

IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

T.P.No.291/2016

Under Section 397 & 398 of Companies Act, 1956

Order delivered on 24<sup>th</sup> January 2018

Coram: 1. Hon'ble Shri.Ratakonda Murali, Member (Judicial)  
2. Hon'ble Shri.Ashok Kumar Mishra, Member (Technical)

IN THE MATTER OF M/S LAXMI RAMA MEDIA & CABLE NETWORK PRIVATE  
LIMITED

Mr. Gnyaneswar Swamy  
S/o Annadana Swamy  
238, Shanti Nagar, Marali – 583 268  
Gangavathi, Koppal-583 268  
Karnataka

.. Petitioner

-Vs\_

1. M/s Laxmirama Media & Cable Network Private Limited  
Registered Office at: Ward No.12, 4-2-57,  
Dalali Bazar, Karatagi -583229  
Karnataka

2. Mr. Bichal Kashiviswanath  
s/o Narasayya  
280, ELA, Ward 6, Kote, Karatagi  
Koppal – 583 229, Karnataka

3. Mr. Maheboob  
S/o Mohammed Ali  
256/C, Mandalabhatti, Karatagi-Bla-8  
Karatagi, Koppal – 583 229  
Karnataka

4. Ravi S.Tangadagi  
S/o S.S.Tangadagi  
No.92/B, Karatagi, Block No.7  
Koppal – 583 229, Karnataka

.. Respondents

For the Petitioner (s): Mr.Hasan S.Hiremani, Advocate

For the Respondent(s): Mr. Simhadutta, Advocate for R-1 to R-4

Per: Hon'ble Shri.Ashok Kumar Mishra, Member (Technical)

Heard on: 30.01.2017, 01.03.2017, 25.04.2017, 30.06.2017, 02.08.2017, 23.08.2017, 21.09.2017, 23.10.2017, 17.11.2017, 03.01.2018, 15.01.2018

**ORDER**

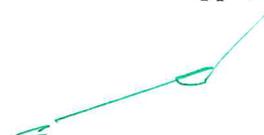
This petition was originally filed before the Company Law Board(CLB), Southern Region, Chennai under section 397/398, 402, 403, 406, 235 & 237 of the Companies Act, 1956 by the petitioners against the Respondents which was not numbered by CLB. Consequent upon the establishment of National Company Law Tribunal Bench at Bengaluru, the said case was transferred and numbered by this Tribunal on abolition of Company Law Board, Southern Region, Chennai Bench and was numbered as T.P No.291/2016.

The averments made in the petition are as follows:

The petitioner is a shareholder in the company holding in excess of 1/10<sup>th</sup> of the total membership of the 1<sup>st</sup> Respondent Company. The Petitioner has filed this petition alleging certain acts of oppression and mismanagement against Respondents Nos.2 to 4. The 1st respondent is the Company.

It is the case of the petitioner that Respondents Nos.2 to 4 have taken undue advantage by keeping the Petitioner away from the business of the Respondent No.1 Company. The Petitioner was not allowed to participate in the affairs of the Respondent No.1 Company and therefore he got a legal notice issued on 20.10.2015 which is produced as Document No.4, which the Respondents have failed to reply to.

According to the Petitioner, the 1st respondent Company was incorporated on 6.2.2014 as a Private Limited Company, the promoters of the Company were a group of young entrepreneurs about 17 people including the petitioner and the 2nd respondent, who pooled in their personal resources to set-up necessary infrastructure to run a cable TV operating business. These 17 persons are Somashekar S/o Shivappa, Raghavendra S/o



Vitobappa, Sridhar S/o Veerana, Ramanna S/o Devappa, Raju S/o Chiranjeevi, Srinivas S/o N.Sathyanaarayana, Lohit S/o Sharkrappa, Paranjyothi S/o Muslayya, Kumar gouda S/o DhamojiRao, N.Srinivas S/o Sathyappa, Yugendar, Srinivas S/o Venkayyashetty, Narsimalu (dead), Veerbhadrappakodli and Channappatogether started a local cablechannel by name VCN Channel. This involves obtaining a multi-state operating license apart from Digital signal network set-up, acquiring signals from a digital net-work cable TV operator at Bangalore and setting-up the necessary network for transmitting it from Bangalore to Gangavathi and further transmitting it through a single channel to all places in and around Gangavathi Taluk.

