

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
18-07-2024 AT 10:30 AM**

**CP No. 53/2008
TP No. 28/HDB/2016
AND
IA No. 205/2019 in CP No. 53/2008
TP No. 28/HDB/2016
u/s. 397/398 of Companies Act, 2013**

IN THE MATTER OF:

SY Sri Kumar

...Petitioner

AND

M/s. Vision Broadband Services Pvt Ltd & 2 Others

...Respondent

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

CP No. 53/2008

TP No. 28/HDB/2016

Orders pronounced. In the result, **this company petition is disposed of** as per the directions mentioned in the order. For reporting compliance, call on 22.08.2024.

IA No. 205/2019

As the main company petition is disposed of, **this application stands closed.**

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I, HYDERABAD**

C.P. No.53 of 2008

T.P. No. 28 of 2016

Under Section 397, 398, 402, 404 & 111 of The Companies Act, 1956

**IN THE MATTER OF VISION BROADBAND SERVICES
PRIVATE LIMITED**

BETWEEN:

S.Y. Sri Kumar

S/o. Mr. Venkateshwara Rao,

Occ: Director of Vision Broad Band Services Private Limited

R/o. 171/3RT, R/o. Vijaya Nagar Colony, Hyderabad - 500040

...Petitioner

AND

1. Vision Broadband Services Private Limited

A Private Company incorporated under The Companies Act, 1956

Certificate of Incorporation No.01-46265 dated 17.05.2005

...Respondent No.1

2. Mendu Sai Eswara Swamy

S/o. Mr. MR Swamy,

Occ: Director of Vision Broad Band Services Private Limited

Residing at Flat #A-204, Venkata Ramana Apartments,

AC Guards, Hyderabad.

...Respondent No.2

3. Kancherla Siva Rama Krishna

S/o. Mr. Ram Mohan Rao,
R/o. 6-3-855/10/A, Flat No.3B,
Sampathji Apartments, Ameerpet, Hyderabad-500029.

...Respondent No.3

4. VMGK Murty & Co.,

Auditors of Company having office at 1-2-593/26,
Upstairs, Bala Sai Marg, Gaganmahal Colony,
Domalguda, Hyderabad – 500029.

...Respondent No.4

Date of Order: 18.07.2024

Coram:

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA

HON'BLE MEMBER (JUDICIAL)

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Parties/Counsels present:

For Petitioner : Mr. R. Murari, Counsel

For Respondents : Mr. V.S. Raju, Counsel

PER BENCH

ORDER

1. This Petition was initially filed under Section 397, 398, 402, 404 & 111 of The Companies Act, 1956 before The Company Law Board, Chennai

Bench. Upon enactment of The Companies Act, 2013, and the subsequent rules prescribed in lieu thereof, this Petition was transferred to this Tribunal for adjudication. The reliefs sought by the Petitioner herein are as follows:

a. Cancel the allotments made on 30.06.2007 and order for rectifying the register of members accordingly.

b. Direct no further issue of shares be made without offering shares to the Petitioner pro-rata to his original shareholding.

c. Direct that the Petitioner continues to be a Director of Company

d. Direct the respondent Nos. 2 & 3 not to approach the customers and bankers of the Company without the consent or participation of the Petitioner.

e. Direct the Respondent Nos. 1 & 2 not to take any arbitrary decisions to the exclusion of the Petitioner and involve the Petitioner in the running of the Company.

f. Direct that an investigation be carried out into the affairs of the Company and to surcharge Respondents 2 and 3 herein for the amounts diverted by them from the Company.

g. Direct that any legal expenses incurred by the respondents for the purpose of defending the Company petition shall be met out of their own funds and not to be charged to the said Company

2. It was submitted that the Respondent No.1 is a Private Company (hereinafter referred as 'Respondent Company') incorporated under the provisions of 'The Companies Act, 1956' (hereinafter referred as 'The Act of 1956') vide Certificate of Incorporation dated 17.05.2005 bearing No. 01-46265 issued by the Assistant Registrar of Companies, Andhra Pradesh (**Annexure A1 of the Petition**). It was submitted that the Petitioner and Respondent No.2 & 3 are the Promoter-Directors and also the initial subscribers to the Memorandum and Articles of Association of the Respondent Company. It was further submitted that the Petitioner subscribed to 33.34% of the paid-up share capital while Respondent No.2 & 3 each subscribed to 33% of the paid-up share capital of the Respondent Company.

