

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

C.P.No.464/BB/2018
U/s 241(1)
Of the Companies Act, 2013
R/w Rules 11 & 83
of the NCLT Rules, 2016

In the matter of:

Mr. Shankar Subramanya Bhat
R/a. No.10, Prestige Lake Vista,
Ramagundanahalli, Varuthur
Main Road,
Belagavi – 560 066 & Anr.

- Petitioners

Versus

M/s. Star Cable Infonet Pvt. Ltd.
2nd Floor, Vamanashram Building,
GHS Cross Road,
Mangalore – 577 001 & 6 Ors.

- Respondents

Date of Order: 16th January, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Mr. A. Murali along with
Mr. Andre Peter
For the Respondent : Mr. Saji. P John

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. The instant Company Petition bearing C.P. No.464/BB/2018 is filed by Mr. Shankar Subramanya Bhat ('Petitioner') and another U/s 241 (1) of the Companies Act, 2013 R/w Rules 11 & 83 of



the NCLT Rules, 2016, against M/s. Star Cable Infonet Pvt. Ltd. & 6 Ors. ('Respondents') by seeking the following reliefs:

- (1) To direct that 50% of the shareholding of the Company lies with the Petitioner group, and the shareholding of the Respondent No.2 is only 50%;
- (2) To direct that the Respondent No.3 is not a shareholder in the Company, and consequently, pass an order of permanent injunction restraining the Respondent No.3 from claiming or representing to any person that she is a shareholder of the Company;
- (3) To direct that the Business Transfer Agreement (Annexure D) is void, as the contingency of the assets being released from the Bank loan was not fulfilled by the Respondent No. 7 or the Respondent No.2 on behalf of Respondent No.7;
- (4) To declare that the purported letter dated 7 May 2018 sent by email dated 9 June 2018 is illegal and that the Petitioners and Mr. Kandlur continue to remain directors of the Company;
- (5) To direct that the Respondent Nos. 4 & 5 are not duly appointed directors of the company, and consequently direct the Respondent Nos. 4 & 5 to make good the loss suffered by the Company at their hand, including their salary, benefits, perks, or any other expenses of their which was borne by the Company;
- (6) To direct that the Respondent No. 2 has oppressed the petitioners by his malafide and illegal actions;
- (7) To direct that the Company be permitted to buy back the shares of Respondents No.2, and consequently reduce the share capital of the Company;
- (8) To direct that the appointment of Respondents No. 6 was done without authority, and consequently pass an order for removal of Respondent No. 6 forthwith;

(9) To pass any other and further orders that this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the captioned matter.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

(1) M/s. Star Cable Infonet Pvt. Ltd. (herein after referred to as Respondent No.1 Company) is a company incorporated under section 25 of the Companies Act, 1956, on 29 January 2002, with the Registrar of Companies, Karnataka. The Company was incorporated under the Companies Act, 1956 on January 29, 2002, having its registered office at 13/8/1053/34, II Floor GHS Cross road, Mangalore 575 001 with CIN: U72900KA2002PTC030058 Bangalore. The Company is engaged in the business providing internet services and cable services to its customers/subscribers. It collects subscription from its customers and provide cable services directly to them and has customers mainly in Indiranagar and Mysore Road., in Bengaluru; and in parts of Mangalore, where its registered office is situated. The Company has distribution/collections offices in Mangalore and in Bangalore. Its Authorized capital is INR 1,00,00,000, made up of 10,00,000 shares bearing face value of INR 10/- each, out of which the paid up capital of the company is INR 67,20,000/- comprising 6,72,000 shares of face value INR 10/- each and entire paid up capital of the company has been issued.

