

**IN THE COURT OF SH. ANIL KUMAR SISODIA
DISTRICT JUDGE (COMMERCIAL COURT)-04,
CENTRAL DIST. DELHI**

Misc. DJ 666/2024

BKR CAPITAL PVT. LTD. Applicant

Vs.

AMIT GUPTA Respondent

ORDER

1. Vide this order, I shall dispose of an application filed by the applicant company under Section 379 read with Section 215 of Bhartiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 340 Cr.P.C r/w Section 195 Cr.P.C, 1973) to initiate proceeding under Section 215 of B NSS, 2023 against the Respondent for deposing falsely under oath before this court, by filing false and fabricated documentary evidence and moreover issuing false certificate in the form of an affidavit under Section 65-B of the Indian Evidence Act, 1872 with the sole purpose to delude, defraud, mislead the court.

2. It is stated that the Applicant Company is a non-banking finance company (NBFC) duly registered with the Reserve Bank of India. It is submitted that the Respondent has flagrantly manipulated documents and deposed falsely. The respondent has already filed a civil suit bearing C.S. No. 525/2018 titled as “M/s Majestic Buildcon Pvt. Ltd. vs. M/s BKR Capital Pvt. Ltd. & Ors” in collusion with Defendant no. 6 Sanjay Goel for defrauding illegal monetary gain from the applicant Company.

3. It is stated that the respondent had intentionally filed an application dated 01.04.2023 under Order XI Rule 1(5) CPC which is fabricated and to mislead the court. The respondent along with Sh. Sanjay Goel has been using Ms/ Majestic Buildcon Pvt. Ltd. (hereinafter referred to as “the plaintiff company”) as an umbrella to avoid their liability and to defraud the public at large. Hence, the applicant has sought the lifting of corporate veil of the plaintiff company. The Respondent, in collusion with has further manipulated the financial statements of the plaintiff company for the financial year 2016-17 and 2017-18 and the Board’s Report along with annexures and notice of AGM for the Financial Year 2016-17 and 2017-18 of the Plaintiff Company.

4. The Respondent has filed fabricated the Board Resolution dated 15.09.2018 and e-mail dated 28.09.2017 in application under Order XI Rule 1(5) CPC. The entire Board Resolution of the Company was replaced by a new Board Resolution. A whole

new block of texts has been flagrantly added to the Board Resolution. The respondent has fraudulently added the signatures of Mrs. Vasudha Gupta knowing that she was not even a director at the time of passing of the Board Resolution dated 15.09.2018. It has been further submitted by the Respondent that the subject as well as the contents of the heading of the Board Resolution was altered. It is stated that the official e-mail of the company i.e. 'amitgupta6882@gmail.com' has been explicitly misused by the Respondent as per his own malafide intention. The Respondent has made attempts to commit perjury by filing application under Order VI Rule 17 CPC and has tried to place the manipulated document on record with it which was thereafter taken.

5. It is stated that the Respondent has furnished false information on oath and has submitted a false certificate under Section 65-B of the Indian Evidence Act, 1872. The act of the Respondent amounts to offences under Sections 229, 233, 234, 235, and 316, 336, 340, 61 of BNS 2023 for giving false evidence on oath, using a true certificate knowing to be false, criminal breach of trust upon the company and its members and criminal conspiracy.

6. The Respondent has filed the reply to the application and has submitted that the application is malafide and amounts to an abuse of the process of law, is not maintainable and is liable to be dismissed. The Respondent has further submitted that the

applicant has manipulated the facts into believing that the respondent has fabricated the certified true copy of extract of minutes of meeting dated 15.09.2018 bearing Ex. PW-1/1 on record in order to get the connected matter titled ‘CS (COMM.) 525/2018 M/s Majestic Buildcon Pvt. Ltd. vs. BKR Capital Pvt. Ltd. & Ors.’ dismissed on this ground itself.

7. It is stated that the respondent has relied on public documents which are available on the MCA portal. The respondent has submitted that it is mandatory for a company to conduct its Annual General Meeting (AGM) before the 30th of September of each year for the preceding financial year ending on 31st March. The applicant did not conduct the board meetings in the year 2017 due to which AGM of F.Y. 2016-17 could not be conducted. Thus, Mr. Amit Gupta approached the NCLT vide company petition no. 44/97/ND/2018 to regularize the affairs of the company. The NCLT, vide order dated 08.03.2018 issued directions to convene a meeting on 16.03.2018. On the next date of the hearing i.e. 24.04.2018, an order was passed by the NCLT stating that an Auditor has been appointed and directed the respondent to conduct the AGM within 45 days. It is stated that the respondent approached Mr. Sanjay Goel through electronic conversations and emails dated 07.06.2018, 21.07.2018, 11.08.2018 for the commencement of the board meetings. However, no reply was furnished to the said emails. These emails have been admitted by Mr. Sanjay Goel in a connected suit bearing no. ‘CS (COMM) 525/2018 M/s Majestic Buildcon Pvt.

