

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

Company Petition No.81/ALD/2017
(Under Section 241-242 of
Companies Act, 2013)

IN THE MATTER OF:

NITHYANANDA BROADCASTING PVT. LTD.
NITHYANANDA DHYANAPEETAM, NITHYANANDAPURI,
KALLAGOPAHALLI, OFF MYSORE ROAD, BIDADI BANGALORE,
KARNATAKA – 562 109
THROUGH ITS AUTHORIZED SIGNATORY
MR. V. NATARAJAN.

.....PETITIONER

VERSUS

1. **VARUN MEDIA PVT. LTD.**
HAVING ITS REGISTERED OFFICE AT C-457, SECTOR 10 NOIDA –
201 301, UTTAR PRADESH, THROUGH ITS DIRECTOR –
RAKESH KUMAR GUPTA.
2. **RAKESH KUMAR GUPTA, DIRECTOR, VARUN MEDIA PVT. LTD.**
15A, BELA ROAD, CIVIL LINES, NEW DELHI – 110 054
3. **POOJA AGGARWAL, DIRECTOR, VARUN MEDIA PVT. LTD. 493, FF,**
KOTHI BLOCK B MEERA BAGH, PASCHIM VIHAR DELHI – 110 087
4. **SAURABH GUPTA, DIRECTOR, VARUN MEDIA PVT. LTD. 23**
VAISHALI, PITAMPURA DELHI – 110 088
5. **URMIL GUPTA,**
15A, BELA ROAD, CIVIL LINES, NEW DELHI – 110 054
6. **GAURAV GUPTA,**
15A, BELA ROAD, CIVIL LINES, NEW DELHI – 110 054

.....RESPONDENTS

JUDGMENT/ORDER DELIVERED ON 30.08.2018

CORAM : Sh. V.P. Singh, Hon'ble Member (Judicial)
: Ms. Saroj Rajware, Hon'ble Member (Technical)

For the Petitioner : Sh. Udai Chandani, Advocate

PER SE : MS. SAROJ RAJWARE, MEMBER (TECHNICAL)

ORDER/JUDGMENT

1. The present petition is filed under Section 241, 242, 244 & 210 of Companies Act, 2013 by the petitioner alleging oppression & mismanagement against the respondent company.

2. Brief facts of the present petition are as follows:
- i. The Petitioner is a registered Company incorporated on 4th May, 2004 under the Companies Act, 1956 having its registered office at Nithyananda Dhyanapeetam, Nithyanandhapuri, Kallagopahalli, Off Mysore Road, Bidadi, Bangalore –562109. The Petitioner is represented by its authorized signatory Mr. V. Natarajan. The petitioner's main business is of Television/Radio/Relay/other broadcasting and through such other media, relay any programme and related segment. The authorised capital is Rs.2,00,00,000/- (Rupees Two Crores) and paid up capital is Rs.1,21,74,540/- (Rupees One Crore Twenty One Lakh Seventy Four Thousand and Five hundred forty only).
 - ii. Respondent company M/s Varun Media Pvt. Ltd., having its registered office at C-27 Sector-7, Noida U.P., was incorporated on 4th April, 1994.
 - iii. The petitioner and the respondent were known to each other for a long time. Noticing the success of the petitioner, Respondent no.2 to 6 approached the petitioner to invest in respondent no.1 company to add value to the business of respondent company. Therefore, believing the Respondent No.2 to 6, the petitioner agreed to invest in the Respondent No.1 Company by entering into a Promoters Inter-se Memorandum of Understanding with the Respondent No. 1 Company on 18.02.2012, which is marked as **Annexure-A1** to this petition.
 - iv. According to Clause 2 of the MoU, it was agreed that out of existing two (02) channel licenses, one will be used by the Directors of Respondent No.1 Company for running the spiritual channel (Ishwar) and the other license will be vested unconditionally for the content to be provided by the Petitioner having perpetual and irrevocable rights, responsibility, powers

and privileges to provide the contents and bear all expenditure/profit/losses for the said license in any manner whatsoever. It was further agreed that the financial / accounts of both these operations will be independent and shall be maintained separately.