(2) Mr. Shankar Subramanya Bhat & Anr. (Herein after referred to as 'Petitioners') are Shareholder of the Respondent No.1 Company and together individually hold over 10% of the issued share capital in the Respondent No.1 Company and comprise two of the three Directors in the



Respondent No.1 Company. The third Director in the Company is Mr. Brahmanand Suresh Kandlur. The Respondent No.2 is the other shareholder of the company holding the remaining 50% of shares in the Respondent no.1 Company. The share Capital of the Respondent No.1 Company is detailed as under:

Sl.No	Name of Shareholders	No. of shares held	Type of shares
1.	Mr. Sachin Narayan (Respondent No.2)	3,36,000	Equity
2.	Mr. Shankar S Bhat (Petitioner No.1)	1,82,500	Equity
3.	Mr. M.B. Arvind Kumar (Petitioner No.2)	1,53,400	Equity
4.	Mr. Shashikanth	10	Equity
5.	Mr. M.S. Bhaskar	90	Equity
	TOTAL	6,72,000	Equity

- (3) The Petitioner purchased 100% shares of the Company in the year 2004, and became its Directors with effect from 22 March 2004. They have together individually hold over 10% of the issues share capital I the respondent No.1 Company and comprise two of the three Directors in the respondent No.1 Company. The third Director in the Company is Mr. Brahmanand Suresh Kandlur.
- (4) It is stated that the Petitioners Nos.1 and 2 had previously borrowed certain loan amounts from Bank of India (Which loan was subsequently taken over by Indian Overseas Bank) for running the Company's business operations, and which amounts were due to be repaid to the Bank. The Petitioner Nos.1 and 2 have executed a Business Transfer Agreement on August 11, 2017 (hereinafter referred to as "BTA) with one of the Companies where the Respondent



No.2 was the majority shareholder by the name of M/s Prisac Aviation Technologies Pvt. Ltd (hereinafter referred to as "Prisac"). As per BTA rep by Respondent No.2 took over the entire operations of the Company subject to the terms and conditions stipulated in the Agreement. It appears that the Company's loan was declared as a Non-Performing Asser (NPA) in September 2017, as Prisac failed to fulfill its obligations under the Business Transfer Agreement. However, not being aware of the default committed by Prisac, Petitioner Nos.1 and 2 handed over the business operations of the Company to the Respondent No.2 on behalf of Prisac, in December 2017, and were ready and willing to perform their obligations under the Business Transfer Agreement. Once again, believing the representations of the Respondent No.2, Petitioner Nos. 1 and 2, have entered into a Lease Agreement dated January 17, 2018 for the lease of equipment owned by the Company, to Prisac, and Petitioner Nos.1 and 2 as Directors of the Company, were signatory to this Lease Agreement. However, during 2018, Petitioners have received a notice from the Bank with respect to the outstanding loan liability and the intended sale of mortgaged assets, and the Petitioners became aware of the fact that the Respondent No.2 had failed to fulfil his obligations under the Business Transfer Agreement with respect to release of mortgaged assets of the Company from the Bank. Being aggrieved by the breach of contractual obligations by Prisac, the Petitioner No.1, as Director of the Company issued a Notice dated May 02, 2018 by declaring that BTA as void, and called upon Prisac to inter alia cease and desisted any transactions either under BTA or the Leaser Agreement.



- (5) It is stated that on June 09, 2018, they have received an abrupt e-mail from the Respondent No.2 with attachment letter dated May 07, 2018 claiming that Petitioners have been removed as Directors of the Company. On 13th June 2018, the Respondent No.4, who is a stranger to the Company purported to act on behalf of the Company, has filed a complaint with the Indiranagar Police Station in Bengaluru making false allegations against, inter alia alleging that the Petitioners cheated the Company by making withdrawals of amounts legally due to them into their personal accounts. The Indiranagar Police Station decided to lodge a FIR being FIR No. 145/2018 against the Petitioners, inter alia, on 15 June 2018 and even raided the offices of the Petitioners on 19th June 2018.
- (6) It is asserted that the Petitioners still remain the Directors of the Company to the exclusion of anyone else, as is evidenced by the latest extract of the MCA21 portal of the Company's page. There has been no transfer of shares from the Petitioners in favour of the Respondent No.2 and especially not in favour of Respondent No.3. The Petitioners were never intimated of any shareholders meeting on proposed to be converted on 30 April 2018 and the removal is illegal. The first and foremost requirements under Section 169 (2) is to send a Special Notice to the Company stating in clear and succinct manner of the intent to send a copy of the Special Notice to the Director concerned. The Director is allowed to make a representation that may be circulated or when time does not permit circulation, may be read out at the shareholders meeting. The Director is even given the right to make oral representations to the shareholders at the meeting. None of these steps have occurred in the present case. The Company never received any Special



