.A. No. 1 of 2024  
In  
C.P. No. 254/KB of 2023**

***An application under Section 59, 241, 242 and 244 of the  
Companies Act, 2013.***

**IN THE MATTER OF:**

**Rajeev Nain Mishra and Pankhuri Mishra**

**... Petitioners**

***Versus***

**Brijsons Hotel Private Limited and others**

**... Respondents**

**Date of Pronouncement: 14<sup>th</sup> of May, 2024**

**CORAM:**

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)**

**SHRI. D. ARVIND, MEMBER (TECHNICAL)**

**APPEARANCE:**

**Mr. Jishnu Chowdhury, Adv.                   ]       For the Petitioner**  
**Mr. S.K. Tiwari, Adv.**  
**Ms. Ankita Dalmia, Adv.**  
**Mr. Gopal Khetan, CA**

**Mr. Joy Saha, Sr. Adv.                       ]       For the Respondents**  
**Ms. Urmila Chakraborty, Adv.**  
**Mr. Snehasish Chakraborty, Adv.**

**ORDER**

**Per: D. Arvind, Member (Technical):**

1. The Court congregated through hybrid mode.
2. Heard Ld. Counsels for the parties.
3. This is an application filed by **Mr. Rajeev Nain Mishra and Ms. Pankhuri Mishra** (hereinafter referred as "**Applicants**") against

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**Brijsons Hotel Private Limited, Mr. Brij Bihari Mishra and Mrs. Kamal Nayan Mishra** (hereinafter referred as “**Respondents**”) seeking following reliefs:

- “a) Directions for making joint operation of the bank accounts of the company of both the present directors of the company namely the petitioner no.1 and the respondent no.2;*
- b) Directions upon the petitioners therein to pay the EMI for November 2023 immediately and ensure timely payment of the future monthly instalments till disposal of the petition or till full satisfaction/realization thereof;*
- c) Orders and directions be passed against the petitioners therein to refund a sum of Rs. 1,34,350/- which has been paid as litigation costs from the bank account of the company;*
- d) Injunction restraining the petitioners therein and each of them and/or their men, servants and agents from paying the litigation costs from the bank accounts of the company;*
- e) An order thereby appointing a forensic auditor to make an enquiry into the accounts and day to day affairs of the company since 1<sup>st</sup> April, 2023 and file a report in respect of the transactions and accounts of the company;*
- f) An order for repayment of such amounts which have been defalcated and/or siphoned away by the petitioners therein as may be ascertained and/or found in the forensic audit report;*
- g) Stay of CP No. 254/KB of 2023 till disposal of the instant application;”*

**Brief facts of the case:**

- 4.** Applicant No. 1 namely, Mr. Rajeev Nain Mishra is a shareholder and one of the directors of the respondent No. 1 company Brijsons Hotel Private Limited. The respondent No. 2 Mr. Brij Bihari Mishra
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is another director and shareholder of the company. It is the claim of the applicant herein that the respondent No. 1 Mr. Brij Bihari Mishra has breached fiduciary duties in running the company. The applicant claims that the company is grossly mismanaged and its funds are diverted for the unjust enrichment of the respondent No. 2 herein.

5. Factually the applicant along with his wife owns 83.85% of the shares in the respondent 1 company whereas, the respondent 2 owns 16.15% of shareholding.
6. It is the claim of the applicant herein that respondent No. 2 is taking advantage of the bank signatory mandate of “either/or” in the company to operate bank accounts of the company as per his whims and fancies. Admittedly, it is the respondent No. 2 who is running the day-to-day affairs of the company and despite holding 83.85% shares, the applicant is unable to prevent the respondent No. 2, being father of the applicant, from running the company to the ground. The applicant claims that respondent has been engaging in gross acts of mismanagement of the affairs of the company.
7. To substantiate his contentions with reference to mismanagement, the applicant has placed following acts of alleged mismanagement with certain document supports in the form of Whatsapp messages exchanged between him and General Manager of the respondent company apart from attaching bank statements, MIS report received by him from the General Manager of the respondent No. 1 company etc.

