

(4)

NATIONAL COMPANY LAW TRIBUNAL  
SINGLE BENCH  
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI  
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 23/08/2017 AT 10.30 AM

PRESENT: SHRI K. ANANTHA PADMANABHA SWAMY, MEMBER-JUDICIAL

APPLICATION NUMBER :

PETITION NUMBER : TCP/180/2016

NAME OF THE PETITIONER(S) : A.K. Mansoor

NAME OF THE RESPONDENT(S) : M/s Indo – Asian News Channel Private Limited & 3  
others

UNDER SECTION : 397/398

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
		REPRESENTATION BY WHOM	

1. RAMANATHAN  
(ABDULASIH)

COUNSEL FOR P<sub>1</sub> to P<sub>3</sub>

G. Ananthaswamy.

2. A.M. Sridharan

Counsel for Respondent

Am Jinn

**In the National Company Law Tribunal  
Single Bench, Chennai**

**CA No. 34 of 2016**

**[TCP/180/2016]**

**Under Section: 397 & 398 of the Companies Act, 1956**

**In the matter of**

**Mr. A.K. Mansoor**

**V/s**

**M/s. Indo Asian News Channel Pvt Ltd**

**Leena Narayanan**

**Vijayakumari**

**Laliya Joseph**

**M/s. Asset Homes Private Limited**

**Order delivered on: 23.08.2017**

**For the Petitioner: Mr. AM. Sridharan, Advocate**

**For the proposed 7<sup>th</sup> Respondent: Mr. Sai Vihari, Advocate**

**Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)**

**ORDER**

1. The matter under consideration is an application filed by the applicant, the petitioner in the original petition to implead three individuals 1. Leena Narayanan, 2. Vijayakumari and 3. Laliya Joseph and one company viz. M/s. Asset Homes Private Limited, the other and remaining shareholders of the Company, as Respondents 5 to 8 respectively in the main petition.

2. The applicant herein originally has filed a petition under section 397,398, 402, 403 & 406 of the Companies Act, 1956 and sections 58, 59, 210 & 213 of the Companies Act, 2013 alleging various acts of oppression and mis-management in the affairs of M/s. Indo-Asian News Channel Pvt Ltd (the 1<sup>st</sup> Respondent Company) and 3 others.
3. The brief averments of the application are that the shareholders of the Company are the applicant herein, Respondents 2 & 3 and proposed Respondents. Since, the proposed Respondents are proper and necessary parties, they are to be impleaded as Respondent Nos. 5 to 8 in the main petition. The impleading of them in the main petition will not prejudice the interest of any one; instead, it will also safeguard the interest of the proposed Respondents along with the petitioner and the Respondents 2 & 3.
4. The Learned Counsel for the applicant contends that at that time of filing of main petition, he was informed that the 2<sup>nd</sup> Respondent was in discussion with the proposed Respondents for a settlement to purchase their shares. Subsequent to filing this main petition, it came to the notice of the applicant that the proposed Respondents are continuing as shareholders of the Company. There are some

legal proceedings initiated between the proposed Respondents and the 2<sup>nd</sup> Respondent against each other.

5. It is also contended that in view of the reliefs prayed in the petition, the rights of all the shareholders of the Company would be directly affected, if any order is passed by the Tribunal. The issues raised in the main petition could not be adjudicated upon effectively unless this application is allowed. Since the proposed Respondents are the only other shareholders of the Company, their presence in the proceedings becomes necessary. It is further contended that any order to implead them in the main petition as Respondents No. 5 to 8 would not, in anyway, prejudice the rights of other Respondents and if they are not impleaded, the rights of the proposed Respondents would be affected seriously.
6. In support of the above contention, the learned counsel has also relied on the following case laws:

- **Ramesh Hirachand Kundanmal Vs Municipal Corporation of Greater Bombay and others – Manu/SC/0493/1992 – To show that necessary parties is one without whom no order can be made effectively and proper party is one in whose absence effective order can be made but whose presence is**



necessary for complete and final decision on question involved in the proceedings – Addition of parties not question of initial jurisdiction of Court but of judicial discretion which has to be exercised in view of all facts and circumstances of the case.

- **C.M.V. Krishnamachari Vs M.D Dhanalakshmi Ammal and others – Manu/ TN/0384/1965** – To show that the persons shall be entitled to be parties to suit if such course shall ensure final and complete adjudication of points involved and avoid multiplicity of proceedings.