Notice for removal of the Petitioners, nor was any Special Notice furnished for appointment of Respondent No.4 and 5 as directors in the Company. When none of procedures under section 169 of the Companies Act, 2013 have been followed, it is only with a severe ignorance of the law, or an utter disregard to it, can the Respondents claim in their purported letter dated 7 May 2018 that they have complied with provisions of Section 169 of the Act.

3. The Respondents have filed their statement of Objections dated 19th January 2019, by inter-alia contending as follows:
 - (1) It is contended that as on the date of filing of this Petition, the Petitioners are neither 'Members' nor 'Directors' of the Respondent Company No.1. The Shareholding pattern as shown in the Petition (Para 1.4) is false. As per the said Shareholding pattern the Petitioner No.1 and 2 holds 1, 82,500 and 1, 53,400 shares respectively. The Petitioner No. 1 had transferred his 1,82,500 shares in the Respondent Company No.1 in favor of the Respondent No.2, Similarly Petitioner No.2 transferred his 1,53,400 shares to Respondent No.1. The Respondents have also paid consideration for the shares, which was also duly acknowledged by them.
 - (2) It is stated that Section 56 of the Act, provides that a Company shall not register a transfer of shares of, the Company, unless a proper transfer deed in Form SH.4 as given in Rule 11 of Companies (Share Capital & Debentures) Rules 2014 duly stamped and executed by or on behalf of the transferor and by on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the Company, along with the letter of allotment of the shares. In the instant case, a proper transfer



deed in Form SH-4 is duly stamped and executed by the petitioners in favour of Respondent No.1 & 2. Subsequently, the names of Respondent No 1 and 2 are entered in the Register of Members of the Respondents Company to be maintained under Section 88 of Companies Act, 20163 by following the due procedures as per law.

(3) It is contended that an Application/Petition can be maintained U/s 241 of Companies Act, 2013 by Members of a Company, that too, after fulfilling the requisite conditions as per law. The term '**Member**' in relation to a Company is defined in Section 2(55), which reads as under ;

2(55) - "member", in relation to a company, means-

- (i) *The subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;*
- (ii) *Every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;*
- (iii) *Every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depositor."*

It is clear from the language of Section 2(55) that in order to qualify as a 'Member' of any Company the particular Shareholder must get his/her name registered in the 'Register of Members' maintained by the said company as per Section 88 of Companies Act, 2013. Transfer of the Shares of Petitioners came to be registered in the 'Register of Members' as per the terms of Section 88 of CA, 2013. Consequently the Petitioners ceased to be the 'Members'.



And thus they are no more the 'Members' of the Respondent Company in terms of Section 88 and 2 (55) of Companies Act, 2013.

It is relevant to extract section 241 of Companies Act, 2013 which reads as under:

241 Application to Tribunal for relief in cases of oppression, etc.

(1) Any member of a company who complains that -

(a) The affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company;

(b) The material change, not being a change brought by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal or an order under this Chapter.

Any member(s) of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply under Section 241 Companies Act, 2013 to the tribunal, provided such members have a right so to apply by virtue of Section 244 of Companies Act, 2013. Section 244 provides for the requisite number of members of a Company can file Petition under Section 242 seeking reliefs against oppression and mismanagement in the company.

