

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
[Through Physical hearing/VC Mode (Hybrid)]

ITEM No.27
C.P. No.18/BB/2024

IN THE MATTER OF:

MIH Edtech Investments B.V and others ... Petitioner
Vs
M/s. Think and Learn Private Limited and others ... Respondent

Order under Section 241-242 of the Companies Act, 2013

Order delivered on: 27.02.2024

CORAM:

SHRI K. BISWAL
HON'BLE MEMBER (JUDICIAL)

SH. MANOJ KUMAR DUBEY
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner No.1 : Shri. Sudipto Sarkar, Sr. Adv.
For the Petitioner No.2 : Shri CA Sundaram, Sr. Adv.
For the Petitioner No.3 & 4 : Shri. V Srinivasa Raghavan, Sr. Adv.
Shri Shankh Sengupta, Mr. Yogesh Singh
Ms. Manasa Sundarraman, Shri Aubert .S
Shri Sujoy Sur, Ms. Lavanya Ananth
Ms.Angelike.A, Ms.Neha, Ms. Aneetha.M
For Respondent No.1 : Shri Dhyan Chinnappa, Sr. Adv.
For Respondents No.2 to4 : Shri K.G Raghavan, Sr. Adv.
Shri Manmeet Singh, Dr. Rishab Gupta,
Shri Sairam Subamanian, Ms. Nayana Tara
Ms. Vidhya Pai, Ms. Saloni Shah, Ms.Priyanka
Ajjamavar, Mr. Ishu Gupta, Ms. Ashika Jain,
i/6 Saraf & Partners for R1 to 4

ORDER

1. Heard the Learned Senior Counsels for the Petitioners No.1,2 3 & 4 and Learned Senior Counsels appearing for the Respondents No.1, 2 to 4.
2. The Ld. Senior Counsels appearing for the Petitioners No.1 to 4 prayed for an interim orders to Stay the operation and effect of the Letter of Offer dated 27.01.2024 for Rights issue of shares and also the resolution passed at the

meeting held on 27.01.2024, submitting that there are serious allegations of siphoning off the funds by the Promoters and investigations have been initiated by the Enforcement Directorate (ED) and Ministry of Corporate Affairs (MCA) in respect of the Respondent Company No.1. The Learned Senior Counsels further submitted that let the Extra-ordinary General meeting (EGM) be held and decide how the shares are to be allotted, for what purpose and how the money is going to be used and thereafter the rights offer may be made; and until then the Rights issue of shares which is closing on 28.02.2024 may be stayed.

3. Shri Sudipto Sarkar, the Ld. Senior Counsel appearing for the Petitioner No.1 pointed out that the Rights issue in excess of the Authorised Share capital of the Company is not allowable under the Companies Act. He also pointed out on various documents including Minutes of Board meeting held on 27.01.2024, placed at Page-1310 onwards in the C.P, and stated that there are various irregularities against the Company and the matter is also under investigation before the Enforcement Directorate(ED).
4. Shri. Srinivasa Raghavan, the Learned Senior Counsel appearing for the Petitioners No.3 & 4 pointed out to the Para 6 & 7 of the Minutes of the Board meeting dated 27.01.2024 stating that the proposal for approval for the Offer Letter for Rights Issue was without the Increase of the Authorised share capital. He specifically refers to the Memorandum of Association in which it is mentioned that the Authorised share capital of the Company was Rs.6,56,60,000/- whereas, the face value itself of the rights issue was Rs.40 crores and thus there was a violation of provisions of Section 62 of the Companies Act. He also referred to the letter from the Chairman dated 15.02.2024 placed at Page-1330 of the C.P in which, it is stated that the Company had committed to give the information/documents within a period of next five business days, however the same was not given.
5. Shri. Aryama Sundaram, the Ld. Senior Counsel appearing for the Petitioner Company No.2 pointed out to the various deficiencies and irregularities stating that the no financial audit has been done for financial year 2022-23; and earlier also such audits were substantially delayed. He