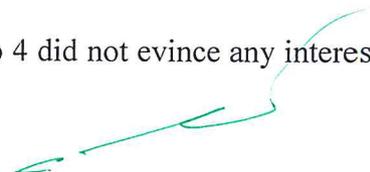
All the said 16 persons took enormous efforts as Promoters to set-up the 1st respondent Company. However, the petitioner herein and the 2nd respondent alone were nominated as subscribers to the MoA and some of the remaining persons were promised share allotment subsequently. While all these promoters pooled in their respective personal resources for this purpose, the respondents 2 and 4 who are the local M.L.A and persons of influence in and around Gangavathi Taluk promised the petitioner and other promoters that their presence in the company would not only add value to the company, but also help in further infrastructure building and expansion. Believing the said representation of the respondents 2 and 4, the petitioner, other promoters and the 3rd respondent agreed to the respondents 2 and 4 to be inducted into the 1st respondent company as Directors. In fact, the clout of the 4th Respondent is such that he had assumed himself to be the Managing Director and as such, began exercising the rights of the Managing Director without discharging the duties of one. It is pertinent to state that the intention of the respondents 2-4, the 16 persons who are the promoters and the petitioner was always that the company should be jointly run by all the persons more in the nature of a partnership firm i.e. administration and management being jointly conducted.



The 1st Respondent Company is a business which is location specific. The business of the 1st Respondent Company depends on license and interaction directly with customers as well as through smaller cable TV operators and as such, principally money collection is in cash. The cash collection for a day itself may be a few lakhs. Therefore, systematic and proper banking of the cash-in-trade is a must. The 1st Respondent Company had a flourishing business ever since incorporation and its subscribers are more than 7000 in number. The business of the 1st Respondent Company also includes sale of set-top boxes for a commission. It appears that the 1st respondent company has been only issuing a kutchra bill for this purpose.

From the inception, the petitioner had been kept out of the core management of the company. While the petitioner was confined to handling the technical and marketing aspects for building a wider subscriber base, the petitioner was never given any access to the books of the Company including the accounts. Therefore, the petitioner raised a demand for issuance of share certificate. For reasons unknown, this request was never acceded to. On the contrary, the 3rd respondent forgetting his commitment and responsibilities to the promoters also began to handle the accounts of the company in a more discrete manner. Since the entire business of the 1st respondent company is cash based, non-maintenance of proper accounts and/or banking of daily cash is also against the interest of the company. Therefore, the petitioner called upon the respondents to furnish particulars of daily cash collection, render accounts for the Income and Expenditure of the Company, etc. However, the respondents refused to provide any particulars of the working or accounts of the 1st respondent Company.

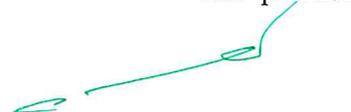
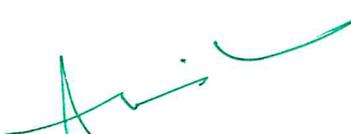
After much persuasion, the respondents 2 to 4 acceded to all the requests orally however kept dillydallying on some pretext or the other and till date, the demand/queries of the petitioner remain unanswered. Since the respondents 2 to 4 did not evince any interest in



addressing the concerns of the Petitioner, the petitioner herein issued a Legal Notice through his Lawyer to the respondents 2 to 4 pointing out the various irregularities in the management of the affairs of the 1st respondent company and lack of even an audit of the books of the Company. It is also contended that there was lack of transparency in the affairs of the 1st respondent company by respondents 2 to 4 which amounted to oppression vis-à-vis the petitioner, who had been repeatedly seeking the entire statement of accounts, balance sheet, stock book and audited report and other statutory books of the company. The respondents received the said legal notice dated 20.02.2015. The same is annexed to this petition.

The respondents did not reply to the said notice but merely handed over a hand written statement of several unconnected and undated amounts with an incoherent narration under the heading "VCN Company". Unable to fathom such entries, the petitioner approached the respondents 2 to 4 but was simply handed over a bank statement dated 27.11.2015 from the bank account of the 1st respondent company maintained with Canara Bank, Karatagi Branch for the period 01.01.2013 to 05.11.2015. On seeing the statement, the petitioner was completely taken aback and shocked that despite all his efforts to expand the business and bringing in several customers for the 1st respondent company, the bank balance was very poor and remittances were meagre. In other words, the respondents 2 to 4 were not remitting any amount earned by the 1st respondent company into the accounts of the 1st respondent Company but were appropriating the same to themselves and denying the petitioner his income.

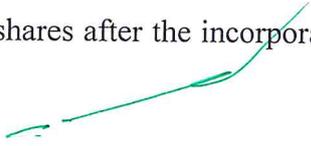
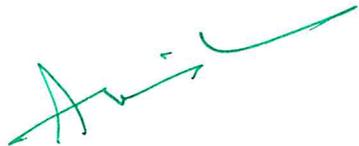
The petitioner as a Director and share-holder has not been paid a single rupee as income from the date of incorporation of the Company. The respondents 2 to 4 are denying the petitioner a right in management of the affairs of the 1st respondent Company, not conducting board meeting(s), have zero transparency in profit sharing, do not maintain a single register mandated under the Act and / or even books of accounts. The petitioner



submits that the 1st respondent has obtained the license for digital Signal Network in his own name from and out of the capital of the company and now the respondents 2 to 4 are attempting to divert the entire business of the 1st respondent company and earn profits therefrom in a clandestine manner. For this reason, the petitioner has been kept completely in the dark about the affairs of the 1st respondent company although the petitioner has contributed to the paid-up capital of the 1st respondent company.

