




name and style of M/s.Aveda Info Tech Private Limited, having its registered office at 3<sup>rd</sup> Floor, Khivraj Building, No:624 Anna Salai, Chennai-600 006.

The Capital structure of the 1<sup>st</sup> Respondent Company is as under:

(i) **Authorized Share Capital is Rs.20,00,000/-** divided into 2,00,000 equity shares of Rs.10/- each.

ii) **Issued, Subscribed and Paid up share capital is Rs.13,50,000/-** divided into 1,35,000 equity shares of Rs.10/- each.

PARTICULARS OF THE PETITIONERS:

The 1<sup>st</sup> Petitioner is Abhijit Surlaker, S/o Gajanan Surlaker residing at Park Street, 1-12, Emerald Park, Audh Chest Hospital Wakad, Pune- 411057, Maharashtra represented by his power of attorney holder Mr. M.D.Prabhu. The 1<sup>st</sup> Petitioner is the Director of the 1<sup>st</sup> Respondent Company since 2011 holding 45,000 equity shares of Rs.10/- each which represents 33.33% of the paid up capital of the 1<sup>st</sup> respondent Company. 

The 2<sup>nd</sup> petitioner is Mr.M.D.Prabhu, S/o Mr.M.Diraviam residing at A4, 4<sup>th</sup> Floor, Himadri Apartments, #36, Raman Street, T.Nagar, Chennai-600017, Tamil Nadu. The 2<sup>nd</sup> Petitioner is the Director of the 1<sup>st</sup> respondent Company since 2011 holding 45,000 equity shares of Rs.10/- each which represents 33.33% of the paid up capital of the 1<sup>st</sup> Respondent Company.

PARTICULARS OF THE RESPONDENTS:

The 2<sup>nd</sup> Respondent is a member of the 1<sup>st</sup> Respondent Company holding 45,000 equity shares of Rs.10/- each representing 33.33% of the paid up capital of the 1<sup>st</sup> Respondent Company.

The 3<sup>rd</sup> Respondent M/s. AVGI Solutions Private Limited is a limited company incorporated under Companies Act, 2013 on 10.11.2016, having its registered office at No. 10, 7<sup>th</sup> Cross Main Road, 3<sup>rd</sup>Block, Koramangalam, Bangalore- 560034. It is an entity owned and controlled by the 2<sup>nd</sup> Respondent.

FACTS OF THE CASE:

1) The Petitioners have stated that the 1<sup>st</sup> Respondent Company is a closely held company with only 3 shareholders cum Directors each holding 33.33% shares. The 1<sup>st</sup> Respondent Company manages software development centres located at Bangalore which generates the entire sales and profits of the 1<sup>st</sup> Respondent Company and that the 2<sup>nd</sup> Respondent was in charge of the day to day affairs of the Bangalore office and as on November, 2016, 15 employees were working in the Bangalore office.

2) One of the major clients of the 1<sup>st</sup> Respondent was a USA based company named Sales Warp which was primarily handled by the 2<sup>nd</sup> Respondent. To the shock and surprise of the Petitioners the 2<sup>nd</sup> Respondent has sent an email on 09.11.2016 at 3:49PM stating that the Sales Warp has decided not to renew its contract with 1<sup>st</sup> Respondent Company and via trail mail it was found that an employee/consultant of the 1<sup>st</sup> Respondent has sent

an email to Sales Warp on 28.10.2016 enquiring whether they intend to renew the contract and their reply there under and the same was communicated to the 2<sup>nd</sup> respondent on 01.09.2016 but the same was communicated to the petitioners only on 09.09.2016. It is alleged by the Petitioners that the contract does not end on 31.10.2016 and that it was false on the part of the 2<sup>nd</sup> respondent to say so to the client of the 1<sup>st</sup> Respondent.

3) On 09.11.2016 at 5:58PM the Petitioners received an email from the 2<sup>nd</sup> respondent that he resigns from the 1<sup>st</sup> Respondent Company and also directed that within about 10 days, all the employees of the 1<sup>st</sup> Respondent Company in Bangalore Office should be given a smooth exit with no dues and that he has already informed about this to all the employees. The petitioners issued an email to the 2<sup>nd</sup> respondent on 11.11.2016 stating that they have not accepted the resignation and the same would be discussed in the Board meeting on 16.11.2016 and the decision of the same was sent to the 2<sup>nd</sup> Respondent on 25.11.2016 to

which the 2<sup>nd</sup> Respondent sent a letter dated 08.12.2016 stating that Sales Warp is his personal client and few other allegations.

