

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

TRANSFERRED PETITION No. 78/2016
IN COMPANY PETITION No. 65/2015

DATED TUESDAY, THE 30th DAY OF JANUARY, 2018

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

IN THE MATTER OF SECTIONS 241 AND 242 COMPANIES ACT, 2013
AND
IN THE MATTER OF KANNADA PRABHA PUBLICATIONS LIMITED
AND

IN THE MATTER OF

Asianet News Network Private Limited & Ors. ... Petitioners

AND

Kannada Prabha Publications Limited & Ors. ... Respondents

ORDER

An affidavit application is filed on behalf of petitioners. The Petitioner No.2 and the authorised signatory of Petitioner No.1 Company has sworn to this affidavit. He has also submitted that he is filing this affidavit on behalf of petitioners No.3 and 4 as well. He submitted in his affidavit that the petitioners have filed petition against certain other shareholders of the 1st respondent company viz., Kannada Prabha Publications Ltd., hitherto called as KPPL. It is averred that due to non-cooperation of Respondents in the 1st respondent company, the 1st respondent company was unable to raise funds and also capital infusion. It is further averred that the petitioners have also prayed interim relief permitting them to infuse funds into the 1st respondent company as and when required over and above the borrowing limits of the company.


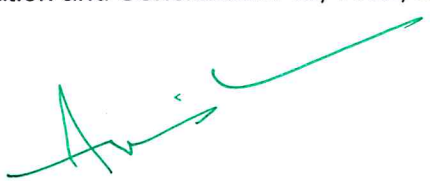
The petitioners have further averred that KPPL has been running in loss due to various reasons and also due to a dispute among the shareholders. Banks are not ready to extend loan facility to KPPL due to inadequate assets cover and inability to clear the debt.

It is averred that for the financial year 2017-18 as per business plan approved by the Board, was at 12.32 crores. It is averred that the borrowing powers of the board of respondent No.1 Company are exhausted. In view of the on-going disputes between the shareholders of Respondent No.1 Company, the Company is unable to increase its borrowing powers and there is no alternative for the company to generate funds for its operations. It is also averred that the Respondent No.1 Company is in immediate need of Rs.12,32,00,000 (Rupees twelve crore thirty two lakhs only) towards payment of salaries, overdue creditors, purchase of newsprint and other working capital investments during the financial year 2017-18. It is further stated in the affidavit that the immediate requirement of Respondent No.1 Company such as employees' salary for the month of August, 2017, purchase of newsprint, payments to printers and vendors will be met out of the above said sum.

It is averred that the Petitioner is committed to ensuring the growth and sustenance of the Company and for this purpose is willing to advance further unsecured loans to the Company based on the annual operating plan approved by the board of Respondent No.1 Company. It is further averred that the petitioners are confident that given the unique nature of the print media industry, with funding at appropriate junctures, the Respondent No.1 Company will be able to hold its position in the market and will achieve a sustainable growth trajectory.

In view of the above, the petitioners have prayed that in consideration of the prayer of the petitioners for infusion of funds into the Respondent No.1 Company as and when required and in particular, to permit Petitioner No.1 to infuse a sum of Rs.12,32,00,000 (Rupees twelve crores thirty two lakhs only) immediately into the Respondent No.1 company as unsecured loans.

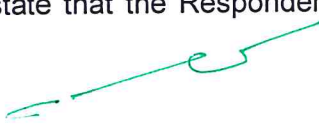

Against this affidavit application, the Respondents No.2 to 4 have filed a memo stating that the Respondents No.2 to 4 have already filed an application under Section 8 of the Arbitration and Conciliation Act, 1996, alleging that the subject matter of this company petition



is covered by the Arbitration clause 14 under the Shareholders (SHA) Agreement entered between the parties dated 31.03.2010 and its allied agreements. It is also averred that the matter is under active consideration of Arbitration Tribunal comprising of Shri Hon'ble Justice Shivraj V. Patil, Shri Hon'ble Justice Chandrashekaraiiah and Shri Hon'ble Justice R.V. Eshwar. Therefore, they submit that the petitioners cannot invoke jurisdiction of this Tribunal. It is further averred in the memo that an application under Section 8 of the Arbitration and Conciliation Act, 1996 is already pending before this Tribunal and without prejudice to the contentions raised in Section 8 application regarding jurisdiction of the Tribunal to decide the dispute in the main Company Petition and without prejudice to their objections and contentions in the Arbitration Tribunal regarding infusion of funds, the respondents have stated that whenever the proper utilisation of the previously sanctioned amount has not been properly or fully explained, the Tribunal should not consider further funds to be granted unless adequate information and details which can be analysed by these respondents and the Tribunal. Further, any additional infusion only increases the liability of the shareholders including these respondents and hence, it is stated that it is the duty of the petitioner to come up with transparent details.

It is further urged that as for the new requirement of Rs.12.32 crores, once again, no valid details/break-up and the method of utilisation have been given for the respondents to respond adequately/suitably. Even this Tribunal cannot come to any proper conclusion or pass orders without proper details being produced, so that the funds of the company would get frittered away for unspecific purposes.

