

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, MUMBAI**

**Company Petition No. 88/186/CLB/MB/2012**

CORAM:

Present: **SHRI M.K. SHRAWAT**  
MEMBER (JUDICIAL)

In the matter of Section 186 of the Companies Act, 1956.

BETWEEN

M/s. Interport Global Logistics Pvt. Ltd.

... Petitioner

Versus

M/s. Netzland Wireless India Pvt. Ltd. & Ors

... Respondents

**ORDER**

Reserved on 3<sup>rd</sup> October, 2016  
Order pronounced on 27<sup>th</sup> October, 2016

This Petition was initiated on 14<sup>th</sup> June, 2012. The Applicant is a private limited company having following shareholding pattern: -

Name of Member	No. of Shares	Percentage
Interport Global Logistics Private Limited (Petitioner)	4,900	49.00
Netzland Limited (Respondent No.2)	5,100	51.00
Total	10,000	100.00

2. The Petitioner had entered into a Joint Venture Agreement with Respondent No. 2 dated 16<sup>th</sup> July, 2007. Pursuant to the said Joint Venture Agreement, the Petitioner along with German Partner i.e. Respondent No.2 incorporated a Private Limited Company under the name and style of Netzland Wireless India Private Limited (Respondent No.1). The said company was stated to be incorporated on 25<sup>th</sup> March, 2008, having its office at Chembur, Mumbai.

3. The Petitioner was holding 49% of issued, subscribed and paid-up share capital of the said company and the balance 51% was held by Respondent No.2.

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4. At the time of incorporation of the company, there were only two Directors i.e. Mr. Sham Bendre, representing the Petitioner and the other Director was Mr. Martin Elcheberger (Respondent No.3) representing Respondent No.2.
5. The allegation is that after the incorporation of the Company, Respondent No.2 and Respondent No.3 had failed to perform their duties as required under the Joint Venture Agreement. As a result, termination notice dated 23<sup>rd</sup> December, 2008 was issued by the Chairman & Managing Director of M/s. Interport Global Logistic Private Limited (Petitioner) to Mr. Martin Elcheberger. The Petitioner has also issued a "buyout notice" to Respondent No.2 dated 26<sup>th</sup> January, 2009. Despite notice of termination of Joint Venture and notice for buyout, there was no response from Respondent No.2 and Respondent No.3. Due to the said reason, there was a complete deadlock in the management of Respondent No.1 company. Respondent No.1 company was also unable to comply with the statutory provisions. Respondent No.1 was not able to convene the Board meeting or Annual General Meeting. The accounts could also not be finalised.
6. In the light of the above factual background, Ld. Advocate Mr. Mehta i/b SD Israni Law Chambers, from the side of the Petitioner, has narrated that notices and requests have not been responded. A letter on 27<sup>th</sup> January, 2012 was written to Mr. Mr. Martin Elcheberger by Chairman of the Petitioner company Mr. Sham Bendre; informing the winding up of Respondent No.1 company. He had pleaded that on account of the non-cooperation, the company had committed certain defaults by not making the statutory compliances. As a result, a prayer has been made that an Order may be passed to call a General Meeting of the shareholders to appoint Mr. Subhash Lakhani as a Director to enable the Board of Directors to complete pending statutory compliances and also to hold an Annual General Meeting for finalisation of accounts to be submitted before the concerned authorities. The Counsel has also placed reliance on a decision of *Pucci Dante v. Rafeeqe Ahmed and Anr.* [1999] 32 CLA 38 (CLB) for the legal proposition that a single member present in the meeting, as per the directions of the Court, can also constitute a quorum under certain peculiar circumstances. He has also demonstrated the proper service of notice for today's date of hearing.
7. An affidavit for service of notice is on record with annexures exhibiting the issue of notice and also service of notice sent through International Speed Post along with a Tracking Report of the delivery of the document. Under the circumstances, when the notice for the date of hearing has duly been communicated and also the past record has demonstrated that the

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Respondents have never attended the proceedings, it is hereby decided to proceed ex-parte *qua* Respondents. Facts of the case have been carefully perused in the light of the compilation filed.