4) On 17.11.2016, the petitioners received a communication through a courier from the 2<sup>nd</sup> Respondent containing resignation letters of all the employees of the 1<sup>st</sup> Respondent Company, who were involved in the Sales Warp project. All the resignation letters were dated 08.11.2016 and the relieving order issued by the 2<sup>nd</sup> Respondent was also on 08.11.2016.

5) The Petitioners have stated that the 2<sup>nd</sup> Respondent had evinced interest in acquiring the entire shareholding in the 1<sup>st</sup> Respondent Company and was willing to pay Rs.10,00,000/- to acquire 45,000 shares held in the 1<sup>st</sup> Respondent Company by the 2<sup>nd</sup> Petitioner vide an email dated 01.09.2015 with a share purchase agreement. The same did not fructify as the price offered was not to the satisfaction of the 2<sup>nd</sup> Petitioner.

6) It was alleged by the Petitioners that the 2<sup>nd</sup> Respondent who was in charge of the day to day affairs of the Bangalore office of the 1<sup>st</sup> Respondent Company was privy to trade secrets, confidential information, employee details including salary etc. All communications of the 1<sup>st</sup> Respondent and such information was available to the 2<sup>nd</sup> Respondent which was used for the benefit of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

**Main Reliefs sought in the CP by the Petitioners** are as follows:

*A) To declare that the acts of the Respondent Nos.2 and 3 are oppressive and prejudicial to the interest of the 1<sup>st</sup> Respondent and the petitioners.*

*B) Direct the 2<sup>nd</sup> Respondent to buy the entire shareholding of the Petitioners in the 1<sup>st</sup> Respondent at a value, as on 30<sup>th</sup> September, 2016, to be determined by an independent auditor appointed by this Hon'ble Tribunal.*

*C) Declare the Respondents 2 and 3 to be jointly or severally liable for all damages and losses caused to the 1<sup>st</sup> Respondent and the Petitioners*

*as determined by the independent auditor appointed by this Hon'ble Tribunal.*

*D) Appropriate reliefs be passed under and in accordance with Section 246 of the Companies Act, 2013.*

*E) Order costs of and incidental to this Petition be paid by the Respondents.*

*F) Such further order or orders and/or direction or directions be given as to this Hon'ble Tribunal may deem fit and proper.*

The Respondents in their counter has stated the following;

7) The amount of INR 10,00,000 was paid to M/s. Aveda Info Tech Private Limited ("Company" or Aveda" or "First Respondent") during the period of April 2014 to March 2015 and the shares were allotted belatedly by the Company. The share certificates representing these shares are still not issued by the Company. Further, Aveda became a growing and profitable entity only after the 2<sup>nd</sup> Respondent viz., Mr. Hemant Gajanan Khandeparkar, joined the operations. The name and main objects of the Company were changed by the

special resolution dated 09.05.2014, only after the 2<sup>nd</sup> Respondent joined the board of directors of the 1<sup>st</sup> Respondent Company on 29.04.2014.

8) The entire business was generated, fulfilled and managed by 2<sup>nd</sup> Respondent without any management inputs from the petitioners as the 2<sup>nd</sup> Petitioner was in Chennai and the 1<sup>st</sup> Petitioner was based in Pune. The registered office of the Company continued to be in Chennai with an assistant appointed to process payroll, invoicing and payment under the instructions of the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> Respondent was an executive director handling the day to day affairs of the 1<sup>st</sup> Respondent Company and dedicated his entire time to the growth, development and management of the Company. Therefore, his preliminary and only interest was in the 1<sup>st</sup> Respondent Company and its welfare.

9) It has been stated that the major client, Sales Warp was brought on board and completely handled by the 2<sup>nd</sup> Respondent. There was no correspondence between the client and both the petitioners in the duration of the 2<sup>nd</sup> Respondent's tenure. Likewise, all

the resources/ employees who were deployed in the project did not have an occasion to discuss anything with either of the Petitioners.