It further appears that the respondents 2 to 4 have gone to the extent of increasing the Company's authorised capital unilaterally so as to enable future allotment of shares in their favour. It is for this purpose that no meetings are called for by the 1st respondent Company in terms of the Companies Act, 1956. In fact, the respondents are illegally holding board meetings, general meetings without serving statutory notice upon the petitioner as required by law and are taking various decisions detrimental to the interest of the petitioner and the 1st respondent Company. The petitioner at present is not aware of the exact extent to which the respondents 2 to 4 have manipulated and fabricated the records of the 1st respondent company to support their misdeeds. However, the above facts clearly show that the respondent 2 to 4 are manipulating the accounts and eroding the capital of the 1st respondent company to the detriment of the petitioner and the 1st respondent Company. Since the petitioner does not have exact details of the extent of the manipulation and illegalities committed by the respondents, the petitioner retains the right to vary, alter or amend the petition if and when necessary on furnishing of hidden details by the respondents.

The Respondents deny the averments made in paragraph 1 of the petition and submit that, the petitioner's averment that the Respondents had agreed to allot shares of the Respondent-company to 16 members who are represented by the petitioner is false and baseless and the petitioner is put to strict proof of the same. The respondents also submitted that, the petitioner is falsely alleging the matter of allotment of shares after the incorporation



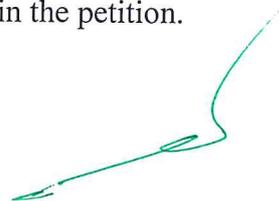
and no such assurance was given by the respondents for allotment of equity shares to the group of 16 members of the petitioner as alleged.

Denying the allegations made in paragraph 2 of the petition, the respondents submitted that the 17 members who were involved and had pooled their personal resources to set up necessary infrastructure to run a cable TV operating business is false and baseless and submitted that apart from the existing promoters, respondents and petitioner, no other persons were involved in setting up of the company and that no other personal resources were used or pooled to start the cable TV operating business. The same has been named with an intention to gain undue advantage over the respondents and to seek benefits which the petitioner is not entitled for. It is further argued that there is no Managing Director or Executive Director appointed by the Company till date to run the business.

The respondents also denied that there are no such 7000 subscribers as alleged and the petitioner has made up the fact when there is no business going on in the name of the respondent-company and denied issue of kutch bills as claimed by the petitioner.

The respondents further contended that they are ready and willing to issue the share certificate of the Respondent Company to the petitioner upon receipt of the subscription money as required and agreed upon by the petitioner at the time of incorporation and submitted that it has not been done as the petitioner has not remitted the amount towards subscription of share capital .

The respondents deny that there was an organized meeting held on 13.10.2015 and petitioner raised many issues as stated in the petition are not true and there were no such issues raised by the petitioner at any point of time till date except in the petition.



We have heard the learned counsel for the petitioner and the respondents and perused the written submissions of both the parties. On careful consideration of the materials available on record, the following points arise for consideration:

- (i) The allegation of the petitioner is that the respondents have collected the money in cash and for a day itself there might be a few lakhs and the subscribers of the company are more than 7000 in number. But not produced a single paper such as kaccha receipt for having collected the cash by the respondents from the subscribers. Further, in so far as sale of set top box is concerned, the petitioner has not produced any receipt showing the actual purchase price and selling price on the boxes on commission basis.
- (ii) Though the copy of the legal notice dated 20.10.2015 issued to the respondents is produced along with the petition requesting to furnish the Statement of Accounts, Profit and Loss Accounts, Balance Sheets, Audit Reports etc., the reply offered by the respondents to the said notice is not produced. Further, it is also averred that the respondents have handed over a handwritten statement etc. But the petitioner has not produced those statements also, to substantiate his claim.
- (iii) Thereafter the petitioner has produced the copy of the letter wherein showing that he has approached the Registrar of Companies on 19.01.2016 praying to take action against the violators under Section 153 of the Companies Act, but has not mentioned the stage of the petition before the ROC. This document itself speaks that the petitioner has alternative and efficacious remedy to redress the issue. The petitioner has made bald and vague statements in the petition.

We are therefore of the considered view that the petition lacks merits and needs to be dismissed and accordingly petition is dismissed and no order is made as to costs.

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL