

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

C.P No. 10 of 2016

CORAM:

B.S.V. PRAKASH KUMAR  
MEMBER (JUDICIAL)

V. NALLASENAPATHY  
MEMBER (TECHNICAL)

In the matter of Companies Act, 2013 under Sections 213, 241, 242.

AND

Between:

M/s. Ricoh Company Limited

..... Petitioner

Versus

M/s. Ricoh India Limited & Ors.

..... Respondents

**PETITIONER**

M/s. Ricoh Company Limited

**RESPONDENTS**

- |                             |                                       |
|-----------------------------|---------------------------------------|
| 1. M/s. Ricoh India Limited | 6. Regional Director                  |
| 2. Mr. Manoj Kumar          | 7. Secretary                          |
| 3. Mr. Arvind Singhal       | 8. Bombay Stock Exchange              |
| 4. Mr. Anil Saini           | 9. Securities Exchange Board of India |
| 5. Ms. Smriti Pandey        | 10. Registrar of Companies (Mumbai)   |

**Present on behalf of the parties:**

1. Mr. Janak Dwarkadas, Senior Counsel, a/w. Ms. Ritu Bhalla, Mr. Amit Kumar, Mr. Ameya Gokhale, Ms. Meghna Rajadhyaksha, Mr. Yajur Mittal, Mr. Umang singh, Advocates for the Petitioner.
2. Mr. Sharan Jagtiani a/w. Mr. Jimit Shah, Advocates for R-1.
3. Mr. Ajay Khaire, Advocate for R-8.
4. Mr. Roopadaksha Basu, a/w. Mr. Pulkit Sukhramani, Advocates for R-9.

**ORDER**

(Heard on: 22.08.2016)

(Pronounced on 24.08.2016)

The Petitioner, in compliance of orders dated 12.08.2016, filed various documents reflecting falsification of the accounts of R1 causing loss of Rs. 1123



Crores. On perusal of those documents, this Bench has noticed that Auditors audited the Company and observed that the accounts of the Company have been defalcated causing erosion of net worth of R1 Company.

This Bench issued notices to RDO and RoC Mumbai, SEBI and BSE to find out as to whether they have any objection to pass orders in this case, over which, as this Bench earlier said in the order dated 12.8.2016, BSE said it has no objection for cancellation of the petitioner's shares and recapitalization and, as to SEBI, it neither has raised objection nor given no-objection for recapitalization, as to Ministry of Corporate Affairs, no representation has come, nor any affidavit is filed, so in effect, no refusal has come from any authority that R1 should not be recapitalized. But, since these authorities have been looking in to this issue, it can't now be said by this Bench that who the persons are involved in perpetrating this fraud, but the losses caused to the Company being apparent, undoubtedly it will adversely affect the Company bringing it to grinding halt immediately.

The Petitioner Counsel submits that R1 has about 1400 employees presently working, it has about 24% public shareholding and has loans to be serviced from time to time, and it has large customer line taking services, therefore, in a situation like this, unless R1 is infused with funds, the Company will obviously not in a position to meet payment of salaries to the employees, debt service, services to the customers, and the public shareholders will remain perturbed by looking at crashing the company owing to the fraud sneaked into R1.

To overcome all these hurdles, the petitioner has come forward to invest money equivalent to the estimated loss of Rs. 1123Crores by cancellation of the shares of the petitioner or/and NRG, associate promoter of R1 Company and then recapitalize with equity on premium equivalent to the estimated loss of Rs. 1123crores as replacement to the cancelled shares so that percentage of the shareholding of the public shareholders will remain intact.

The Counsel has also stated that since the Petitioner Company being a foreign Company it will be easy to the Petitioner to bring in money as equity,



thereby he has prayed this Bench for cancellation of existing shares of the Petitioner or at the Petitioner's decision, NRG, to the extent of the loss detected and permission for issuance of new shares at an appropriate valuation in place of the shares thus cancelled for enabling infusion of funds, to render the net-worth of R-1 Company as before, and to recapitalize for losses incurred without diluting members of the public shareholding.

The Petitioner herein is the member of the Company holding about 75% shareholding along with NRG they are therefore qualified to invoke jurisdiction under section 241 & 242 of the new Act when the actions conducted in the Company are either prejudicial to the public interest or prejudicial to the members of the Company or even prejudicial to the interest of the Company.

In the backdrop of it, it is evident that ramifications of the fraud perpetrated in the Company is not only prejudicial to the interest of the members but also prejudicial to all the stake holders of the Company and the Company as well. When this Bench felt that other reliefs such as restraining the Regulating authorities from taking action against R1 company and prayer for investigation and punitive action against the perpetrators are not maintainable at this juncture, the Petitioner Counsel has stated that the Petitioner has not pressed any other relief in the Company Petition except seeking approval of recapitalization of R1 Company as mentioned in the Company Petition.

For the counsel has also said that either the Petitioner or R1 Company will not seek any immunity for any of the actions emanate from the fraud perpetrated in the Company, this Bench, basing on the facts available on record, is of the opinion that infusion of funds into the Company is far more essential to see R1 carry its functions so that the economic implications of this fraud will not spill over to the functioning of the company and other stake holders of the Company.

Therefore, this Bench hereby orders that the petitioner, before cancellation of shares of the petitioner or NRG, shall bring in Rs. 1123crores as share application money, R1 company then will cancel the shares of the petitioner or NRG, as the case may be, and issue the same number of shares



already cancelled on premium to the money brought in by the petitioner or NRG.

This Bench is also of the view that an independent authority is required to monitor the affairs of the Company for a period of one year and especially utility of the funds coming in the form of recapitalization, in view of the same, Hon'ble Justice V. C. Daga, Retired Judge of Honorable High Court of Bombay is hereby appointed to monitor the affairs of the Company for a period of one year from 1<sup>st</sup> September, 2016.

For cancellation of shares and issuing fresh shares as mentioned above, the Company will hold Extra Ordinary General Meeting under the monition and approval of monitoring authority appointed above. The monitoring authority is suggested to take the assistance of an auditor in monitoring the affairs of the Company. R1 Company shall take approval of the monitoring authority over the decisions Board takes from time to time for the period of one year as mentioned above.

It is also needless to say that this order will not have any bearing either on inspection or investigation initiated by the Ministry of Corporate Affairs or any action by any other statutory body on defalcation of accounts occurred in the Company. On the top of it, this Bench explicitly makes it clear that this order has not been passed either to give protection to the petitioner or to any person indulged in the fraud. The regulating authorities and investing agencies are at liberty to proceed against even the Petitioner, in case any material is found against the Petitioner indicating its involvement in the fraud perpetrated in R1 Company. R1 Company's interest being paramount consideration for passing orders under section 241 & 242, this Bench allowed the petitioner to recapitalize the company with Rs.1123crores on premium as replacement to the shares ordered to be cancelled to ensure R1 Company functioning is not affected by the fraud alleged to have been perpetrated.

The monitoring authority may send bi-monthly report to this Bench so that this Bench will remain informed of the developments taking place in R1 Company.



As to remuneration of the Monitoring Authority and the Chartered Accountant, R1 Company shall pay as agreeable to the Monitoring Authority.

With the above directions, this Petition is listed on 07.11.2016.

**sd/-**

**B.S.V. PRAKASH KUMAR**  
Member (Judicial)

**sd/-**

**V. NALLASENAPATHY**  
Member (Technical)

Dated: 24<sup>th</sup> August, 2016.