(4) It is denied that the Business Transfer Agreement (BTA) as relied upon by the Petitioners is not a valid Agreement. Admittedly, the Respondents No.2 representing Respondent No.7 (Prisac) did not sign the agreement. It was never signed on behalf on Prisac (R-7). After the execution of the Share Transfer Forms, the Respondents took over the Management of the Company in the beginning of 2018 and found that the Petitioners and Mr. Brahmanand Suresh Kandlur, who were the previous Directors of the Company, has fraudulently withdrawn Rs.120.66 Lakhs in aggregate from the Company's Account. Accordingly, the Respondent No.4, who is the Director of the Company has filed a case at Indiranagar P.S, which is under investigation.

4. Heard Shri A. Murali along with Shri Andre Peter, learned Counsel for the Petitioner and Shri Saji. P John, learned Counsel for the Respondent. We have carefully perused the pleadings of both the parties and extant provisions of the Companies Act 2013, and rules made thereunder and law on the issue.
5. Shri A. Murali, the learned Counsel for the Petitioners, while reiterating the averments made by Petitioners in their pleadings,



as briefly stated supra, has further inter alia submitted as follows:

- 1) The SH4 form in question, allegedly executed between the parties, has not even been delivered and it was in fact deposited with Respondents by the Petitioners only as a pledge in anticipation of infusion of funds by the Respondent into the company, which never transpired. The petitioners and the Respondents had an existing business arrangement in terms of the Business Transfer Agreement and in terms of the Equipment Lease Agreement. As part of the implementation of this Agreement and believing the false promise of the Respondent, the Petitioners agreed to pledge their shares with the Respondent in anticipation that the Respondent would invest capital into the Company. However, the Respondent in a mala fide attempt is now claiming that this SH4 document is evidence of his complete control over the Company even without Board authentication/ nothing and by circumventing the statutory procedure under the Act and the Articles. In fact, the SH4 has not been authenticated/ noted by the Company, and also the signature of the Board is mandatory prior to entering of the names in the register of members which is absent in the present case.
- 2) And the impugned transfer of shares is in violation of the terms of the Articles of Association as well. Article 6 of the AoA of the Company, clearly stated that the first step in transfer of shares of the Company would be for the transferor to notify the Board the number of shares and price offered and the name of the proposed transferee. The Board shall then offer the other shareholders the number of shares transferred at the same price and if the same is accepted, the shares shall be transferred to the acceptor.



The entire document produced by the Respondents has been fabricated to mislead this Tribunal. The Respondent is unable to show any evidence of the payment towards the so called transfer except an internal entry in their personal ledger accounts.

- 3) It is denied that notice dated 26 March 2018 requisitioning to hold of an Extraordinary General Meeting to be held on 30 April 2018, was never received by the Company. The BTA in question was executed between the Parties. The Respondent has also sought to take a loan from Canara Bank for implementing the terms of the BTA, against which the Bank sought clarifications from the Respondent No.2 on 29 December 2017.
 - 4) Therefore, he has urged the Tribunal to allow the Petition as prayed for.
6. Shri Saji. P John, learned Counsel for the Respondent, while reiterating various averments made in the pleadings already placed on record, as briefly stated supra, while filing a Memo dated 09.12.2019, has inter alia contended as follows:
- 1) A sum of Rs.25 Lakhs each was transferred from Respondents No. 2's Canara Bank Account to Petitioner No.1 and 2 on 28.11.2016. The said amount was transferred as the total Share Consideration for the purchase of shares held by Petitioners in the Respondent Company and as an advance to purchase Shares of Canara star Private Limited. Enclosed a copy of the Canara Bank Statement Evidencing the transfer of Share consideration to the Petitioners.
 - 2) As on the date of transfer of the said Share Consideration, the Petitioners were holding 1,82,500 ,1,53,400 Shares respectively. The Respondent No.2 transferred Rs.18.25 Lakhs to Petitioner No.1 (Shanikar S Bhat who holds



1,82,500 Shares of INR 10 each) and Rs.15.34 Lakhs to Petitioner No. 2 (Aravind Kumar who holds 1,53,400 Shares of INR 10 each).

