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**IN THE NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH, CHENNAI**

TCP/153/2016
[CP/75/2014]

Under Sections 397, 398, 402, 403 and other applicable provisions of the Companies Act, 1956.

In the matter of

Mr. C.Ganapathy & 3 Ors.

... Petitioners

Vs.

M/s. Edison Global Solutions Private Limited & 4 Ors.

... Respondents

Order delivered on: 7th of September, 2018

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (J)

For Petitioner(s) : M/s. Ramani & Shankar,
Mr. R.Vidhya Shankar,
Mrs. Sadhana V.Shankar &
Mr. R.Ashok Kumar, Counsels.

For Respondent(s) : Ex-parte.

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (J):

1. At the outset, it is placed on record that after the establishment of NCLT, the Company Petition under consideration has been transferred from the then CLB to this Bench and re-numbered as TCP/153/2016. The Company Petition has been filed under Sections

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397, 398, 402, 403, r/w other applicable provisions of the Companies Act, 1956. There are four Petitioners and five Respondents. Respondent No.1 is *M/s. Edison Global Solutions Private Limited*.

2. The authorised share capital of the 1st Respondent Company is Rs.2,00,00,000/- divided into 20,00,000 equity shares of Rs.10/- each and the paid up share capital of the Company is Rs.1,50,00,000/- divided into 15,00,000 shares of Rs.10/- each. The Petitioners are holding 7,47,050 equity shares of Rs.10/- each, which according to Petitioners constitute 49.80% of the paid up share capital of the Company. Therefore, the Petitioners are entitled to maintain the Company Petition under Sections 397 & 398 of the Companies Act, 1956.

3. The 1st Respondent Company has been incorporated as Private Limited Company under the name and style as "*M.M.Infotech Private Limited*" vide Certificate of Incorporation dated 24.08.1994 issued by RoC, Tamil Nadu. Subsequently, the name of the

Company was changed to “*Edison Global Solutions Private Limited*”, and the Certificate of Incorporation was granted by the RoC, Tamil Nadu, Coimbatore on 13.05.2003. The Registered Office of 1st Respondent Company is situated at No.171-A, Mettupalayam Road, Coimbatore – 641 043. The main object of the Company is to provide education and training to mankind in any field, most specifically spelt as Training in Computers, Computer Software, Computer hardware, General Management and Managerial skills in computer related or non-computer related fields in India and abroad.

4. The Respondent Nos. 2 and 4 are the present Directors of the 1st Respondent Company and the Respondent No. 3 was the Director against whom the Petitioners have levelled the allegations of oppression and mismanagement in relation to the affairs of 1st Respondent Company. The Respondent No. 5 is the banker of the Company.

5. It has been submitted by the Petitioners that 1st Respondent Company was promoted by two set of families viz., the Petitioners' family and Respondents' family. The 2nd Petitioner and 2nd Respondent were only the subscribers to the Memorandum of Association of the Company and were named as First Directors of the Company. According to the Petitioners, the shareholding of the Company has been more or less equal in between the two families with Petitioners' family holding 49.80% and the Respondents' family holding 50.20% of the subscribed and paid-up share capital of the Company. It has been claimed by the Petitioners that the control and management of 1st Respondent Company was to be equally shared between the two families, the Board of Directors of the Company has always had two nominees from the side of the Petitioners and two nominees from the side of the Respondents, who were Petitioner Nos. 1 and 2 and Respondent Nos. 2 and 3, and the same Directors have been re-elected from time to time and parity in management was never disturbed.

The Petitioners have submitted that from the year 2004 onwards, the Respondent Nos. 2, 3 and 4 did not show any interest concerning the affairs of the Company and they did not attend any board meeting of the Company nor participated in the day-to-day affairs of the Company.