The Respondents No.2 to 4 have submitted that they expressly make it clear that such infusion, in their opinion, is unwarranted and unnecessary and can be only at the sole responsibility and account of the Petitioners and shall not be taken to be binding upon the respondents nor an acknowledgment of either legality, necessity or validity which should be left open to be decided by the appropriate Forum before whom the matters are pending at the relevant time. The Respondents No.2 to 4 would further state that the Respondent No.1



Company has not filed accounts for Rs.8.40 crores as to how the infused amount was utilized as directed by this Tribunal till date. It has prayed that this Tribunal may direct the Respondent No.1 Company to submit the detailed statement of accounts for the earlier infused funds and thereafter to consider this application. The respondents have also stated that they have filed this memo without prejudice to all their rights contended before this Tribunal as well as before the Arbitral Tribunal already constituted.

In the meanwhile, after hearing the counsels on both sides, vide orders dated 02.11.2017 and 16.11.2017, this Tribunal had permitted the Petitioner Company to infuse Rs.1.75 crores and Rs.5.00 crores respectively, totalling to Rs.6.75 crores out of the total requirement of Rs.12.32 crores projected by the petitioners for infusion to meet the immediate requirement of the Respondent No.1 company during the financial year 2017-18 and directed the petitioners to file account for the expenditure of this amount and the details of the same. This Tribunal had also observed that this amount permitted to be infused, is to be treated as unsecured loan given by the petitioners to the 1st respondent company.

We have heard both sides. The main petition is filed seeking certain final reliefs and the petitioners have also sought for certain interim reliefs in the main petition. One of the interim reliefs prayed is to permit the 1st petitioner to infuse funds in the 1st respondent company. The petitioners have filed this affidavit with a prayer to permit the 1st petitioner company to infuse Rs.4.50 crores for payment to the vendors. It is the contention of the 1st petitioner that KPPL required immediate funds for payment to the vendors and for running the business. It is contended that the financial institutions are not coming forward to lend money to the 1st respondent company. Respondents No.2 to 4 have simply contended that the present subject matter of the company petition cannot be entertained by the Tribunal as already an Arbitral Tribunal was constituted which was inquiring into the matter covering the subject matter of this petition. Secondly, Respondents No.2 to 4 have already moved an




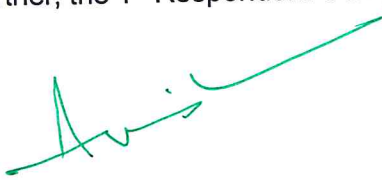
application under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the matter to the Arbitrator by virtue of Clause 14 of the Shareholders Agreement.

During enquiry, this Tribunal, by way of interim direction had allowed the 1st Petitioner to infuse a sum of Rs.1.75 crores dated 12.11.2017 and further permitted the 1st Petitioner to infuse a sum of Rs.5.00 crores dated 16.11.2017 pending passing of final order. The Petitioners, particularly the 1st Petitioner have requested the Tribunal to infuse a total sum of Rs.12.23 crores for meeting expenditure as per business plan for the financial year 2017-18. Earlier also, this Tribunal had permitted the 1st Petitioner to infuse funds. The 1st Respondent company has filed the details of expenditure incurred from out of the amount permitted to be infused by the 1st petitioner into the 1st Respondent Company.

The objections raised by Respondent No.2 to 4 that necessary information was not furnished to the Tribunal in respect of the amount infused into the 1st Respondent Company as per the orders of this Tribunal on earlier occasion. However, the 1st Respondent Company has filed a detailed statement of expenditure in the Tribunal.

In this affidavit, the 1st Petitioner has requested the Tribunal to permit to infuse a total sum of Rs.12.32 crores to meet the expenditure for the financial year 2017-18. Considering the necessities, this Tribunal has already permitted the 1st Petitioner to infuse a total sum of Rs.6.75 crores out of Rs.12.32 crores. Therefore, permission is granted to the 1st Petitioner to infuse a total sum of Rs.12.32 crores (-) (minus) Rs.6.75 crores which was already infused and the 1st Petitioner is permitted to infuse the balance sum of Rs.5.57 crores to meet the expenditure for the financial year 2017-18.

This permission to infuse funds into the 1st Respondent Company is granted without prejudice to the objections and contentions raised by the Respondents No. 2 to 4 either before this Tribunal or before the Arbitration Tribunal. It is also made clear that the amount to be infused into the 1st Respondent Company by the 1st Petitioner is treated as an unsecured loan. Further, the 1st Respondent Company to file a detailed statement of accounts in respect of the



total amount of Rs.12.32 crores being infused into the company and file the same in the Tribunal.

This affidavit is accordingly disposed of.


(RATAKONDA MURALI)
MEMBER (JUDICIAL)


(ASHOK KUMAR MISHRA)
MEMBER (TECHNICAL)

psp.