Ltd. vs. BKR Capital Pvt. Ltd. & Ors.' Upon realising that the applicant was intentionally avoiding the board meetings, a legal notice dated 12.09.2018 was sent by him directing the applicant to commence an Annual General Meeting within 7 days of the receipt of the legal notice. Thus, an AGM was conducted on 15.09.2018. The respondent has denied tampering with the company records, because the same are uploaded on or before 15.10.2018 on MCA website nor has made any ante-dated resolutions on the company. The respondent has placed the certified true copy of the extracts of the minutes of meeting dated 15.09.2018 bearing Ex. PW-1/1 thus there is no discrepancy by the respondent.

8. It is further stated that Mrs. Vasudha Gupta was a director at the time of filing of the amended suit dated 08.01.2020, and she certified the Extract of minutes of board meeting dated 15.09.2018 in the capacity of a director. Thus, the applicant was misguiding this court by taking advantage of the fact that the date of certification was not put by the respondent or Mrs. Vasudha Gupta. The respondent while filing an application under Order XI Rule I (5) of CPC, 1908, has itself stated that certified true copy of extracts of minutes dated 15.09.2018 certified by Mrs. Vasudha Gupta is necessary to come on record so that it can be shown that Mrs. Vasudha Gupta has only certified the earlier resolution so passed.

9. It is further stated that he has not forged the email dated 28.07.2017 rather he has sent another e-mail at 3:13 to BKR Capital, requesting for money of the M/s Majestic Buildcon Pvt. Ltd. the two e-mails at 2:47 and 3:13 respectively are in continuation of a third mail sent at 2:42 to the BKR Capital which contains a copy of criminal complaint for misappropriation of funds of SAG Infrastructure Pvt. Ltd. the Email sent at 3:13 did not come on record through order dated 14.10.2023. It is stated that the applicant is the recipient of the aforesaid mails and the email id of the applicant company i.e. kapilperiwal1976@yahoo.in to which the respondent has sent the said emails is admitted as the registered email of the applicant company on the MCA website by the AR of the applicant company vide cross-examination dated 18.10.2024 in the connected matter 'M/s Majestic Buildcon Pvt. Ltd. vs. BKR Capital Pvt. Ltd. & Ors.'

10. It is stated that the applicant is in collusion with M/s BKR Capital Pvt. Ltd. is taking advantage of the finding that this court has recorded its order dated 14.10.2023, the certified copy of the extract of order dated 14.10.2023, and the certified true copy of the extract of minutes of meeting dated 15.09.2018 having the signatures of Mrs. Vasudha Gupta and the mail dated 28.09.2017 sent at 3:13 to the applicant company. It is stated that the minutes of meeting is a private document and also, it is not required under company law to file it on the MCA portal and with ROC. It is further stated that an application under Order 11 Rule 1(5) was

filed and then filed afresh because of the directions issued by this court to state the reasons for all the documents so filed in the application. It is prayed that the present application may kindly be dismissed with cost.

11. I have heard the Ld. Counsels for the parties and have gone through the record carefully.

12. Counsel for the applicant has argued that it 15.09.2018 was decided to be the date for the AGM. However, no AGM was conducted and only a Board Meeting has been conducted. It was further argued that the Board Resolution created on 15.09.2018 to file a suit against the BKR Capital Pvt. Ltd. has been signed only by Sh. Amit Gupta. Counsel for applicant have submitted that the suit has been filed by the plaintiff on the basis of Board Resolution dated 15.09.2018 which does not bear the signature of Sh. Sanjay Goel. It was further argued that Sh. Amit Gupta fabricated the Board Resolution dated 15.09.2018 which has the signatures of his wife Smt. Vasudha Gupta, who was not even a director on the date of said Board Resolution.

Counsel for Sh. Sanjay Goel [defendant no. 6 in CS (Comm) no. 525/2018 and defendant no. 1 in CS (Comm) no. 1432/2020] has argued on similar lines.