Facts as submitted on behalf of the Petitioner

3. It was submitted that as on 31.03.2007, the Respondent Company was having the authorized share capital of Rs.70,00,000/- divided into 7,00,000 equity shares of Rs.10/- each. It was submitted that the issued, subscribed and paid-up share capital of the Respondent Company is Rs.1,00,000/- divided into 10,000 shares of Rs.10/- each and that the Respondent Company is holding Rs.54,89,000/- as share application money (**Annual Return of the Respondent Company for 2006-07 at Annexure A-3**).

4. It was submitted that the Petitioner is filing the present Petition in his capacity as a Director and shareholder of the Respondent Company and that the Petitioner holds 33.34% of the paid-up capital of the Respondent Company to maintain the present Petition.
5. It was submitted that it was agreed by the Directors of the Respondent Company (Petitioner, Respondent No.2 and Respondent No.3) that the Petitioner would be looking after the marketing and Respondent No.2 & 3 would be taking care of the administration (which included banking operations) of the Respondent Company. It was submitted that Respondent No.2 & 3 took advantage of their position and started acting against the interests of the Respondent Company and the Petitioner.
6. It was submitted that the Respondent Company obtained a loan for an amount of Rs.2 crores from 'Syndicate Bank' (hereinafter referred as 'Bank') to start a semiconductor unit. That the Petitioner stood as a Personal Guarantor to this loan of Rs.2 crores by giving the property of Petitioner as a collateral security.
7. It was submitted that on 19.12.2007, the Petitioner was asked by the Bank Manager to come to the Bank to sign papers relating to a vehicle loan availed by the Respondent Company. It was alleged by the Petitioner that Respondent No.2 & 3 applied to the Bank for this vehicle loan for an amount of Rs.2,60,000/- on behalf of the Respondent Company without

the knowledge of the Petitioner. It was submitted that when the Petitioner disclosed to the Bank that there was no Board Meeting held in this regard by the Board of the Respondent Company, the Bank sought a confirmation in this regard from Respondent No.2 & 3. It was submitted that on non-receipt of any information from Respondent No.2 & 3 in respect of the Board Resolution for vehicle loan, the Bank closed the said loan account and adjusted the loan amount against the OD account of Respondent Company (**Form 8 filed with the ‘Registrar of Companies’ (hereinafter referred as ‘RoC’) and Certificate of Registration of Mortgage – Annexure A-8 & A-9 of the Petition respectively**).

8. It was submitted that after this act of Respondent No.2 & 3, the Petitioner made further enquiries with regard to the affairs of the Respondent Company and came to know that the shareholding of the Petitioner was reduced from 33.34% to 15% by Respondent No.2 & 3 and that the shares of the Respondent Company were allotted to the family members and friends of Respondent No.2 & 3.
9. It was submitted that the authorized share capital of the Respondent Company was increased by Respondent No.2 & 3 without giving any notice and also without there being any Board Meeting and General Meeting. It was submitted that this act of Respondent No. 2 & 3 is violative of Sections 286 & 171,172 & 173 of The Act of 1956, and is illegal and

oppressive to the Petitioner (**Form 5 filed with RoC – Annexure A-10(a) to A-10(c) of the Petition**).

10.It was submitted that on 20.12.2007, the Petitioner requested the Bank under The Right to Information Act to provide certified copies of all the documents of the Respondent Company pertaining to the loan of Rs.2 crores and also other documents which were submitted by the Respondent Company. Basing on these documents, it was submitted that Respondent No.2 & 3 exclusively handled the Rs. 2 crore loan application made to the Bank and that the Petitioner only signed the declaration given to the Bank as a Director of the Respondent Company and as a Personal Guarantor to the loan (**Annexure 11-(a) to 11-(c)**).

11.It was submitted that Respondent No.2, 3 and 4 (Statutory Auditor of Respondent Company) connived with each other and manipulated the accounts of the Respondent Company. It was submitted that in the loan application submitted to the Bank, the paid-up capital of the Respondent Company was shown as Rs.29,39,000/- whereas as per the audited Financial Statement as on 31.03.2006, the paid-up share capital was Rs.1,00,000/-. That Para 8 (a) (iii) of the loan application shows the false shareholding structure of Respondent Company. It was submitted that in the Balance Sheet of the Respondent Company for the year ended on 31.03.2006, share application money was shown as Rs.28,39,000/-

whereas in the Balance Sheet submitted to the Bank it was shown as Rs.43,69,869/-.

