

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P.NO. 65/2015

***PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI. ASHOK KUMAR MISHRA, MEMBER TECHNICAL***

**IN THE MATTER OF COMPANIES ACT, 2013 (18 OF 2013)
SECTION 397/398 READ WITH SECTIONS 241& 242**

AND

IN THE MATTER OF M/S KANNADA PRABHA PUBLICATIONS LIMITED

PETITIONERS:

1. ASIANET NEWS NETWORK PRIVATE LIMITED & OTHERS

RESPONDENTS

1. Kannada Prabha Publications Limited & others

PARTIES PRESENT:

1. Ms. Nalina Mayegowda
2. Mr. Bharadwaj.R, PCS an authorised representative
3. B.Vijayaraghuram & Associates
4. Mr. N.Gopalan
5. Mr. M.Sunil Raja
6. Ms. Shristi Widge

ORDER

This Miscellaneous Application/Affidavit is filed on behalf of Petitioner Company under Section 241 and 242 of Companies Act 2013 for grant of Interim Relief to permit the Petitioner company No.1 to infuse a sum of Rs 8.40 crores into 1st Respondent Company.



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The contents of the Affidavit in brief that all the Petitioners filed company petition against certain other Share Holders of 1st Respondent company viz., Kannada Prabha Publications Limited (KPPL) on grounds inter alia that Respondents Share Holders are carrying on acts which are oppressive and prejudicial to the interest of petitioner and 1st Respondent Company and consequently seeking inter alia an injunction against them in any way exercising powers in KPPL in a manner so as to prevent Kannada Prabha Publications Limited from raising funds to meet its requirements.

It is the case of Petitioner Company that non co-operation of Respondents herein to raise money has consistently deprived Kannada Prabha Publications Limited of much needed funds and capital infusion.

One of the relief prayed by the Petitioners is to permit them to induct further funds, into the company as and when required by the Company over and above the approved borrowing limits of the Company and perform such acts as may be required for the same.

It is also averred in the affidavit that Kannada Prabha Publications Limited is running in loss from inception due to various reasons. At present Kannada Prabha Publications Limited had no working capital and Financial Institutions/Banks were not willing to lend money on account of inadequate Assets cover and the inability to service its Debts. Thus Kannada Prabha Publications Limited is running a business on the funds received from the majority share Holders i.e., 1st Petitioner in the form of unsecured loans. There was proposal to raise equity capital of KPPL by Rights issue to the extent of Rs 60 crores, but Resolution could not be passed due to dis-agreement between the Share Holders. Arbitration proceedings were initiated by 2nd Respondent against 1st Petitioner under Share Holders Agreement dated 31/03/2010.

The borrowing limit of KPPL which was at Rs 50 crores was enhanced to Rs 53 crores. After exhausting the borrowing limit once again KPPL required funds to make payment to its Vendors and for its working capital. There was no agreement to further increase borrowing limits of KPPL due to opposition by 2nd Respondent. Thus a critical situation arose in August 2015 and KPPL was constrained to borrow Rs Six crores over and above approved borrowing limits of KPPL from 1st Petitioner by way of inter Corporate deposits in August 2015 and further



a sum of Rs 2.60 Crores as per requirement as set out in the Business Plan of the Petitioner Company for 2014-15.

Thus Kannada Prabha Publications Limited required money for payment to Vendors, payment towards Salaries etc., KPPL in the absence of infusion of funds through equity and further in the absence of any loan forthcoming from Share Holders or Banks/Financial Institution, is unable to continue its operation in efficient manner.

The Board of Directors of Kannada Prabha Publications Limited approved Business Plan for Financial year 2017 which recorded the requirement of Rs 12.9 Crores which was approved with the descent of 2nd Respondent, copy of Board Meeting is enclosed in Annexure-B.

Kannada Prabha Publications Limited also addressed a letter to the Share Holders seeking urgent infusion of Rs. 8.40 crores being the Board approved funding for Q1 FY-2017. A copy of the letter is enclosed as Annexure-D. There were constant demands by Vendors for payment. Thus Kannada Prabha Publications Limited is in dire need for funds. Thus it is prayed to permit petitioner -1 to infuse Rs 8.40 crores immediately into Respondent No.1 Company. If funds are not infused it would seriously affect functioning of KPPL.

Counsel appearing for 1st Respondent Company state that 1st Respondent/KPPL required funds for running the business.

