IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
AT HYDERABAD

CPNO. 53/HDB/2008

In the matter of:

1. Mr. S. Y. Sri Kumar,
   Director, Vision Broad Band Services Pvt. ltd
   S/o Mr. Venkateshwara Rao,
   R/o 171/3RT, Vijaya Nagar Colony,
   Hyderabad, 500040

....Petitioner

राष्ट्रीय कम्पनी विधि अधिकरण ★ National Company Law Tribunal ★ हैदराबाद न्यायपीठ Hyderabad Bench

Versus

1. Vision Broad Band Services Pvt.Ltd
   Floor, Flat No 103, Sirimalli Towers,
   Panjagutta, Hyderabad - 500082,

2. Mr. Mendu Sai Eswara Swamy,
   S/o Mr. M. R. Swamy,
   R/o Flat # A-204,
   Venkata Ramana Apartments,
   A C Guards, Hyderabad

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3. Mr. Kancherala Siva Rama Krishna
   S/o Mr. Ram Mohan Rao,
   R/o 6-3-855/10/A, Flat.no.3B
   Sampathji Apartments, Ameerpet,
   Hyderabad 500016

4. V.M.G.K. Murty & Co.,
   1-2-593/26, Gaganmahal colony, Domalguda
   Hyderabad 500029

....Respondents

Order Delivered on: 14 .07.2017

CORAM:

The Hon'ble Mr. Rajeswara Rao Vittanla, Member (Judicial)
The Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Counsels for the Applicants:	**Mr. V. Harish Kumar** **Ms. Shiela**
Counsels for Respondents :	**Mr. V.S. Raju** **Mr. B. P. Mohan**

Per: Ravikumar Duraisamy, Member (Technical)

Order

1. The Application was initially filed before the Hon'ble Company Law Board (CLB), Chennai Bench, Chennai. Since the National Company Law Tribunal (NCLT), Hyderabad Bench, has been constituted for the cases pertaining to the states of Andhra Pradesh and Telangana the case is transferred to the Hyderabad Bench of NCLT, hence we have taken the case on records of NCLT, Hyderabad Bench and deciding the case.

2. The petitioner has filed this Company petition under Sections 397, 398, 402, 404 and 111 and other applicable Provisions of the Companies Act, 1956 for oppression and mismanagement in the affairs of the company inter alia seeking the following prayers:

a. Cancel the allotments made on 30.06.2007 and order for rectifying the register of members accordingly.

b. Direct no further issue of shares be made without offering shares to the Petitioner pro-rata to his original shareholding.

c. Direct that the Petitioner continues to be a Director of Company.

d. Direct the Respondent Nos. 2 and 3 not to approach the customers and bankers of the company without the consent or participation of the Petitioner.

e. Direct the Respondents Nos 1 and 2 not to take any arbitrary decisions to the exclusion of the Petitioner and involve the Petitioner in the running of the Company.

f. Direct that an investigation be carried out into the affairs of the Company and to surcharge Respondents 2 and 3 herein for the amounts diverted by them from the Company.

g. Direct that any legal expenses incurred by the respondents for the purpose of defending the Company petition shall be met out of their own funds and not to be charged to the Company.

Brief Facts of the case:

3. That Vision Broadband Services Private Limited (herein after referred to as "Company") who is Respondent No.1 is a Private Limited Company incorporated under the Companies Act, 1956 at Hyderabad in the State of Andhra Pradesh, vide certificate of incorporation dated 17.05.2005 (Seventeenth Day of May, Two thousand and five) bearing No.01-46265 issued by the Assistant Registrar of Companies, Hyderabad, Andhra Pradesh.

4. That the Petitioner filed this petition, in his capacity as a shareholder and Director of the R1 Company. The Petitioner holds 33.34% of the paid up capital of the Company while the Respondent No.1 and 2 hold 33% each. All the above three are also First Directors of the Company. Main objects of the company are to provide infrastructure for broad band services especially Dark fibre, leased lines etc. The Petitioner, in his capacity as a promoter and director of the company, had put in every effort to achieve the objects of the company, by using his good offices and contacts procuring various contracts/ agreements for the Company.

5. It is submitted that, it was agreed to by the Petitioner and Respondents herein that the Petitioner would look after the marketing and the respondents would take care of the Administration of the Company which included cheque signing powers, bank operations, maintenance of accounts etc. It is submitted that taking this as an advantage the 2nd and 3rd Respondents had started acting against the interest of Company and against the Petitioner for their own and personal benefits.

6. It is submitted that the Petitioner came to know about this when he was asked to come to the bank by the bank manager to sign papers relating to a vehicle loan availed by the Company for an amount of Rs. 2,60,000/- (Rupees Two Lakh Sixty Thousand only). The 2nd and 3rd Respondents had applied for this loan on behalf of the company without the knowledge of the Petitioner and misled the bank into believing that the loan being sought

was approved in a duly convened board meeting, which was not true and the same has been informed to the bank by the Petitioner.

7. That by actions of Respondent 2nd and 3rd regarding fabricating a Board resolution and in attempting to avail a loan, the petitioner made discrete enquires on the activities of the 2nd and 3rd Respondent in the Company during which he found that the Petitioner's shareholding was reduced from 33.34% to 15% in a bid to reduce the shareholding of the Petitioner to an insignificant minority. That the authorized share capital of the company was increased, without any information or intimation to the Petitioner. It's further submitted that neither any Board Meeting nor any General meeting has been convened by the R1 Company for increasing its authorised capital, neither any notice of any such alleged Meeting was ever given to the Petitioner.

8. That as part of the enquires mentioned earlier by mode of RTI (Right to Information) the Petitioner made a request to the bank to provide Certified copies of all documents submitted by company while applying for the loan of Rs. 2, 00, 00,000/- (Rupees Two Crores only) and any other such documents for any other loan that may have been submitted by the R1 Company to the bank. It may be noted that from the various documents executed with the bank that the respondents had exclusively handled the loan application made to the bank. The Petitioner had only signed the declaration required to be given by him as a Director of the Company and the personal guarantee given by him. While scrutinizing the documents,

Petitioner was shocked to know that loan application to Bank, contained several false statements.

9. That under the head share application money shown in the audited Balance sheet for the year ended 31.03.2006 a sum of Rs. 28, 39,000/- (Rupees Twenty Eight Lakh Thirty Nine Thousand only) is disclosed while the head share application money in the audited Balance sheet submitted to the bank is shown as Rs. 43, 69,869/- (Rupees forty three lakhs sixty nine thousand eight hundred and sixty nine only). Thus it clearly proves that Respondents had manipulated the financial statements of the Company and the Auditor had connived and abetted in the manipulation of accounts.

10. That in the same application the shareholding of the Petitioner was shown as 15% instead of 33.34% while the Respondent No.2's shareholding percentage was falsely shown as 34% instead of 33.33% and the Respondent No.3's percentage was again falsely shown as 51% instead of 33.33% though there were no allotment or issue of shares in the Company.

11. That it was learnt by the Petitioner that the Vigilance and Enforcement Department (hereinafter referred to as ("ED"), Government of Andhra Pradesh had conducted a raid on 20.02.2008 suspecting heavy evasion of commercial taxes and seized several documents of the Company from its registered office. Therefore, Petitioner and Respondents 2nd and 3rd were asked to appear for answering the queries of the ED. During this appearance before ED, the Petitioner found that the 2nd and 3rd Respondents were maintaining several different sets of accounts for the accounting years

2005-2006, 2006-2007, and 2007-2008 and were indulging in grave irregularities including large scale misappropriation of funds, falsification of accounts, cheating and fraud on not only the Company and the various government departments but also on the Petitioner.