- v. It was also agreed between the Petitioner and the Respondents that together they will apply for another new satellite channel license within three (03) months of entering into the MoU and that the said license will be used for launching a new channel to which, Petitioner will, perpetually and unconditionally, provide the content.
- vi. As per the MoU, each party shall have equal shareholding in the Respondent No.1 Company either through themselves or through their authorized representatives and are entitled to appoint equal number of directors on the board of Respondent No.1 Company. It was further agreed that no decision pertaining to increase in the paid up share capital shall be taken unless it is mutually agreed between the parties.
- vii. On 18.02.2012 itself the Petitioner and Respondent No.1 also executed a content license agreement wherein Respondent No.1 Company had agreed to appoint Petitioner as its exclusive content provider for a period of 10 years.
- viii. The Petitioner agreed to invest in the Respondent No.1 Company and vide letter from respondent company dated 31.03.2015 paid a sum of Rs.2.22 crores as consideration for allotment of share equity. 6,08,728 equity shares of Rs.10 each were transferred/allotted in M/s Varun Media Pvt. Ltd. making the total shareholding to 50% Share transfer process and shareholding of M/s Nithyananda Broadcasting Pvt. Ltd. was stated to be

50% as on 31.03.2015. Further, share transfer forms were executed and share certificate provided to petitioner.

- ix.** The Petitioner has received an undated letter of offer on 06.06.2017 from the Respondent No. 1 Company to raise an amount of Rs.1 crore by way of issuance of 7,82,526 shares at Rs.13 each in order to meet the requirements of the Respondent No.1 Company for the purpose of expansion of existing business due to the decrease in the profits.
- x.** At this juncture it is noteworthy to mention that neither any nominees of the Petitioner are on the Board of Respondent No.1 Company nor any intimation or consent has been sought from Petitioner for proceeding with the increase in the paid up capital of the Respondent No.1 Company by way of rights issue, despite the terms of the MoU mandatorily provide for the same.
- xi.** The Respondents have also maliciously demanded a sum of Rs.172.14 lakhs towards fee for the TV Channel license held by the Petitioner vide email dated 13.04.2016, which they have claimed has been paid by them to the Ministry of Information & Broadcasting vide email communications dated 13.04.2016. Despite requests from the Petitioner to provide appropriate receipts reflecting the payments made by the Respondents, the Respondents have failed to provide any document in this connection.
- xii.** Thereafter, the Respondent No.1 Company arbitrarily issued an undated letter of offer, which was received by the Petitioner on 06.06.2017, relating to the increase in the existing paid up capital shares without even seeking consent from the Petitioners, which itself is in a sheer violation of the MoU executed between the parties.

- xiii.** It is also pertinent to note that the Respondents have utilized/ siphoned off the funds of the Respondent No.1 Company by executing various related party transactions between the Respondent No.1 Company and the Respondent No. 6.
- xiv.** The Petitioner has now learnt through reliable source that the Directors of Respondent No. 1 Company, being the promoters of Sadhna Group, have issued a broadcasting licence to a third party for valuable consideration, despite having entered into an exclusive agreement with the Petitioner and earning substantial revenue. In addition to non-disclosure of such facts to the Petitioner, the Respondent No. 1 Company and its directors are seeking to extort money from the Petitioner through malicious and illegal means.
- 3.** Petitioner served the copy of the petition and court notice by speed post and electronic medium which was duly delivered. Further, respondents were given multiple opportunities to appear in the case, but they did not turn up despite availing sufficient opportunities given and notices issued. Therefore, the Court was constrained to proceed exparte in the matter vide order dated 06.10.2017.
- 3.1.** Petition was filed after receipt of undated letter from respondent company on 06.06.2017 for augmenting equity and was heard on 06.07.2017 and an interim direction was issued by Court to the respondents to maintain status quo as of today, as far as the share holding pattern and voting Rights of the petitioner in respondent company is concerned.
- 3.2.** An undated letter of offer received by the petitioner from the respondents, whereby the respondents proposed to increase its paid up share capital of the company as they were in need and crunch of funds. They had granted 30 days' time to the petitioner or otherwise, the respondents were to proceed further to

increase its paid up share capital by allotting the share to some third party and parties, which triggered this petition.