10) There were detailed email exchanges regarding cash flows where 2<sup>nd</sup> Petitioner had reworked on the numbers so as to ensure delay of vendor payments which put tremendous pressure on the 2<sup>nd</sup> Respondent as he was facing the project critical vendor who was supplying IT equipment. Pursuant to this, the 2<sup>nd</sup> Respondent had requested in the detailed call on 04.10.2016 via bridge call that the vendor payments have to be made and accordingly, the shortfall of about INR 1,80,000/- has to be filled by a short term loan to be given by all directors equally by putting in INR 60,000/- each which would be repaid as soon as customer payments are received. To this, both the petitioners responded that they would not be able to provide this loan amount and they said that they would fund only INR 20,000/- per person. However, having committed to this, the petitioners later did not even meet this commitment whereas the 2<sup>nd</sup> Respondent diligently funded INR 20,000/- as agreed into the Company's Bank

account.

11) The 1<sup>st</sup> Petitioner called on 05.10.2016 and in this call, the 2<sup>nd</sup> Respondent had clearly voiced his dissatisfaction at the functioning of the Company and his intention to leave the Company to which the 1<sup>st</sup> Petitioner had replied with his consent to the same and he confirmed that he would inform the 2<sup>nd</sup> Petitioner accordingly.

12) The 2<sup>nd</sup> Respondent had made a call to the 2<sup>nd</sup> Petitioner at 16.31 P.M. (as mentioned in the resignation email) and the 2<sup>nd</sup> Petitioner had conference with 1<sup>st</sup> Petitioner in which it was discussed that the 2<sup>nd</sup> Respondent would like to be relieved with immediate effect and it was accordingly agreed. The fact that the call discussing the resignation and the fact that the biggest client had moved on and the fact that the Bangalore office had to be shut down was concluded in such a short time, shows that the petitioners had little interest in the Company and

further that they were already aware of the fact pattern as it was informed to them in other conversations.

13) The resignation mail "My resignation" was sent to both the petitioners at 17.30 P.M. on 09.11.2016 with the resignation date as 09.10.2016 so that the 2<sup>nd</sup> Respondent could be relieved by 09.11.2016. However, the 2<sup>nd</sup> Petitioner called and requested the 2<sup>nd</sup> Respondent to change the date of resignation to 09.11.2016 and as per this conversation a subsequent email "My resignation - resending with today's date" was sent at 17.58 P.M. Pursuant to the resignation, form DIR-11 was filed on 17.11.2016 in which the reason for resignation is mentioned "Resigned due to the lack of support from other directors of the Company". However, as per the provisions of section 168 of the Companies Act, 2013 ("Act") the resignation of a director will take effect from the date of the resignation of the director or the date of receipt of notice by the company whichever is later. The 2<sup>nd</sup> Respondent's resignation from the 1<sup>st</sup>

Respondent Company was communicated via email on 09.11.2016. Further, the Act does not contemplate any acceptance of resignation by the remaining directors. Therefore any board meeting called for after 09.11.2016 was not acknowledged and responded to.

14) The 2<sup>nd</sup> Respondent was completely aware of the employees working in Sales Warp. The 2<sup>nd</sup> Respondent was aware of his staff and need not have reached out to the Chennai office for such information as he was the one on whose instructions the invoices were prepared. The 2<sup>nd</sup> Respondent had personally interviewed, shortlisted and recruited each of the candidates and was therefore aware of the team size and the employee.

15. The following allegations were made against the petitioners;

a. There were serious differences between the 1<sup>st</sup> Petitioner and the 2<sup>nd</sup> Petitioner in relation to M/s. Atlantis Lab Private Limited ("**Atlantis**") (where the 2<sup>nd</sup> Respondent had no stake). The

2<sup>nd</sup> Petitioner had made plans to have the 1<sup>st</sup> Petitioner exit Atlantis.

- b. As a corollary to this exit from Atlantis, the 1<sup>st</sup> Petitioner or any other person nominated by him was supposed to make an offer for the purchase of the shares held by the 2<sup>nd</sup> Petitioner in 1<sup>st</sup> Respondent Company.
- c. The 1<sup>st</sup> Petitioner had approached a lawyer to draft the agreement on his behalf. In the mail dated 22.08.2015, the 1<sup>st</sup> Petitioner had sent a set of documents which had been forwarded to him by the 2<sup>nd</sup> Petitioner. The 2<sup>nd</sup> Respondent was marked in this email.
- d. The 2<sup>nd</sup> Respondent had no role to play in this misunderstanding and was dragged into their fight for no reason. The 2<sup>nd</sup> Respondent only offered to purchase the stake of the 1<sup>st</sup> Respondent Company from the 2<sup>nd</sup> Petitioner to ensure continuity of business and the protection of interest of all the stakeholders.