- 3) Subsequent to the transfer of share consideration in full, the Petitioners and Respondent Nos 2 & 3 executed Share Transfer Forms (SH.1 and SH-4), which are produced along with Objection to Main Petition. Thus by the abovementioned transfer of INR 18.25 Lakhs and INR 15.34 Lakhs from Respondent No.2 to the Petitioners, and subsequent execution of Share Transfer Forms, the transfer of Shares was essentially concluded as per the provisions of Companies Act, 2013. As on Today, the Petitioners name do not even appear in the 'Register of Members' of the Respondent Company, under Section 88 of Companies Act, 2013. The petitioners are not Members of the Respondent Company, which bars them filing a petition under Section 241 of the Companies Act, 2013. Section 59 of CA, 2013 provides for Rectification of Register, which would be an appropriate remedy in such cases. He has relied upon the landmark decision given *In Ved Prakash v. Iron Traders P. Ltd.*, [1961] Comp Cas 122. He has cited another decision rendered in *Gulabrai Naik v. Lakshmidas Patel*, [1977] 47 Comp Cas 151 (Guj) , wherein it was interalia held that where title to shares is in dispute, the appropriate remedy is to proceed for rectification; and after successful for rectification, then a petition under Sections 397/398 be maintainable.
- 4) He has stated that Star Cable Infonet Private Limited allotted 3,36,000 equity shares of Rs.10/- each at par to Mr. Sachin Narayan (Second Respondent) on March 28, 2017, and amount of Rs.33,60,000/- was paid to the Company on 20.3.2017. There is no dispute regarding the same. Even



though the Second Respondent was holding 50% shares, the Board of Directors of the Company consisting of Mr. MYSORE BHASKAR ARVIND KUMAR, Mr. SHANKAR SUBRMANYA BHAT AND . BRAHMAND SURESH KANDLUR were continued to manage the affairs of the company until April 30, 2018, the date of their removal by the EGM. Share Transfers were recorded in the Board Meeting held on 18.1.2018. The Petitioners are not handed over nay records of the Company maintained up to 30.4.2018.

7. In pursuance to directions of the Tribunal to produce original documents, he has filed the original documents by way of memo dated 7.1.2018 by enclosing the following documents:
- a) Original Form No.SH-4 dated 18.1.2018 for Transfer of 1,82,500 Equity Shares of Rs.10/- each of Star Cable Infonet Private Limited executed by Mr. Shankar Subrahmanaya Bhat (First Petitioner) in favour of Priyanka Narayan (Third Respondent)
 - b) Original Share Certificate bearing No.13 of Star Cable Infonet Private Limited in respect of 1,82,500 shares held by Mr. Shankar Subrahmanaya Bhat (First Petitioner). Transfer of shares duly endorsed in favour of Priyanka Narayan (Third Respondent) and signed by Mr. Shankar Subrahmanaya Bhat.
 - c) Original Form No.SH-4 dated 18.1.2018 for Transfer of 1,53,400 Equity Shares of Rs.10/- each of Star Cable Infonet Private Limited executed by Mr. Mysore Bhaskar Arvind Kumar (Second Petitioner) in favour of Sachin Narayan (Second Respondent);
 - d) Original Share Certificate bearing No.14 of Star Cable Infonet Private Limited in respect of 1,53,400 shares held by Mr. Mysore Bhaskar Arvind Kumar (Second Petitioner). Transfer of shares duly endorsed in favour of Sachin



Narayan (Second Respondent) and signed by Mr. Mysore Bhaskar Arvind Kumar.