**a) Difference in sales:**

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The applicant submits that the entire accounting is maintained in a software meant for hotels called IDS. The applicant submits that for the month of April 2023 to November 2023, amount of revenue captured in MIS (IDS software) is Rs. 7,55,81,287/- whereas, what has been reported in the GST Forms filed with the Statutory Authority during the relevant period is only Rs. 6,02,39,732/- leading to a difference of Rs. 1,53,41,555/-. Thus, Ld. Counsel for applicant submits that cash sales must have been done but recorded in IDS software only whereas, it has not been captured in the books of accounts maintained for statutory purposes leading to under reporting of revenue in GST returns. The applicant further submits that it is also not clear whether all cash sales have been recorded in the IDS software or not, as MIS data on occupation of rooms/halls does not tally with the revenue entered as per the Hotel tariff with even discounts applied, in the course of business.


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**A) Differences in sales as per MIS report shared by  
General Manager from his mobile number 7381035000  
and the GST Forms filed.**

<b>MONTHS</b>	<b>AS PER MIS (Amount in Rs)</b>	<b>AS PER GST RETURNS (Amount in Rs)</b>	<b>DIFFERENCES (Amount in Rs)</b>
APRIL, 2023	1,90,87,162	1,62,06,501	28,75,661

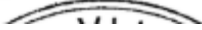
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MAY, 2023	1,57,33,488	1,11,88,807	45,44,681
JUNE, 2023	1,40,33,483	1,10,90,635	29,42,848
JULY, 2023	NO MIS REPORT SHARED	No Details Shared	NA
AUGUST, 2023	1,41,18,856	1,15,04,610	20,06,218
SEPTEMBER, 2023	1,26,08,298	1,02,49,179	23,59,119
OCTOBER, 2023			
NOVEMBER, 2023			
TOTAL	7,55,81,287	6,02,39,732	1,53,41,555



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**1. Non-IDS sales –**

**Number of Room Nights**

APRIL, 2023	72
MAY, 2023	411
JUNE, 2023	1095
JULY, 2023	NO MIS REPORT SHARED
AUGUST, 2023	1492
SEPTEMBER, 2023	76
OCTOBER, 2023	101
NOVEMBER, 2023	825



As per applicant in this regard, it is material to note that IDS is the software in which the billing of the hotel is done. Non-IDS is basically cash sales which is being done to avoid payment of GST and leave scope for mishandling the cash generated. From the table above it is claimed that the respondents are indulging in gross acts of defalcation and misappropriation of funds of the company.

**b) Delay in payment of salary to staffs:**

Ld. Counsel for the applicant submits that due to mismanagement there has been a considerable delay in paying salary to the staffs. The delay ranges from 7 days to 30 days. Due to this delay in paying salary, the applicant claims that there is huge unrest among the staffs which has led to

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exodus of many efficient employees and recorded staffs from the company. Payment of almost Rs. 7 lacs have been made in cash. There is a variance between salary paid and recorded in the books of accounts vis-à-vis the IDS software leading to suspicion of diversion of funds. The relevant portion of this application is reproduced:

**2. Delay in payment of salary to staff.**

<b>MONTHS</b>	<b>PAID IN</b>	<b>01 to 07 (in Rs)</b>	<b>08 to 14 (in Rs)</b>	<b>15 to 21 (in Rs)</b>	<b>22 to 30 (in Rs)</b>	<b>(in Rs) TOTAL</b>
APRIL, 2023	MAY, 2023	0	2,51,789	13,65,899	61,793	16,79,481
MAY, 2023	JUNE, 2023	24,801	11,66,941	5,41,979	2,81,218	20,14,939
JUNE, 2023	JULY, 2023	6,500	9,49,877	8,85,885	4,000	18,46,262
JULY, 2023	AUG, 2023	75,258	26,976	15,00,873	4,82,984	20,86,091
AUG, 2023	SEP, 2023	22,032	61,1472	9,09,220	5,35,964	20,78,688
2023	2023					
SEP., 2023	OCT, 2023	57,914	64,3520	8,50,039	3,50,000	19,01,473
OCT, 2023	NOV, 2023	6,000	4,86,399	6,14,820	6,41,179	18,02,398

**c) Delay in payment of GST:**

The applicant submits that GST payments have been delayed considerably ranging from 30 days to 50 days approx.



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involving interest and penalties. The applicant relies on the GST returns and notice given by the GST Authorities in this regard. The relevant portion is reproduced:

**4. Delay in payment of GST:** Due to the petitioners the company has defaulted in payment of the GST dues which will appear from the following table.