4. Heard the learned counsel for the petitioner and perused the documents and following issues framed:-

- i. Whether the letter received from the respondent on 06.06.2017 for issuing equity of Rs.1 crore without consent of the petitioner in contravention of MOU amounts to oppression.
- ii. Whether non appointment of Directors despite allotment of 50% shares in terms of MOU and full payment received by the respondents towards share capital amounts to mismanagement.
- iii. Whether violation of MOU viz entering into an agreement with third party for issuing Broadcasting license to third party despite exclusive agreement with the petitioner, demand of fees of Rs.1.72 Crores raised by the respondent and alleged utilization/siphoning off funds of respondent company by executing various party transactions between the Respondent no.1 company and Respondent no.6, amounts to oppression & mismanagement.

5. **ISSUE NO.1 & 2:**

5.1. On perusal of the MOU, Clause 1.6 entered between the petitioner and the respondent company dated 18.02.2012, it is clear that the shareholding of two companies was to be 50% each. The Authorized Share Capital of the respondent company was Rs.1 Crore divided into 10 lakhs equity shares of Rs.10 each and paid up capital of Rs.81 lakhs as on that date. Parties agreed to issue shares to the petitioner company, if required, by increasing the authorized and paid up capital and transfer the shares to the petitioner company, so that the final shareholding pattern remains 50% each.

- 5.2.** Further, in terms of clause 3.1 of the MOU, the Board of Directors of the respondent company was to comprise of equal number of Nominee Directors from the side of the petitioner company and the respondent company.
- 5.3.** From the letter of respondent company dated 31.03.2015 at 49-A, it is clear that the respondent company agreed to transfer/allot 6,08,728 equity shares of Rs.10 each in respondent company for a total amount of Rs.2.22 crores and completed the share transfer process by issuing share certificates and the shareholding of the petitioner company was 50% as on 31.03.2015. Therefore, it is clear that the petitioner company was 50% shareholder in the respondent company as on 31.03.2015.
- 5.4.** In terms of para 6.10 of MOU, any further increase in the issued and paid up share capital of the company shall be mutually agreed upon in writing and any transfer of shares by a party shall be as per the procedure prescribed in the Articles of Association of the Company.
- 5.5.** The undated letter received from the respondent company on 06.06.2017 for increasing the existing paid up share capital is placed at Annexure A-4. It is stated that the respondents are in need and crunch of fund in order to meet the requirement for the purpose of expansion of existing business. Further, it is also stated that the company is in requirement of Rs.1 Crore, so Board of Directors have decided to increase its existing paid up capital by issue of 7,82,546 shares @ of Rs.13 each. Petitioner had the option to either confirm or renounce their right in favour of some other person within 30 days from the date of receiving this letter. Further, if no communication is received, it will be presumed that you have declined letter of offer and Board of Directors may dispose of such offer in such manner as it may consider advantageous to the company.

- 5.6. The letter is not only without seeking the consent of the petitioner company but is against Section 94 of Companies Act, 1956 (Section 61(a) of the Companies Act, 2013), Section 61(a) is given as under:

Section 61(a): Power of limited company to alter its share capital-(1)
A limited company having a share capital may, if so authorized by its articles, alter its memorandum in its general meeting to-

(a) increase its authorized share capital by such amount as it thinks expedient.