- e) Confirmation letter dated 15.12.2019 issued by the Canara Bank Cantonment Branch, Bangalore along with the relevant account statement evidencing payments of Rs.25,00,000/- each payments made to Mr. Shankar Subrahmanaya Bhat and Mr. Mysore Bhaskar Arvind Kumar on 28.11.2016.
8. The main points for consideration arise in the instant petition are whether the Petitioners were still shareholders of R - 1 Company, as on date of filing the instant Petition, to maintain the petition , as per extant provisions of Companies Act, 2013, as stated supra; Whether the Petitioners are removed as Directors of R -1 Company, as per law or not; Whether the petitioners made out a case so to wind up R -1 Company, which would otherwise prejudice the interest of Petitioners and other stake holders.
9. The first basic to decide is whether the Petitioners are shareholders of R-1 Company as on the date of filing the instant Petition. It is not in dispute that the first Petitioner was Shareholders of R-1 Company by holding 182500 Shares in question. However, those shares were subsequently transferred in favour of transferee namely, Priyanka Sachin/Respondent No. 3 for consideration for Rs.18,25,000/-, which was duly acknowledged in the Form No. SH.4, in addition to advance payment of Rs.25 Lakhs, as stated supra. By perusal of Original Securities Transfer Form (Form No. SH- 4) dated 18.01.2018, is noticed that it is duly stamped and signed by the first Petitioner, witness and the Transferee. Original Renewed Share Certificate issue in lieu of old Share Certificates dated 18th January, 2017 produced by the Respondents, was also signed by both the Petitioners. Similarly, the Second Petitioner, has also executed

Transfer Deed in Form No. SH-4 dated 18.01.2018 for transfer of his shares(3,35,900 shares) for final consideration of Rs.15,34,000/, which was duly acknowledged by him in favour of Sachin Narayan/Respondent No. 2 , and it was also duly stamped and signed by the second Petitioner, Transferee and witness. He was also admittedly received another Rs.25 Lakhs from the Respondents as advance for the sale of his shares. Original Renewed Share Certificate issued in lieu of old Share Certificates, dated 18th January, 2017 produced by the Respondents, was signed by both the Petitioners. Prior to the said execution of Transfer Deeds, the Respondents paid Rs.25 Lakhs each to both the Petitioners, on 28.11.2016, as an advance to Petitioners to purchase their shares. Therefore, by virtue of execution of Transfer deeds in question, transfer of shares of both the Petitioners stand completed, as per Law. Even comparing the signatures of the both the Petitioners, as available on the Petition and other connected documents, with naked eye, with their signatures as available on Share Transfer Forms in question, are tallying. Therefore, there is no doubt in our mind that the petitioners have executed those material documents. And the shares in question was subsequently transferred to the Respondents by the Company, as per law.

10. As stated supra, it is not the case of the Petitioners that they have not received consideration for transfer of shares in question and executed the material documents in question. Their contention is that they have signed those documents in anticipation of something that would arise out of implementation BTA in question. So far as the contention of Petitioners that they continued to be Directors of the R -1 Company is not at tenable, as they were duly removed duly following law, as stated supra. The Petitioners continued as Directors till April, 30, 2018 when they were duly removed. It is settled position of law that mere



Directors, without holding shares in their names, cannot, independently maintain a Company petition. Since the Petitioners ceased to be Members of the Company, they cannot question their removal as Directors of the Company in the instant Petition.

11. We have also examined the issue whether the Petitioners have made out case so as to wind up the R 1 Company in order to exercise powers of Tribunal conferred on it under provisions of Section 242 of the Companies Act, 2013. As mentioned supra, the instant petition is filed only under Section 241(1) of the Companies Act, 2013 R/w Rules 11 & 83 of the NCLT Rules, 2016. We found that the Petitioners have failed to make out any such case.
12. For the aforesaid reasons and the circumstances of the case and the law on the issue, we are of the considered view that the both the Petitioners ceased to be Members of the R -1 Company, as on the date of filing of it, in order to maintain it. And they have also failed to make out any case so as to interfere in the affairs of Company by invoking equitable jurisdiction of this Tribunal, conferred on it, under extant provisions of Companies Act, 2013, and the Rules made thereunder. Therefore, the instant Petition is liable to be dismissed.
13. In the result, the instant Company Petition bearing C.P.No.464/BB/2018 is hereby dismissed as devoid of merits. No order as costs.

**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**