13. Per contra, counsel for the respondent has argued that plaintiff company through Sh. Amit Gupta had written several

emails dated 21.07.2018 and 11.08.2018 to Sh. Sanjay Goel requesting him to convene a board meeting for initiating the suit for recovery against BKR Capital Pvt. Ltd. but Sh. Sanjay Goel deliberately chose to ignore the said emails and also concealed the fact that he had already realized the money of the plaintiff company in his own account. It was argued that all the aforesaid emails have been admitted by Sh. Sanjay Goel in his affidavit of A/D dated 11.03.2022. It was further argued that on 15.09.2018, a board meeting was convened and Sh. Sanjay Goel was present in the said meeting. It was argued that Sh. Sanjay Goel in his affidavit of A/D of documents dated 11.03.2022 admitted the board report along with annexures and notice of AGM and balance sheet, profit and loss account and notes to financial statements of plaintiff company for the Financial Year 2016-17 and 2017-18 were signed by him in the board meeting dated 15.09.2018 and 28.09.2018. Sh. Sanjay Goel has further identified the signatures at point 'A' on the copies of board reports along with the annexures. In his cross examination dated 24.08.2024, he also admitted that he had put his signatures in the presence of officials of NCLT and he never objected to signing of the documents. It was argued that Sh. Sanjay Goel in his WS has not even mentioned about the non-passing of the Board Resolution in the plaintiff company but has taken a contradictory stand in his evidence. It was argued that as per Section 174 (1) of the Companies Act, the quorum for board meeting dated 15.09.2018 was complete as both the directors were present in the board meeting dated 15.09.2018, wherein aforesaid Board

Resolution was passed. It was also argued that as per Rule 25 (1) (c) (1) of The Companies (Management and Administration) Rules, 2014, Sh. Amit Gupta being the Chairman of board meeting dated 15.09.2018 of the plaintiff company had appended his signature on to the minutes of board meeting dated 15.09.2018 and Sh. Amit Gupta had put his signature on the extract of Minutes of Meeting dated 15.09.2018 as he wanted certified true copy of the Board Resolution passed at the meeting of the board of directors of plaintiff company on 15.09.2018.

It was argued that no ante-dated Board Resolutions were passed by the plaintiff company and Smt. Vasudha Gupta, who was appointed as director in June/July 2019 only certified the extract of minutes of board meeting dated 15.09.2018, being the director of the plaintiff company at the time of filing of amended suit dated 08.01.2020. It was also argued that the said extract of minutes of board meeting dated 15.09.2018 was not allowed to be filed and taken off the record by the court vide its order dated 14.10.2023.

14. Perusal of the record shows that the respondent has filed the certified copy of extract of Resolution passed at the meeting of board of directors on 15.09.2018 in the suit titled, "M/s Majestic Buildcon Pvt. Ltd. vs. M/s BKR Capital & Ors." By the said Resolution, Sh. Amit Gupta, director of the plaintiff company was authorized to sign, execute all necessary documents, engage a lawyer and to do all such acts and deeds

necessary for initiating action against BKR Capital Pvt. Ltd. for recovery of the loan amount. The copy of the said extract of Resolution has been signed by Sh. Amit Gupta. The crux of the objection raised by the defendants is that the Board Resolution is not a valid document as it does not bear the signatures of defendant no.6 Sanjay Goel, who was the other director of the plaintiff company and Mr. Amit Gupta could not have passed a Board Resolution in his own favour.

15. Counsel for the respondent has argued that there is no forgery or fabrication in the Board Resolution dated 15.09.2018. It was argued that the extract of Resolution was filed along with the amended suit dated 08.01.2020 and the certified copy of the extract of minutes of board meeting dated 15.09.2018 were signed by Smt. Vasudha Gupta, who was appointed as a director in June/July 2019. Perusal of cross examination of PW-1 Sh. Amit Gupta conducted on 07.08.2024 also shows that certified copy of the board resolution dated 15.09.2018 Ex.PW-1/DA was filed along with the amended suit and it was bearing the signatures of Vasudha Gupta, who was appointed as director of plaintiff in June/July 2019. In the absence of any other evidence to show that the Board Resolution dated 15.09.2018 was ante dated, there is no reason to believe as to why the plaintiff would forge and fabricate a document which is already available with him. The counsel for the respondent has relied on the decision of ***James Kunjwal vs. State of Uttarakhand SLP (Crl.) No. 9783/2023.***