A Memo was filed on behalf of Respondents 2 to 4 contending, they are not filing any counter either to the main petition or to the present Application for Interim relief, as they took a stand that main company petition itself is not maintainable as subject matter is covered under clause 14 of Share Holders Agreement dated 31/03/2010. It is further stated that, Respondents also filed application under section 8 of the Arbitration and Conciliation Act 1996 contending inter alia, that the subject matter of the present company petition is covered by Arbitration clause 14 in the Share Holders Agreement dated 31/03/2010. The same subject matter is also under the consideration of the Arbitration Tribunal and that present petitioners are also parties before the Tribunal. Thus petitioners have no right to invoke jurisdiction of this Tribunal.



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It is stated that the application filed under Arbitration and Conciliation Act 1996 is under consideration of this Tribunal. It is also stated that without prejudice to all the contention raised in the Section 8 application regarding jurisdiction of this Tribunal to decide the dispute in the main CP and further without prejudice to their objections and contentions in the arbitral tribunal regarding infusion of funds the respondents have no objection to the Petitioners for infusing further sum of Rs 8.40 crores into the 1st Respondent Company for running business. It is also stated that, it is at the only sole responsibility of the petitioner to infuse funds and which may not binding on the Respondents 2 to 4. Without prejudice to their contention before this Tribunal and also before Arbitration Tribunal this Memo is filed.

Heard the counsel for petitioners and counsel for Respondents 2 to 4. The main petition is filed seeking certain final reliefs and Petitioners also sought for interim relief in the main petition. One of the interim relief prayed is to permit 1st Petitioner Company to infuse funds in the Kannada Prabha Publications Limited

The 1st Respondent herein in support of inter relief prayed filed this affidavit with a prayer to permit 1st Petitioner to infuse Rs 8.40 crores into KPPL for smooth running of business as per requirement of the approved Business Plan.

It is contended on behalf of the Petitioners that 1st Respondent Company required immediate funds for payment of Salaries to the Employees, for payment to the Vendors and for running business. It is contended no one is coming forward i.e., Banks, Financial Institutions to lend money to 1st Respondent Company. The Petitioners are major Share Holders of 1st Respondents Company. Petitioners request permission of this Tribunal to infuse funds with 1st Respondent Company to the tune of Rs 8.40 Crores by way of unsecured loan for smooth running of business.

The first objections raised by Respondents 2 to 4 that the Company Petition itself is not maintainable and therefore it at the sole responsibility of 1st Petitioner Company to infuse funds. The 2nd objection is that the subject matter of the Company petition is already covered before Arbitration Tribunal, constituted by virtue of Arbitration Clause 14 under Share Holders Agreement dated 31/03/2010 and further the 3rd objection



of Respondent 2 to 4 is that 2nd Respondent also filed separate application before this Tribunal under Sec.8 of Arbitration and Conciliation Act, 1996 to refer main Petition to the Arbitration Tribunal, where already the relief prayed by the 1st Petitioner in the Company petition is under consideration.

During the course of Arguments Counsel for Respondents 2 to 4 reported no objection for 1st petitioner to infuse funds to the tune of Rs 8.40 crores into 1st Respondent Company, but without prejudice to its Rights and contentions in the company petition, in the Arbitral Tribunal and also with reference to application filed under Sec.8 of the Arbitration and Conciliation Act, 1996.

The Respondent 2 to 4 have no objection for the 1st Petitioner to infuse funds in KPPL to the tune of Rs 8.40 crores to meet the expenses for running business activities and also for payment of salaries to the employees and to payment to Vendors.

Therefore, 1st Petitioner Company can be permitted to infuse funds in the 1st Respondent Company towards release of Salaries to the Employees, for payment to the Vendors and for running business, as per approved Business Plan to the tune of Rs 8.40 Crores which is without prejudice to the objection and contention raised by Respondents 2 to 4 regarding maintainability of the main petition as enquiry is pending before Arbitral Tribunal and further without prejudice to their contention in the application filed under Section 8 of Arbitration and Conciliation Act, 1996. The amount to be given by the 1st petitioner to KPPL is an unsecured loan. The amount permitted to be infuse in the 1st Respondent Company by 1st Petitioner is only an unsecured loan. The 1st Respondent is further directed to file statement before this Tribunal, how the amount is expended.



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In the result interim relief is granted permitting 1st Petitioner to infuse funds to the extent of Rs 8.40 crores to the 1st Respondent Company for running the business and amount is treated as unsecured loan and it is granted without prejudice to the Rights & contention of Respondents 2 to 4 before Arbitration Tribunal and without prejudice to the Rights and contentions of the Respondent in the petition filed under section 8 of Arbitration and Conciliation Act, 1996.

9.8.16

RATAKONDA MURALI
MEMBER, JUDICIAL

9/8/2016

ASHOK KUMAR MISHRA
MEMBER, TECHNICAL



DATED THIS THE 9th DAY OF AUGUST, 2016