12.It was submitted that in the said application of loan, the shareholding of Petitioner was shown as 15% instead of 33.34% and that of Respondent No.2 & 3 was shown as 34% & 51% instead of 33.33% & 33.33% respectively. It was submitted that there was no further issuance and allotment of shares of the Respondent Company and that there was no notice of Board Meeting or General Body Meeting issued to Petitioner in which the issuance & allotment of shares of Respondent Company was made and hence, the shareholding percentages as shown in the loan application are false and fictitious.

13. It was further submitted that the loan application was signed by Respondent No.2 and other Respondents signed all other documents viz., the Composite Hypothecation Agreement and the Audited Balance Sheets of the Respondent Company. That the Petitioner only signed the Guarantee Agreement. It was submitted that in the declarations given by Respondent No.2 & 3 in the loan application, the shareholding was correctly mentioned as 33.33% against the false figures mentioned in the loan application (**Loan Application along with documents - Annexure A-12 and A-13 of the Petition**).

14.It was submitted that the Petitioner came to know that the Vigilance and Enforcement Department (hereinafter referred as ED) conducted a raid on 20.02.2008 in the Respondent Company on suspicion of evasion of commercial taxes and seized several documents of Respondent Company. It was submitted that during the appearance before the ED, the Petitioner learnt that Respondent No.2 & 3 maintained several accounts for the years 2005-06, 2006-07 and 2007-08 and were indulged in misappropriation of funds, falsification of accounts, cheating and fraud of the Respondent Company.

15.It was submitted that the Petitioner obtained copies of the documents seized by ED (**Annexure 14(a) and 14 (b) of the Petition**) under the Right to Information Act and found that Respondent No.2 & 3 conducted various misdeeds in relation to the Respondent Company. It was submitted that when the Petitioner questioned about the same, Respondent No.2 & 3 filed Form 32 with the RoC stating that the Petitioner ceased to hold the office of Director of the Respondent Company w.e.f. 22.05.2008 and the cause of cessation was stated as vacation of office under Section 283 of The Act of 1956. It was submitted that the Respondent No.2 & 3 stated to have held some Board Meetings of the Respondent Company and the Petitioner was absent for the said meetings. That as a consequence, Respondent No.2 & 3

recorded that Petitioner No.2 vacated the office as Director of the Respondent Company.

16.It was submitted that the Respondent No.2 & 3 maintained different set of accounts and derived two balance sheets for the Financial Year 2005-06 certified by Respondent No.4 (Statutory Auditor). It was submitted that among these two balance sheets, one was submitted to the Bank showing subscribed and paid-up capital as Rs.1,00,000/- and share application money as Rs.43,69,869/-, whereas the other balance sheet was submitted to the RoC and IT Authorities showing the subscribed and paid-up capital as Rs.1,00,000/- and share application money as Rs.28,39,000/- (**Annexure A-15 & A-16 of the Petition**). It was submitted that these balance sheets were prepared by Respondent No.2, 3 & 4 and that the Petitioner had no role in the maintenance of books of accounts.

17.It was submitted that the Respondents conducted a Board Meeting on 30.06.2007 without issuing any notice to the Petitioner and allotted a further 2,23,900 equity shares of Rs.10/- each to the relatives and friends of Respondent No.2 & 3. That by this act of Respondent No.2 & 3, the shareholding of Petitioner was reduced from 33.14% to 1.43% thereby making him a minority shareholder in the Respondent Company. It was submitted that the Board Meeting dated 30.06.2007 was *void ab initio* and illegal. It was further submitted that the allotment of shares was made

without the Respondent Company actually receiving any share application money and that the Respondent No.2 & 3 made book entries that the share application money was received. It was submitted that this allotment of shares is illegal and that the same was done to reduce the Petitioner to a minority shareholder. It was submitted that the principles of Section 81 of The Act of 1956 are to be adhered by the Respondent Company and that the further issuance of shares is to be made towards the existing shareholders in proportion to the shareholding pattern (**Form 2 filed with RoC – Annexure A-17 of the Petition**).

18.It was submitted that Respondent No.2 & 3 were indulged in siphoning off the funds of Respondent Company. The allegations raised by the Petitioner in this regard pertain to the period 2005-06 to 2007-08 which were explained in detail by relying on the ledger accounts and other books of accounts of the Respondent Company. The same were not extracted herein for the reasons mentioned in further points of this order.