7. By submitting the above, it is prayed to allow the impleading application and to amend the petition by incorporating the names of the proposed Respondents as Respondents No.5 to 8 in the main petition.

8. On receipt of the notice, proposed Respondent No. 7 alone appeared and proposed Respondents 5, 6 and 8 have not appeared. Therefore, they were proceeded ex-parte. The proposed 7<sup>th</sup> Respondent has contended that the applicant neither placed any instances or allegations to show that the 7<sup>th</sup> Respondents is a proper and necessary party in the company petition nor the

applicant has explained as to why it has come necessary at this juncture to implead her as a party in the company petition. It was further contended that the applicant has not levelled any allegation against her with main petition, and all the allegations are raised against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents only, therefore, the proposed 7<sup>th</sup> Respondent squarely stands outside any of those allegations/prayers. She has also raised a technical issue that the application is not in conformity with the format prescribed under Rule 34 of National Company Law Tribunal Rules 2016.

9. Heard both sides and perused records. After considering all the pleadings, the question arises before me is whether the proposed Respondents are proper and necessary parties to the main petition and without their presence and without giving an opportunity to them, whether the petition could be adjudicated effectively by the Tribunal.

10. The learned Counsel for the applicant has submitted that the proposed Respondents are the only other shareholders and without their presence, the petition could not be adjudicated effectively and moreover, their interest would be prejudiced if any order is passed by the Tribunal. Whereas, the learned Counsel for

the proposed 7<sup>th</sup> Respondent has submitted that impleading her as party in the proceedings will be nothing but annoying her and dragging her into a longstanding litigation between the applicant and the contesting respondents.

**11.** At this juncture, I feel it is proper and necessary to see not only the pleadings of this application but also the pleadings of the main petition. The applicant in his main petition has alleged that shares to the proposed 5<sup>th</sup> and 6<sup>th</sup> Respondents were allotted at Rs.100/- per share at par whereas the allotment to the petitioner was made at a premium of Rs. 650 per share. Further 10000 shares have also been allotted to the other shareholder at Rs. 100/- at par. The petitioner has also alleged that there was purported transfer of 85000 shares to the 2<sup>nd</sup> Respondent from the other shareholders and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent have also transferred 3466 and 3333 shares respectively to the proposed 5<sup>th</sup> Respondent. But there was no disclosure in the annual returns filed by the Respondent No.1 Company with ROC and all the allotments made in the company are in violation of Article 5 of the Articles of Association of the Company.

**12.** One of the prayers in the main petition is that, to set aside the transfer of 85000 shares which are transferred to the 2<sup>nd</sup> Respondent from the other shareholders. For any reason, if the Tribunal passes an order to set aside the transfer of shares made by the other shareholders to the 2<sup>nd</sup> Respondent, there would be a further order to rectify the register of members which would prejudice the interest of the other shareholders. Further, the petition will also hit by non-joinder of parties. Even according to the learned Counsel for proposed 7<sup>th</sup> Respondent, there is no allegation against her and the other proposed Respondents 5, 6 and 8 did not respond to the application. After impleading the proposed Respondents they will be getting an opportunity to put forth their respective contentions and their interest will not be anyway prejudiced. Further, in my considered view, without their presence in the main petition no effective order can be passed by the Tribunal.

**13.** For the aforesaid reasons, I am of the view that the proposed 5<sup>th</sup> to 8<sup>th</sup> Respondents are necessary and proper parties to the main petition for effective adjudication of the matter and impleading them as Respondents in the petition would not anyway prejudice



their interest and other Respondents, instead, they would be getting an opportunity to be heard by the Tribunal for their grievances in the capacity of shareholders, if any. Further the Contention of the Proposed 7<sup>th</sup> Respondent that the application is not in conformity of the NCLT Rules is only technical and it can be rectified and it is not fatal to the application.

**14.** In view of the above discussions and reasoning supported by the aforementioned **case laws (supra)**, I am inclined to allow the application in the interest of justice. Accordingly the CA. No. 34 of 2016 is allowed. The applicant is directed to amend the petition for impleading the proposed 5<sup>th</sup> to 8<sup>th</sup> Respondents as 5<sup>th</sup> to 8<sup>th</sup> Respondents in the main petition.

**15.** The applicant is directed to serve the copy of this order and amended copy of the petition to all the Respondents. Time is enlarged for filing counters.

**16.** With the above direction the application is disposed of. No orders as to costs.

**17.** Put up the matter on 15.09.2017.



**K. ANANTHA PADMANABHA SWAMY**  
**Member (J)**

RLS