further stated that as per Article-121 of the Article of Association at Page 539 (Volume-II) of the C.P, the Petitioners were entitled to get all the information in respect of the Company which were not given. Further, in violation of Article 197 (Page-564) no information was given to the Petitioners herein regarding the ED investigation, IBC proceedings and other litigations. He also stated that if the Rights issue goes ahead, shareholding of the Petitioners will come down from 24.5% to 2.5% if they do not subscribe; and there is the apprehension that if they subscribed, the money will be lost. Accordingly, he requested to put a hold on the Rights issue as an interim relief and also requested for status-quo order on altering the shareholding of the Petitioners in the Respondent Company; a stay on the Transfer of Assets of the Respondent Company and its subsidiaries, and disclosure of information as prayed at Page 321 of the C.P.

6. On the otherhand, Shri K.G Raghavan, the Ld. Senior Counsel appearing for the Respondents No.2 to 4 stated that the petition was served on them yesterday evening only and considering the voluminous documents, they did not get sufficient time to file the reply which they should be granted. He further submitted that the Hon'ble High Court of Karnataka had put a stay on the implementation on the decision taken in the Extra Ordinary General Meeting held on 23.02.2024, till the next date of hearing i.e 13.03.2024; and the matter before the Hon'ble High Court of Karnataka was substantially the same which has been averred in this petition. He furnished the copy of the order of the Hon'ble High Court of Karnataka dated 21.02.2024 which is taken on record. It is further contended by him that as per Minutes of the Board Meeting held on 27.01.2024, it is noted that the representatives of the Petitioners No.1 to 4 were present during the meeting as recorded in Para-1B, and they were aware of the matter regarding going ahead with the rights issue without increasing the Authorised share capital. However, no objection was raised during the meeting or afterwards. Further, he clarified that the rights issue was only an offer, and 60 days time was available for allotment of shares, thereafter. Therefore, he undertook that no allotment of shares will be made without increasing the Authorised share capital of the Company in accordance with

law. He also pointed out that as per the minutes, the funds/money collected through the rights issue was to be parked in separate bank account with signatories being one Director and CEO/CFO of the Company, as recorded in the Minutes. He averred that this commitment will be followed, and therefore there are no irregularities. It was further stated that the contention raised by the Petitioners Counsel that if the Petitioners don't subscribe, the percentage of shareholding will go down does not hold water, in view of the judgements passed by the Hon'ble Supreme Court on similar issues. It is further stated by him that when the MCA and ED were already looking into the various issues and the alleged irregularities etc., there was no reason for the Petitioners to file petition under Section 241-242 of the Companies Act before this Tribunal. It is reiterated that the matter regarding the governance and management structure, re-cast of the Board and removal of the Chairman and Directors etc., is substantially the same which was the matter in EGM held on 23.02.2024; on which the Hon'ble High Court of Karnataka has put a hold on the implementation on the decision of the EGM dated 23.02.2024. Further, in respect of the objection regarding two days of notice was granted instead of three days period in violation of Section 62 of the Companies Act, 2013, it is stated that during the offer, minimum 15 days was to be given, however a 30 days period was granted for the Rights issue. Therefore, this matter should be seen in proper perspective.

7. Shri Dhyan Chinnappa, the Ld. Senior Counsel appearing for the Respondent No.1 stated that it is a Company that needs to be protected and the Petitioners also accepted that the Company needs money but they want to prevent the same. It was a proper commercial decision of the board of the Company. The right issue can be stayed only if there is clear cut case of malice. He further pointed out that in the prayer (k) & (l) at Page-313, the Petitioners themselves stated that "pursuant to the rights issue in the interest of the Respondent No.1" which is contradictory to the pleadings. He also referred to the *Hon'ble Supreme Court judgement* in the case of *Sangramsinh P Gaekwad and others vs. Shantadevi P Gaekwad in Civil Appeal No.6359 of 2001 decided on January 20, 2005*. He further stated

that no prejudice will be caused to the Petitioners if the rights issue is allowed to proceed.