19.It was also submitted that as per Section 301 of The Act of 1956, the Respondent Company was to maintain a Register containing all the details regarding the contracts entered into by the Respondent Company. It was submitted that the Respondent No.2 & 3 who are taking care of the day-to-day affairs of the Respondent Company have not maintained any Register. It was submitted that the Respondent Company did not enter into any

contracts and no payments were made to any person and that false entries were made by Respondent No.2 & 3 to siphon off the funds of Respondent Company. It was submitted that the Statutory Auditor of the Respondent Company observed that the Company is not required to maintain any register under Section 301 of The Act of 1956 and that this observation of the Statutory Auditor serves as a proof to the false entries and siphoning off funds made by Respondent No.2 & 3.

20. It was submitted that in contravention of Section 314 of The Act of 1956, one Mrs. K. Pushpalatha (wife of Respondent No.2) was appointed as the General Manager of the Respondent Company in the year 2005 with a salary of Rs.50,000/-. It was submitted that there was no special resolution and Board Resolution passed by the Respondent Company for this appointment and also there was no approval of the Central Government as the salary of Mrs. K. Pushpalatha exceeds Rs.50,000/-. It was submitted that Mrs. K. Pushpalatha was appointed as Managing Director of Respondent Company in the year 2006-07 on a remuneration of Rs.50,000/- per month and that no resolution in this regard was passed by the Board of Respondent Company. That no Form No.23 or Form 32 were filed with the RoC by Respondent Company in respect of the appointment of Mrs. K. Pushpalatha as Managing Director. That a remuneration of Rs.16,50,000/- was drawn by Mrs. K. Pushpalatha for the years 2005-06 to

2007-08. It was submitted that the appointment of Mrs. K. Pushpalatha into the Respondent Company was made without the knowledge of the Petitioner (**Relevant Documents at Annexure A-55 to A-58 of the Petition**).

21. It was submitted that there are many differences between the books of accounts and the Audited Financial Statements of the Respondent Company for the Financial Year 2005-06. Relying on the same, it was submitted that Respondent No.2 & 3 are mismanaging the affairs of the Respondent Company and in connivance with Respondent No.4, manipulated the accounts of the Respondent Company.

22. It was submitted that the Petitioner was provided with the remuneration but the same was not paid to the Petitioner since August, 2007 whereas the other Directors of the Respondent Company were provided with the salary (**Annexure A-69 to A-72 of the Petition**).

Counter on behalf of Respondent No.1 to 3

23. Denying the allegations levelled by the Petitioner, it was submitted that the Petitioner do not possess the criteria to maintain the present Petition. It was submitted that as on the date of filing the present Petition, the balance sheet of the Respondent Company for the year 2007-08 was available and as per the same, the issued, subscribed and paid-up share capital of Respondent Company is Rs.23,39,000/- divided into 2,33,900 equity

shares of Rs.10/- each. It was also submitted that the Petitioner is not a Director and was holding only 3334 equity shares of Rs.10/- each accounting to 1.42% of the issued share capital of the Respondent Company. It was submitted that the Petitioner did not make out any prima facie case of oppression and mismanagement of the affairs of the Respondent Company. It was also submitted that the Petitioner filed criminal complaint before the Ld. XII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad with regard to the allotment of shares, cessation of Petitioner as Director, mismanagement and misappropriation of the affairs of the Respondent Company.

24.It was submitted that the Petitioner filed the present Petition with unclean hands and is causing damage to the interests of the Respondent Company. It was submitted that the Petitioner indulged in various acts of oppression and causing loss to the Respondent Company. It was submitted that the Petitioner joined Digicable Network India Private Limited, a rival of Respondent Company on full time employment as Vice-President (**Annexure R1 of Counter**) and hence, on this ground, the present Petition is liable to be dismissed.

25.It was submitted that the Petitioner was entrusted with the affairs of the Respondent Company and used to sign all the agreements and other documents on behalf of the Respondent Company with customers,

employees and banks. It was submitted that the Petitioner dealt with the Finance and Accounts of the Respondent Company and also executed agreements on behalf of the Respondent Company (**Page 21 to 40 of the Petition**).

26. It was submitted that the Petitioner started neglecting the business of the Respondent Company to develop own business and was not interested to bring in funds by way of equity or loans into the Respondent Company. It was submitted that it was Respondent No.2 & 3 who invested the money in the Respondent Company by way of equity.