8. The only prayer for adjudication as per the Petition filed is to give direction to appoint Mr. Subhash Lakhani as a Director (substituted name as per C.A. 324/2013) to enable him to convene a meeting so that the legal formalities can be finalised. On the legal issue that whether the NCLT can have jurisdiction to pass such directions, I have perused the provisions of Section 98 of Companies Act, 2013 which states as under:-

***“Power of Tribunal to call meetings of members, etc.***

**98.** (1) *if for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either suo motu or on the application of any director or member of the company who would be entitled to vote at the meeting, -*

- (a) *order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and*
- (b) *give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company:*

***Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.***

(2) *Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called held and conducted.”*

9. The foremost requirement of this Section is to examine whether it was really “impracticable” to call a meeting of the Company? On this issue, I have also perused few case laws and thereupon arrived at a conclusion that the facts of the case have clearly demonstrated that it was impracticable to call a meeting of the company to accomplish statutory requirements. My reason for holding so is *inter alia* based upon certain undisputed facts discussed hereunder.

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10. The compilation consisted the copy of the Joint Venture Agreement through which the company in question came into existence. However, after execution of the Joint Venture, there was no co-operation extended by the Respondent Nos. 2 &3. On account of the said non-cooperation, the Petitioner had left with no option, but to terminate the said Joint Venture. However, in all fairness, the Petitioner had issued a "buyout notice" to the Respondents as per one of the Clauses of the Joint Venture. The Petitioner has also communicated for winding up of the company. All such efforts have gone in vain and remained wasted. As a result, the factual matrix of the case has clearly demonstrated that it was "impracticable" to call a meeting of the company i.e. Respondent No.1. In such circumstances, in my considered opinion, the provisions of Companies Act, 2013 have enshrined certain powers to the Tribunal u/s 98 of the Act. On account of this enactment practicability or impracticability has to be viewed from the point of view of the prudent businessman. The Application moved thus can be held a bona fide approach of the Petitioner which prima facie can be said to be in the larger interest of the Company.

11. Reverting back to the main Section, it is hereby made clear that while exercising jurisdiction of Section 98 of the Act i.e. "Power of Tribunal to call meetings of members", the statute in unambiguous wordings has enacted that Tribunal may order a meeting to be called, held and conducted to put the Company on the rails to attend the normal business, but "other than an Annual General Meeting". (emphasis supplied)

12. It is also worth to mention that the Petition in question is neither for invocation of jurisdiction u/s 96 to be read with Section 97 of the Companies Act, 2013, nor it is pleaded that an Annual General Meeting may be directed to be convened.

13. It is hereby held that in this case it was impracticable to call a meeting of the company. It is found that the Administration and ordinary business of the Company had paralysed. So, it has become impracticable from a reasonable point of view to convene a meeting; thus compelling the Petitioner to invoke the provisions of Section 186 (Old Act). Tribunal is statutorily required to intervene to overcome the deadlock in management so that the statutory compliances can be made. Hence, it is hereby authorised that Mr. Subhash Lakhani shall convene the meeting to execute the general ordinary business of the company. It may not be out of place to mention that the Company Application bearing No.324/2013 instituted on 6<sup>th</sup> December, 2013 has also declared that Mr. Subhahsh Lakhani should be appointed as a Director to enable the Board to complete the pending statutory compliances. *MUS*

14. It is also hereby held that for the purpose of execution of legal formalities, Mr. Subhash Lakhani, as a Director, shall be deemed to constitute a quorum of the meeting. A meeting so held shall, for the purpose of Sub-section 1 of Section 98, be deemed to be duly called, held and conducted by the Company.

15. As a result, it is hereby directed to prepare an agenda of the meeting now authorized and place it before the NCLT on or before 25.11.2016 and after obtaining the approval conduct the meeting within 15 days' time i.e., on or before 13.12.2016

16. The C.P. No.88/2012 is allowed in the terms directed supra. However, no Order as to cost.

Dated: 27.10.2016

sd/-

**Shri M.K. Shrawat**  
Member (Judicial)