8. The Learned Senior Counsel for the Petitioner No.2 asked that there was no clarification regarding how the money will be kept, under which head, without increasing the authorised share capital. He pointed out to the Letter of Offer at Para-8 of Page-1317 wherein it is stated "*the proceeds of the right issue would be for the operation of the Company, which shall include its working capital needs, discharging its obligations, general corporate expenses*". In such a case, this is in contradiction to the Minutes of Board Meeting dated 27.01.2024 at Page-1312 of the C.P in which, the Chairmen committed that the money would be parked in a separate bank account. Therefore, there is an inconsistency in this regard. He also pointed out to various litigations and irregularities including the ED press release and the investigations going on in USA; referring to Page 750 to 752 (Volume-III) of the C.P. He further clarified that the petition before the Hon'ble High Court of Karnataka is under Section 9 requesting for Arbitration, and the matter in this Tribunal is under Section 241-242 of the Companies Act, 2013 which is materially different and therefore not covered by that petition.
9. The Ld. Senior Counsel for the Petitioners No.3 & 4 have further stated that this rights issue money being collected for expanding the current operations and such other purposes as may be determined by the Board as stated at Page 1308 of the C.P; and not for the survival of the Company as contended by the Respondents Counsels. He also referred to the judgement of *Hon'ble Supreme Court of India in Nanalal Zver and another vs. Bombay Life Assurance Company Limited passed on May 4, 1950* regarding the matter of Increase of Authorised share capital for fresh issue of shares. He also stated that if the Rights issue was not being stayed, as an alternative, he requested the Tribunal to consider deferring the closure date of the rights issue.
10. On the otherhand, the Ld. Senior Counsel for the Respondents No. 2 to 4 again gave an undertaking that there will not be any allotment of shares without increasing the Authorised share capital as per provisions of the

Companies Act and further the amount/funds collected in respect of the rights issue will be kept in a separate Bank account and will not be withdrawn for any purposes of the Company. On the basis of this undertaking, the Ld. Senior Counsel appearing for the Petitioner No.1 stated that this undertaking given by the Ld. Senior Counsel was acceptable to him with regard to his pleadings in the matter.

11. Considering all the submissions made by the Learned Senior Counsels for both the sides and perusing the materials on record, we hereby direct the following:

- (i.) *Since the Ld. Senior Counsel for the Respondent has already given undertaking that there will be no allotment of shares without increasing the Authorised Share capital of the Respondent No.1 Company as per the provisions of law and the funds/money received from the rights offer will be kept in a separate account and will not be used for any purposes, the funds received by the Respondent Company in respect to the rights issue should be kept in a separate Escrow account and it should not be withdrawn till the disposal of this matter;*
- (ii.) *The Respondent Company No.1 is to consider the extension of the closure date of the right issue so that the rights of the Petitioners with regard to the making of application for shares under their rights entitlement does not get prejudiced.*

12. Since there are multiple Interim reliefs which has been sought by the Petitioners, the Learned Senior Counsels of both the sides are directed to file brief note along with cross reference of page numbers for the documents etc, which they referred during the hearing, in not more than 8-10 pages within three days from today duly serving the copy on the otherside. **The matter is reserved for passing of order on the Interim Reliefs requested, after the receipt of the same.**

13. In respect of the main C.P, the Ld. Senior Counsel for the Respondents No.1 to 4 have accepted notice and requested time to file their objections. Two

weeks time is granted to file objections duly serving the copy on the otherside, and two weeks thereafter to the Petitioners to file rejoinder if any.

14. Issue notice to the Secretary, Ministry of Corporate Affairs, Regional Director (South-East Region) Hyderabad, Registrar of Companies, Karnataka, Bengaluru, Reserve Bank of India, Bengaluru and SEBI. Registry is directed to prepare the notice and Ld. Counsel for the Petitioners are permitted to collect the notice and serve it on the above said Authorities along with Company petition and other materials through email as well as by speed post and is directed to file affidavit of service along with tracking report in the Registry within two weeks.

15. A period of two weeks is granted to the Authorities for filing reply from the date of receipt of copy of the notice and two weeks thereafter for filing response/rejoinder, if any, thereto from the date of receipt of copy of reply is granted. List the case for further hearing on **04.04.2024**.

Sd/-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

Sd/-

**K. BISWAL
MEMBER (JUDICIAL)**

Gayathri