*m*

16) This deal did not fructify because the primary deal between the 1<sup>st</sup> Petitioner and the 2<sup>nd</sup> Petitioner in relation to Atlantis did not go through as evident from the email dated 09.12.2015.

17) When the employees were informed about the resignation of the 2<sup>nd</sup> Respondent, they expressed their unwillingness to continue in a rudderless ship as they were not even aware of the existence of the other. Therefore, they decided to wait for the salary to be processed before putting in all their resignations in view of the poor track record of the Company in paying salaries on time. Further, since there were no operations remaining in Chennai and Pune, the token amount was being paid to them for no contribution or directional inputs at all. Nothing stopped either of the petitioners from making any tangible contribution to the business of the Company.

18. Further it has been stated that the entire database of clients and all the information was created and managed by 2<sup>nd</sup> Respondent. Further, there was no non-compete or non-solicitation agreement that has

been signed by the 2<sup>nd</sup> Respondent which prohibits him from hiring employees or competing with the 1<sup>st</sup> Respondent Company and that it would be a violation of Section 27 of the Contracts Act if the 2<sup>nd</sup> Respondent is not permitted to carry on his trade or profession.

19) The 2<sup>nd</sup> Respondent has stated that the original directors and promoters of the 1<sup>st</sup> Respondent Company who are the petitioners are not willing to run a Company that they incorporated for certain purposes which indicates that the petitioners never had the goodwill for the 1<sup>st</sup> Respondent Company and were only looking for the financial rewards without any hardship.

### **ORDER**

From the above facts and circumstances, the Tribunal observes that it is an admitted fact that the 1<sup>st</sup> Respondent Company has made considerable profits only after the 2<sup>nd</sup> Respondent had joined the 1<sup>st</sup> Respondent Company and that the day to day activities of the 1<sup>st</sup> Respondent Company was managed by the 2<sup>nd</sup>

Respondent.

The exit of the 2<sup>nd</sup> Respondent from the 1<sup>st</sup> Respondent Company cannot be disputed as per Section 168 of the Companies Act, 2013, as there was no mention of the acceptance of the resignation by the other Directors. The resignation of the 2<sup>nd</sup> Respondent from the 1<sup>st</sup> Respondent Company was also reflected in the Company Master Data.

The Tribunal observes that the 2<sup>nd</sup> Respondent had earlier offered to purchase the stake of the 2<sup>nd</sup> Petitioner in the 1<sup>st</sup> Respondent Company which was denied. It is observed that the Petitioners are the majority shareholders and also have representation in the Board. They could have taken up the issue in the Board Meeting or could have even removed 2<sup>nd</sup> Respondent as a Director of the 1<sup>st</sup> Respondent Company when they suspected that the 2<sup>nd</sup> Respondent wants to take full control of the 1<sup>st</sup> Respondent Company. But, the Petitioners wanted the 2<sup>nd</sup> Respondent (who resigned from the 1<sup>st</sup> Respondent Company) to buy the shares of the Petitioners and give exit to them from the 1<sup>st</sup> Respondent Company. This shows the Petitioners' lack

of interest in running the 1<sup>st</sup> Respondent Company after the exit of the 2<sup>nd</sup> Respondent.

This Tribunal directs both the parties to suggest three names of Valuers within four weeks from the date of this Order, out of which, the Tribunal will appoint a Valuer for determining true and fair value of the shares of 1<sup>st</sup> Respondent Company as on 31.12.2016. The Petitioners, being the majority shareholders, will have the opportunity to buy the shares of the 2<sup>nd</sup> Respondent as per the valuation report. If the Petitioners would not be willing to buy the shares, the 2<sup>nd</sup> Respondent will be given an opportunity to buy the shares of the Petitioners, failing which the 1<sup>st</sup> Respondent Company shall be liquidated after settling all the statutory dues and liabilities.

With the above directions, **C.P. No.1/2017** is hereby disposed of.

There will be no order as to costs.

  
**CH. MOHD SHARIEF TARIQ**  
**MEMBER (JUDICIAL)**