27. It was submitted that the Respondent Company received the share application money of Rs.28,39,000/- as per the audited balance sheet on 31.03.2006 and that this audited balance sheet was circulated among the shareholders including the Petitioner. It was submitted that the Petitioner attended the Meeting and did not question the authenticity of the accounts for the year ended on 31.03.2006. It was submitted that while giving declaration to the Bank, the Directors of the Respondent Company agreed to convert this share application money into share capital and accordingly allotted 2,23,900 shares of Rs.10/- each on 30.06.2007.

28. In respect of the allegation of siphoning off funds, it was submitted that the Petitioner was relying on the material seized by the Vigilance Department and that these accounts were prepared by Mr. Jitender Kumar,

erstwhile accountant of the Respondent Company who is now working with the Petitioner. It was submitted that all these accounts were fabricated and that these accounts do not match with the statutory and audited books of accounts of the Respondent Company. The Respondent No. 1 to 3 also gave explanations to each allegation of fraud.

29. It was submitted that the property offered to Bank as collateral security for the loan of Rs.2 crores is not that of Petitioner but is of Respondent No.3 and that the same is evident from the sanction letter of the Bank dated 26.03.2007 (**Annexure A-13 (Page 100) of the Petition & Annexure R5 of Counter**). It was further submitted that when the Petitioner ceased to be the Director of the Respondent Company, the Petitioner was discharged from this Personal Guarantee when the loan was renewed (**Annexure R6 of Counter**).

30. With respect to the loan for vehicle, it was submitted that the Bank never sought any clarification on the conduct of Board Meeting and the same does not arise in lieu of *Item No. 26 and 27* of the Articles of the Respondent Company which is as follows:

“A resolution in writing signed by majority of the Director for the time being entitled to receive notice of a meeting of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held subject to Section 289 of the Act.”

It was submitted that the Bank only insisted that all the Directors are to sign the documents but the Petitioner objected to the same and as a result,

the Respondent No.2 & 3 asked the Bank to close the loan account by debiting the amount to OD account.

31.It was submitted that it is the general practice of the Respondent Company not to send prior written notices by way of registered post as all the Directors are working Directors operating from the same premises and that oral intimation is given to the Directors about the date and time of the meeting by keeping notices on the tables of the Directors. It was submitted that the Petitioner is aware of this practice and used to attend the Board Meetings, but the Petitioner had not signed the Board Meetings although some agreements were executed by the Petitioner on behalf of the Respondent Company.

32.It was submitted that the Petitioner was aware of the Board Meeting dated 31.08.2007, but did not attend the same. It was submitted that the Petitioner was not attending the office regularly from May, 2007 and completely stopped from the month of August, 2007 and that the Petitioner collected the salary cheque on 29.08.2007. It was submitted that when questioned by Respondent No. 2 & 3, it was stated by the Petitioner that the Petitioner is going to pursue different field of activity and that accordingly, relinquished the rights and interests in the Respondent Company.

33. It was submitted that the Petitioner was not attending the duties of the Respondent Company since August, 2007 thereby ceasing to be a Director

under Section 283(1)(g) of The Act of 1956 and the Board passed a resolution to that effect and filed Form-32. It was submitted that the Petitioner had never sought any clarification on any issue of the Respondent Company and wrote letters to Banks, customers and suppliers of Respondent Company seeking statement of accounts to be sent to the residential address of the Petitioner (**Page 75 to 77 of the Petition**).

34. It was submitted that Section 81 of The Act of 1956 is not applicable to a private company and that there is no agreement between the Board of Directors or a clause in the Memorandum and Articles of Association that the shares of the Respondent Company will be allotted in equal proportion to the existing shareholders in future allotments on rights basis. It was also submitted that even before further issuance and allotment of shares, the Respondent No.2 & 3 were holding 66% of shares together and the question of malafide intention of Respondent No.2 & 3 to gain control over Respondent Company do not arise. It was submitted that the Respondent Company received the share application money from the members on various dates during the year 2005-06 which was reflected in the books of accounts and that the Petitioner was aware of the same as is evident from the pleadings at Para 6.1.11, 6.1.12 of the Petition.

35.It was submitted that the authorized share capital of the Respondent Company was increased to 70 lakhs over a period of time on three occasions as follows:

- 15.06.2005 – From Rs.5 lakhs to Rs.15 lakhs – Form 5 filed on 22.06.2005
- 26.12.2005 – From Rs.15 lakhs to Rs.30 lakhs – Form 5 filed on 05.01.2006
- 19.02.2007 – From Rs.30 lakhs to Rs.70 lakhs – Form 5 filed on 15.03.2007

36.It was submitted that in all the above occasions, there was a Board Meeting and General Meeting of which notice was issued to the Petitioner. It was submitted that the authorised share capital particulars were mentioned in all the loan documents which were signed by the Petitioner along with Respondent No.2 & 3. It was submitted that the Petitioner did not raise any objection in respect of the shareholding pattern while signing these loan documents.