- 5.7. Therefore, as per the above provision, Annual General Meeting should have been held with a due notice to the petitioner before taking a decision to augment equity. There is no evidence of notice of AGM served on petitioner. Since, the petitioner does not have any nominee on the Board of respondent company, Board's approval as alleged in letter dated 06.06.2017 was without his knowledge and consent. If the paid up share capital is increased as per the letter of 06.06.2017, shareholding of petitioner would stand diluted to 30%. There is nothing on record to show that the letter dated 06.06.2017 was approved in AGM. Being a 50% shareholder in the company, petitioner's consent/approval should have been taken. Since the petitioner was 50% shareholder as on 31.03.2015 as admitted by the respondent vide their letter dated 31.03.2015 (49-A), increasing the share capital without their consent and dilution of their shareholding amounts to oppression.
- 5.8. On going through the returns of 2015-16 filed by the respondent company with MCA, it is noticed that the total number of Directors is only three, namely Rakesh Kumar, Pooja Aggarwal and Saurav Gupta, authorized equity of the company is shown as Rs.2 crores and paid up capital is Rs.1,21,74,540/-. Thus, from the returns, it is clear that no Director was appointed from the petitioner company. Admittedly, shareholding of respondent was made to 50% of total shareholding for a total amount of

Rs.2.22 Crore as on 31.03.2015 and share transfer forms executed and share certificates issued, petitioner was entitled to appoint equivalent number of Directors after March, 2015. The act of not appointing petitioner's nominees as Directors on the Board of Company when they are 50% shareholder and denying petitioner control, management and running the affairs of the Company amounts to oppression and mismanagement.

5.9. Therefore, the issue no.1 & 2 are decided in favour of the petitioner.

6. ISSUE NO.3:

6.1. From the documents, it is noticed that after signing the MOU on 18.02.2012, both the companies also signed a content license agreement on the same date. In terms of this agreement (clause 1), parties had agreed to the appointment as exclusive content provider for a period of 10 years to provide 24/7 content. The petitioners have alleged that the Directors of respondent company, being the promoters of Sadhna Group, have issued a broadcasting license to a third party for value consideration, despite having entered into an exclusive agreement with the petitioner and earning substantial revenue. However, no document to support breach of exclusive agreement has been annexed to support this allegation.

6.2. Further, a general allegation of utilization/siphoning off funds of petitioner company without bringing out any specific instances have been made. Issue of demand for payment of fees and other allegations of breach of agreement of exclusive content provider, are breach of MOU and not oppression or mismanagement and have to be raised by the petitioner in an appropriate forum.

6.3. Therefore, issue is decided against the petitioner.

7. In view of above deliberations, it is held that the intention of issuing additional equity vide the undated letter of petitioner received on 06.06.2017 without seeking the consent of petitioner who is 50% shareholder in the company is not only violating the terms of MOU but is also against Section 94 of the Companies Act, 1956 (Section 61(a) of Companies Act, 2013). Nothing is on record to show that a notice of AGM was served on the petitioner. Increasing the share capital without the consent of the petitioner and consequent dilution of the shareholding of the petitioner, amounts to oppression and mismanagement.

ORDER

Present Petition is partly allowed. Admittedly, the petitioner was 50% shareholder as on 31.03.2015, intention of issuing additional equity vide the undated letter of petitioner received on 06.06.2017 without seeking the consent of petitioner is violation of Section 94 of the Companies Act, 1956 (Section 61(a) of Companies Act, 2013) and oppressive in nature. Further the act of not appointing petitioner's nominees as Directors on the Board of Company when they are 50% shareholder is not conducive to a good management.

In the light of above discussion this Tribunal hereby direct:

- I. the respondents are restrained from proceeding with the rights issue and increasing paid up capital. Also the Board resolution/AGM approving the rights issue and the letter of offer is treated as void and illegal.
- II. Further, respondents are directed to appoint the nominees of the petitioner on the Board of the respondent company within one month from the date of the order.

Company Petition No. **81/ALD/2017** disposed of accordingly. No order as to cost.

Dated: 30.08.2018

(SAROJ RAJWARE)
MEMBER (TECHNICAL)

(V.P SINGH)
MEMBER (JUDICIAL)

Typed by:
Kavya Prakash Srivastava
(Stenographer)