<b>MONTHS</b>	<b>LAST DATE OF RETURN FILING</b>	<b>ACTUAL DATE OF FILING</b>	<b>NUMBER OF DAYS DELAY</b>	<b>DEFAULTER NOTICE FROM GST</b>
APRIL, 2023	21.05.2023	06.07.2023	46	ATTACHED
MAY, 2023	21.06.2023	31.07.2023	40	ATTACHED
JUNE, 2023	21.07.2023	05.09.2023	46	ATTACHED
JULY, 2023	21.08.2023	11.10.2023	51	ATTACHED
AUGUST, 2023	21.09.2023	09.11.2023	49	ATTACHED
SEPTEMBER, 2023	21.10.2023	NOT FILED YET	43	ATTACHED
OCTOBER, 2023	21.11.2023	NOT FILED YET	24	

**d) Delay in filing TDS:**

Ld. Counsel for the applicant submits that there has been a considerable delay in filing TDS returns under the Income Tax Act for the Financial Year 2022-2023 and 2023-2024 ranging from 96 days to 255 days involving penalties and interest. The relevant portion is reproduced:

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5. The petitioner No. 1 has not filed TDS for QTR 01 and 02 for the Financial Year 2023-24 till date and for Financial Year 2022-23 QTR 01, 02, 03, 04 the TDS statements are processed with defaults.

Copies of the TDS statements are annexed hereto and collectively marked ANNEXURE-"1-F".

<b>QTR</b>	<b>LATE DATE OF FILING</b>	<b>ACTUAL DATE OF FILING</b>	<b>NUMBER OF DAYS DELAY</b>	<b>DEFAULTER NOTICE</b>
<b>01</b>	<b>31<sup>ST</sup> JULY 2022</b>	<b>12.04.2023</b>	<b>255</b>	<b>ATTACHED</b>
<b>02</b>	<b>31 OCT 2022</b>	<b>30.03.2023</b>	<b>145</b>	<b>ATTACHED</b>
<b>03</b>	<b>31 JAN 2023</b>	<b>20.09.2023</b>	<b>231</b>	<b>ATTACHED</b>
<b>04</b>	<b>31 MAY 2023</b>	<b>04.09.2023</b>	<b>96</b>	<b>ATTACHED</b>


6. It is further submitted that from 15 November 2023 the wedding season has started and in the the following dates the hotel was sold out with almost all rooms. Usually, every wedding booking continue for at least two days and as such the minimum revenue generated by the company from such wedding bookings shall not be

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less than Rs. 35 lacs. In the last two months, the hotel had nine wedding events from which the approximate revenue which the company must have generated cannot and should not be less than Rs.3 crores. However, in spite of such significant and/or substantial generation of income by the company, there is no reflection of the payments received in bank accounts of the company. Thus from the aforesaid fact it is evident that the petitioners are running the company with complete high handedness and they are indulging into constant siphoning of funds. In this regard, a table indicating the wedding dates and the number of rooms booked for such wedding dates is laid down hereunder:-

<b>WEDDING DATES</b>	<b>NUMBER OF ROOMS</b>
19.11.2023	73
20.11.2023	69
22.11.2023	110
23.11.2023	110
27.11.2023	120
28.11.2023	120
29.11.2023	103
30.11.2023	109
03.12.2023	102
04.12.2023	102
06.12.2023	110
07.12.2023	110
12.12.2023	73
13.12.2023	93
14.12.2023	110
15.12.2023	110



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- e) Ld. Counsel for the applicant also submits that due to extensive cash sales based on the MIS report received, there has been a mismanagement of cash. This is supported by non-reporting of certain sales done in cash in the GST return filed.
  
- f) It is the claim of the applicant herein that there are several incidents of non-payment of GST, non-payment of creditors etc. resulting in complete loss of reputation, apart from gross mismanagement of the affairs of the company by the respondent no. 2 company. Hence, this application seeking reliefs mentioned above.

**Analysis and Findings:**

- 8. We find that no reply has been made by the respondents. However, respondents were represented during the course of hearing through their Counsels. We find that respondent Mr. Brij Bihari Mishra has filed a petition being C.P.(CA) No. 254/KB/2023 levelling several allegations particularly with reference to share transfers, against the applicant herein.
  