6. However, to the shock and surprise of the Petitioners, all of a sudden, on 03.11.2006, the 2nd Respondent came to the Franchise centre of the Company at Coimbatore which is located at Rajarajeswari Towers, Gandhipuram, Coimbatore, along with certain private security personnel, and claimed that he is the Managing Director of the Company entitled to exclusively manage the affairs of the Company, and the Petitioners were no longer Directors of the Company. The Petitioners have submitted that an inspection of the Company's files was made through the net on the MCA Portal, which revealed as under: -

- i) From No. 32 signed by the 2nd Respondent was seen filed with the Registrar of Companies claiming that Petitioners 1 and 2 were removed from the Board of Directors of the Company by a Resolution passed at Extraordinary General Meeting of the Company purportedly held on 07.09.2006.

- ii) Form No. 18 was seen filed under the signature of 2nd Respondent with the Registrar of Companies intimating shifting of the Registered Office of the Company at the residence of 2nd Respondent effective from 07.09.2006.

7. The Petitioners have submitted that the action of the Respondents e.g., the appointment of 2nd Respondent as Managing Director, and 4th Respondent as Director of 1st Respondent Company and shifting the Registered Office of the 1st Respondent Company to the

residence of 2nd Respondent, are illegal, invalid, *void ab-initio* and are also, harsh, burdensome and wrongful for the reasons as follows: -

- a. All the Petitioners were not served with any notice whatsoever concerning any meeting of the Board or General Body Meeting.
- b. No opportunity of being heard was given to the Petitioners, to explain their position before their removal from the directorship.
- c. The Petitioners were in complete physical control of Minutes Books and Registers of the Company, and they must have given notice for any meeting.
- d. The 1st Respondent Company is closely held, owned and controlled by two families and is in the nature of partnership, so the Petitioners cannot be side-lined.
- e. There was absolutely no necessity to appoint 4th Respondent as Director of the Company.

8. The Petitioners have alleged that the impugned acts of the Respondents are being done with intent to gain control over the Board of Directors of 1st Respondent Company and consequently the management of the Company, which is against the legitimate expectations of the Petitioners for being equal participant in the management of the 1st Respondent Company. Therefore, such acts are illegal, thereby amounting to gross oppression and mismanagement.

9. The Petitioners have also disclosed under para 8 of the Petition that once the Respondents usurped the physical control of 1st Respondent Company, the Petitioners filed CP/62/2006 before the then Company Law Board for seeking reliefs against the illegal acts of the Respondents done in relation to the affairs of 1st Respondent Company, but the Company Petition was dismissed in default.

10. Now, it is alleged that the Respondents have sold *Rajarajeswari* and *Madurai* Centres and whatever the

proceeds were realized from such sale, the same has not been accounted to 1st Respondent Company. There has been no single general meeting of 1st Respondent Company for which the Petitioners have had notice, and no balance sheet for any period subsequent to usurping of control by the Respondents has been made available to the Petitioners.

11. The Petitioners have further alleged that no balance sheet of the Company has been placed before the General Body nor have the accounts been made available in any form to the Petitioners. It has also been alleged that the affairs of the Company are shrouded in secrecy and whatever profit and loss is being incurred by the Company is not known to the Petitioners. It has further been alleged that the Company is being used by the Respondents merely for the purpose of harassing the Petitioners by filing false and frivolous cases against them. Based on the pleadings made in paragraph Nos.7,8 and 9 of the petition the prayers made are as follows:-



- i.
- ii.
- iii. *Direct investigations by an appropriate agency designated by this Hon'ble Bench to go into the affairs and accounts of the Company and submit a report thereon with specific reference to the extent of illegality, misapplication, misappropriation, retention and diversion of funds and assets of the 1st Respondent Company by Respondents 2 to 4.*
- iv. *Direct an enquiry into the acts of commission and omission by Respondents 2 and 3, including falsification of accounts, diversion of profits etc., quantify the damages caused thereby to the 1st Respondent Company, direct Respondents 2 to 4 to pay up such damages and surcharge the properties of Respondents 2 to 4 for realization thereof.*

12. It needs to be placed on record that an Order came to be passed by this tribunal on 23.03.2017 in **IA/50/2016** which has been filed by the 2nd Respondent challenging the maintainability of the Petition. After

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hearing both the sides, the Application was allowed partially and the Company Petition was held maintainable to the extent of new facts incorporated in paragraphs 7, 8 and 9 therein, and it has also been made clear that the Petition shall remain confined to the subsequent events for the purpose of granting reliefs. Therefore, the prayers mentioned above are to be considered only for granting the reliefs.