16. PW-1 Sh. Amit Gupta has admitted that Ex. PW-1/DA bears the signatures of Ms. Vasudha Gupta at Point A, who was appointed as director of the Plaintiff Company in. The signature of Ms. Vasudha Gupta is only on the certified True Copy of the Extract of Minutes of Meeting of the Board of Directors of the Plaintiff Company dated 15.09.018. Whereas in the Board's Report along with annexures and notice of AGM for the financial year 2016-17 and 2017-18 of the Plaintiff Company has been signed by Sh. Amit Gupta as well as Sh. Sanjay Goel. Thus, Ms. Vasudha Gupta has merely certified the Copy of Extract of Minutes of Meeting dated 15.09.2018, at the time of filing of the amended suit dated 08.01.2020, at which point she was a director in M/s Majestic Buildcon Pvt. Ltd. which is affirmed from the Designated Partner Details filed by the Applicant.

17. Upon perusal of the record, it is found that the Respondent has placed the certified true copy of the extract of minutes of meeting dated 15.09.2018 along with application u/O 11 Rule 1 (5) CPC. The Board's report bears the signatures of both Sh. Sanjay Goel as well as Sh. Amit Gupta. The same has also been admitted by Sh. Sanjay Goel at para 17 of the cross examination in the connected matter titled "M/s Majestic Buildcon Pvt. Ltd. vs. M/s BKR Capital & Ors.". An admission has been made by Sh. Sanjay Goel that he had signed the documents as well as the financial statements before the Ld. NCLT official at the Board Meeting dated 15.09.2018.

18. Upon perusal of the Copy of Extracts of Minutes of Meeting of the Board of Directors of the Company held on 15.09.2018 filed with the original plaint and the copy of Extracts of Minutes of Meeting filed with the application, it is found that an additional paragraph has been added which stated that Sh. Amit Gupta has stated that BKR Capital Pvt. Ltd. has been defaulting in payment of dues and an immediate action is required before 02.12.2018 in order to prevent a bar of limitation. This additional information is a part of the summary of the minutes of meeting which brings nothing new on record to substantiate the claim of the applicant regarding the allegations of forgery which could attract prosecution under Section 340 CrPC read along with section 195 of the Code of Criminal Procedure, 1978.

19. As regard the forgery of email dated 28.09.2017 is concerned, upon perusal of the record it is found that Sh. Amit Gupta had sent two e-mails to Sh. Kapil Periwal dated 28.09.2017, one email is sent at 02:47 and the other is sent at 3:03AM, the second email was again forwarded at 3.13. Since both e-mails were sent at a different time, one sent subsequent to the other, it cannot be said that the same is done with the intent of falsifying or tampering of evidence. It rather reflects the intent of elucidating the statement made in the previous e-mail. Thus, the contention of the applicant that the respondent has tampered the

e-mail dated 28.09.2017 sent through the official e-mail id of the company by illegitimate incorporation of words does not hold water and is hereby rejected.

20. Section 379 in the Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS) provides for the procedure to be followed in an offence in Section 215 BNSS (Section 195 of the Code of Criminal Procedure, 1973). It provides that if upon application or suo motu, the court is of the opinion that it is “expedient in the interest of justice” that an inquiry is required to be made in an offence referred in Section 215(1)(b), the court may make a complaint in writing after conducting a preliminary inquiry.

21. It was held by the Hon’ble Supreme Court in ***Narendra Kumar Srivastava vs. The State of Bihar and Ors. 2019 INSC 132 (Para 16)*** that Section 340 of Code of Criminal Procedure makes it clear that a prosecution under this Section can be initiated only by the sanction of the court under whose proceedings an offence referred to in Section 195(1)(b) has allegedly been committed. The object of this Section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence in court during the time when the document or evidence was in custodia legis and whether it is also expedient in the interest of justice to take such action. The court shall not only consider *prima facie* case but also see whether it is in or against public interest to allow a criminal proceeding to be instituted.

22. It was further held by the Hon'ble Court in ***Sasikala Pushpa and Ors. vs. State of Tamil Nadu 2019 INSC 636*** that the language used in Section 340 Code of Criminal Procedure the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint.

23. In the present matter, the applicant has failed to establish any tampering /forgery of documents by the respondent. Hence, in view of the aforesaid discussion, I do not deem it expedient to initiate inquiry under Section 379 read with Section 215 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS). Accordingly, the present application is dismissed and stands disposed of.

Announced in the open Court (ANIL KUMAR SISODIA)
Dated: 28.07.2025 District Judge (Commercial Court-04)
Central District, Tis Hazari Courts, Delhi