- 9. On perusal of the company petition, we find the company is run by two directors. One Mr. Brij Bihari Mishra and his son Mr. Rajeev Nain Mishra. It is the claim of the petitioner (respondent herein) in company petition that allotment of shares involving Mr. Rajeev Nain Mishra has been done irregularly in a fraudulent manner resulting in Mr. Rajeev Nain Mishra and his wife holding 83.85% of the shares whereas, Mr. Brij Bihari Mishra was reduced to 16.15% holding and therefore, petitioner therein has filed a petition seeking regularisation of illegally allotted shares by reversing it and allotting

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it in the ratio initially intended at the time of incorporation of the company, amongst other family members.

- 10.** Meanwhile, we note, it is not in dispute that Mr. Brij Bihari Mishra, respondent 2 herein is running the day-to-day affairs of the company as a director. We find that the applicant herein has produced several documents such as Whatsapp chats with General Manager, bank statements, MIS report etc. which prima facie justify his case for mismanagement of affairs of the company, by respondent No. 2.
  
  - 11.** Through a supplementary affidavit, the applicant herein has been able to demonstrate that the respondent No. 2 is unilaterally taking certain important decisions. From the supplementary affidavit we find that the respondent No. 1 company has made agreement with one Veerman Communications Private Limited for event management activities in the company. However, the applicant claims that he was not aware of any such agreement as no board meeting was held for taking any such decision to enter into any agreement with such company.
  
  - 12.** Ld. Counsel for the applicant also placed copy of the summons issued by the office of the Directorate General of Goods and Services Tax Intelligence, Regional Rourkela Unit and service tax dated 16.02.2024, to demonstrate evasion and non-payment of GST. The applicant also placed letter from Kotak Mahindra Bank which has advanced loans complaining non-routing of funds through their bank account. In spite of several reminders which has been placed on record, the respondent No. 2 failed to enroute company's transactions through the bank. It is the claim of the applicant that
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if, company's transactions are not routed through the Kotak Mahindra Bank, the same shall lead to cancellation of sanction and such would consequently lead the account be turned into NPA.

- 13.** Ld. Counsel for the applicant placed on record legal notice issued by Veerman Communication Private Limited for breach of contract and claiming compensation.
  - 14.** Considering that prima facie case of mismanagement has been made out, we are of the view that it is essential to ensure that the company is managed well and handled in a transparent manner, for the interest of the company and its stakeholders. The company should also comply with the various statutory requirements under laws that govern the business of the company, as per applicable laws.
  - 15.** We find that cash sale is a big barrier in bringing transparency in the operations of the company. In the interest of all the shareholders as well as the company, we direct that as far as possible, company should resist dealing in cash and only in unavoidable cases, cash transaction should be made. Cameras should be fixed at the reception/cash counters and every activity happening in reception area/cash receipt and payment counter should be captured/recorded and should be available for viewing even remotely by both the directors. It is also appropriate that bank accounts of the company must be jointly operated by both the directors of the company namely, the applicant herein and the respondent No. 2, till the disposal of the main petition filed by the respondents herein.
  - 16.** We also direct Transaction Auditor be appointed to make an enquiry into the accounts and day-to-day affairs of the company from
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01.04.2023 to 31.03.2024 and file a report. We appoint **CA Priyajit Dutt, FCA, Partner of Ghosh & Associates, (Membership No. 305257), Email ID: [ppghosh@ghoshandassociates.in](mailto:ppghosh@ghoshandassociates.in)** for conducting transaction audit. Fees for the Transaction Auditor may be fixed by both directors of the company and be paid from the company. The Transaction Auditor shall submit a report to this Tribunal within 45 days from the date of his appointment. The transaction audit report will also deal with allotment of shares at various stages from the incorporation of the company, from the point of view of MoA, AA, Companies Act etc.

17. The report may facilitate this Tribunal to deal with Company Petition being **C.P.(CA) No.254/KB/2023** as well as reliefs claimed in this application being **IA No. 1/KB/2024**.
18. Accordingly, this application stands **disposed with above directions**.
19. Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**Signed on this, the 14<sup>th</sup> day of May, 2024.**

*PH(PS)*