13. It has also been noted by this tribunal that the Respondents were given due opportunities to file a detailed reply to the Petition. But in spite of the sufficient opportunities given the respondents have not filed the reply. As per record, Respondent No.3 was set ex-parte on 02.01.2017, and Respondent Nos. 2 and 4 were proceeded ex-parte on 26.04.2018.

14. The perusal of the Petition and the documents placed on record go to show that the 2nd Respondent has claimed to be the Managing Director of the 1st Respondent Company, and appointed the 4th Respondent as Director of the 1st Respondent Company

by removing the Petitioner Nos. 1 and 2 from the Board of Directors of the 1st Respondent Company by passing a resolution in EoGM purportedly held on 07.09.2016, for which, admittedly, no notice has been given to the Petitioners. The 2nd Respondent has also shifted the Registered Office of the 1st Respondent Company to his residence effective from 07.09.2006 as reflects from the relevant Form filed with the Registrar of Companies.

15. The illegal actions of the Respondents as detailed above are harsh, burdensome and wrongful, which constitute the act of oppression and mismanagement and are contrary to the legitimate expectations of the Petitioners, who are holding 49.80% of the subscribed and paid-up share capital of the 1st Respondent Company. The Petitioners have been kept in dark by the Respondents with regard to the sale of the *Rajarajeswari* and *Madurai* Centres and the proceeds realised from such sales have not been accounted to the 1st Respondent Company. It also reflects from the Petition that no Balance Sheet or Annual Return has

been filed even with the Registrar of Companies and the Income Tax Department since 2005. Thus, it clearly establishes that the affairs of the 1st Respondent Company are being conducted by the Respondents in a manner prejudicial to the interests of the shareholders and the Company. In the circumstances, the Company is liable to be wound up on just and equitable grounds, but it will unfairly prejudice the Petitioners and the Company.

16. The illegal actions of the Respondents are lacking probity and good conduct on their part, particularly on the part of Respondent No.2, who claims to be the Managing Director of 1st Respondent Company.

17. The Petition deserves to be allowed and there requires an independent Auditor to audit and verify the accounts of 1st Respondent Company, and report. Therefore, an independent Auditor viz., M/s. Sunderesan Lakshmanan & Co., Chartered Accountants [No.563, D.B. Road, M.S.Complex, II Floor, R.S. Puram, Coimbatore – 641 002, Phone: 0422-4367187,

Mobile: 9843042394 and e-mail: poorni-pretty@yahoo.co.in] is hereby appointed to audit and verify the accounts of 1st Respondent Company with effect from October, 2014, and to report misfeasance, retention and diversion of the funds and assets of 1st Respondent Company done by the Respondent Nos. 2 to 4, and quantify the loss, if any, caused by such illegal acts of the Respondents, in relation to the financials and assets of 1st Respondent Company.

18. The Auditor is directed to file the report within a period of two months from the date the copy of this Order is received. The Petitioners are directed to cooperate with the Auditor and provide all the relevant record and information which they possess.

19. The Auditor shall also issue notice to the Respondents to obtain the record and seek relevant information from them for the purpose of completion of his assignment, and in case of resistance or non-cooperation by any of the parties, he can seek necessary direction from this Tribunal, by filing appropriate I.As.

The Petitioners shall pay the remunerations to the Auditor which may be fixed on mutual understanding between the Auditor and the Petitioners, and the same shall be paid by the Petitioners.

20. It is made clear that based on the report of the Auditor, this Tribunal will pass further appropriate orders, if necessary. Accordingly, the TCP/153/2016 stands **disposed of**. There is no order as to costs.

21. Order is pronounced in the open Court.


[CH.MOHD SHARIEF TARIQ]
MEMBER (JUDICIAL)

P. ATHISTAMANI