12. That the Respondents while maintaining different set of accounts have derived two different balance sheets out of these sets of accounts for the financial year 2005- 2006. It is further submitted the Statutory Auditor of the company had certified and signed these different Balance Sheets and therefore guilty of abetting the fraudulent acts of falsification of accounts. Thus, being impleaded as a party in the present proceedings since he has certified two different Audited Balance sheets for the financial year 2005-2006.

13. That the Respondents, had on 30. 06. 2007, conducted a board meeting of the Company without giving notice to the Petitioner which is mandatory as per the provisions of the Act, and deliberately allotted a further 2,23,900 Equity Shares of Rs. 10/- each to their relatives and friends and thus reduced the shareholding percentage of the Petitioner to a minority i.e. from 33.34% to 1.43%.

14. That the respondents, have siphoned the funds of the Company in various ways in contravention of Section 314 of the Companies Act, 1956. It is submitted that the company had appointed one Mrs. K. Pushpalatha as General Manager of the company in the year 2005 on salary of Rs. 50, 000/- (Rupees Fifty thousand Only) per month. Mrs.K. Pushpalatha is the wife of the respondent No.2. and according to the company's principles,

appointing any family member is inappropriate unless decided in Board meeting.

15. That concluding to it, the Petitioner declares that he had not previously filed any Application, Writ Petition or Suit regarding the matter, which this Petition has been filed in any court of law or any other authority except a Criminal case on the file of Criminal Court, Nampally, against the Respondents.

16. That in reply to allegations made by the Petitioner, the Respondent No. 1st, 2nd and 3rd submitted their counter, and refused all the allegations and fraudulent issues raised against them. It is further submitted that the Petitioner has not come with clean hands. The Petitioner who is a party to the Company's decisions cannot allege that they are oppressive in nature. Further the Petitioner herein has filed the present petition to pressurize the other Directors and shareholders by abusing the process of law.

17. It is submitted that the Petitioner herein has filed a criminal complaint in regard to the allotment of shares and his cessation as a Director of the R1 Company and mismanagement and misappropriation in the affairs of the company by filing under various provisions of Indian Penal Code and Criminal Procedure Code. Thus, the Petitioner has taken out parallel proceedings before the said Courts which is pending and hence the matter is subjudice.

18. That Respondent 4 also denies the allegations made by Petitioner, and it is submitted on his behalf that Petitioner had not sought any relief

either in the form of interim or final order against this Respondent which he ought to have claimed a relief in the Petition. But the fact remains that except making bald allegations nothing candid is brought against this Respondent in the entire Petition. Thus, this Respondent requested this Hon'ble Tribunal to strike its name as one of the Respondent party in this case.

19. This Tribunal after hearing both the parties on 23.01.2017, after considering the facts and circumstances directed that name of the Respondent No.4 in CP No. 53/HDB/2008 to be struck down. Hence, the Respondent No.4 is no more a party to this case.

20. After the submission of both parties and after hearing them on various occasions, finally both parties agreed for valuation of shares of R1 Company.

21. Accordingly the Petitioner suggested an independent Chartered Accountant and Respondents suggested another independent Chartered Accountant and both the memo's were received by NCLT on 28.02.2017 for valuing the shares of R1 Company.

22. We have perused both the Memo's filed by the parties and pending disposal of CP.No. 53/HDB/2008, we pass the following orders:

a. We hearby appoint Nataraja Iyer & Co. (Chartered Accountants) to carry out audit of the books of accounts from the last financial year in which books of accounts of R1 company were audited, till the current financial year and also to arrive at fair value price per share of Vision Broadband Services Private Limited.

b. We also direct the CA firm to positively complete this assignment before 30.09.2017 and submit the report to NCLT.

c. Considering the nature of assignment, the CA firm may fix the fee in consultation with both the parties and Petitioner will bear 1/3 (one- third) of the CA's fee for this assignment and Respondents will bear balance fee.

23. Post the case on 10.10.2017.

Ravikumar Duraisamy
Member (Technical)

Rajeswara Rao Vittanala,
Member (Judicial)