37.It was submitted that the share application money of Rs.28,39,000/- as shown in the balance sheet of 2005-06 is correct and that the same was submitted to the Bank, IT and the RoC, but that in the papers submitted to the Bank, a mistake took place due to a human error. It was submitted that by way of a journal entry, current liabilities of Rs.15,30,869/- were

transferred to the share application money and hence the share application money was shown as Rs.43,69,869/- in the original balance sheet. It was submitted that it is the practice of the Respondent Company to prepare four sets of Balance Sheets. Upon subsequent deliberations and instructions from the management, changes were made in the three balance sheets and no changes were made in the original balance sheet by mistake and that this original balance sheet was submitted to the Bank as the Bank insisted for filing of the original balance sheet. It was further submitted that in the audited Balance Sheet for the year 2006-07, the figures pertaining to 2005-06 were given wherein the share application money was shown as Rs.28,39,000/- and stated that the Respondents did not have any intention of cheating the Bank.

38. With respect to the allegation of maintaining several sets of accounts, it was submitted that it was the Petitioner who was in-charge of the affairs from 2005 to 2007 and that the accounts in-charge Mr. Jitendra Kumar was recruited by the Petitioner.

39. In respect of the allegations of siphoning off funds, denying all the allegations, it was submitted that all the statutory and audited books of accounts are well maintained and properly kept and that the allegations of the Petitioner do not match with the figures in the books of accounts. It was submitted that the Respondent Company was maintaining the register as

required under Section 301 of The Act of 1956. It was submitted that there were no transactions required to be entered by the Respondent Company in the register maintained under Section 301 of The Act of 1956 and quoted *Item No. V* of Auditor's Report (**Page 118 of the Petition**) which is as follows:

“As per information given to us there are no transaction that are needed to be entered into the Register maintained in pursuance of Sec.31 of the companies Act and hence not applicable.”

40. With respect to the appointment of Mrs. K. Pushpalatha, it was submitted that Mrs. K. Pushpalatha is the wife of Respondent No.3 and not of Respondent No.2. It was submitted that after deciding mutually by the three Directors, Mrs. K. Pushpalatha was appointed as Manager (Admn.) on a monthly emoluments of Rs.40,000 + perquisites not exceeding Rs.10,000/- till June, 2007 and subsequently, Mrs. K. Pushpalatha resigned. It was submitted that Respondent No.3, being husband of Mrs. K. Pushpalatha, did not draw any remuneration as Director of the Respondent Company during the tenure of Mrs. K. Pushpalatha. It was submitted that the Petitioner was aware of this fact and also did not raise any objection. It was further submitted that the appointment of Mrs. K. Pushpalatha was placed before the members in the extraordinary general meeting held on 15.06.2005 and was approved by a special resolution and that a Board Meeting was also held in this regard. It was also submitted

that Mrs. K. Pushpalatha was never appointed as Director or Managing Director of the Respondent Company.

41.It was submitted that there are no differences in the figures as between the Books of Accounts and the Audited Balance Sheets of the Respondent Company.

Rejoinder on behalf of the Petitioner

42. Reiterating the contentions put forth in the Petition and denying the contents of the Counter of Respondent No.1 to 3, it was submitted by the Petitioner that the allotment of shares of the Respondent Company was made by the Respondents on 30.06.2007 when the Petitioner was in USA (**Passport of Petitioner at Annexure 2 of Rejoinder**), thereby reducing the shareholding of Petitioner to 1.42%. That no notice was served on the Petitioner in this regard as per Section 286 of The Act of 1956.

43.It was submitted that the Petitioner joined Digicable Network (India) Private Limited to earn livelihood as the Respondent Company stopped paying the salaries for a long time and that the business of Digicable Network (India) Private Limited is different from that of the Respondent Company (**MOA & AOA of Digicable at Annexure 1 of the Rejoinder**).

44. With respect to the requirement of Board Resolution for obtaining vehicle loan from the Bank, it was submitted that *Item No.26 and 27* of the Articles

of Association, as relied on by the Respondents should satisfy the test of Section 289 of The Act of 1956.

45. It was submitted that the general practices followed by the Respondent Company in respect of the Board Meetings are not exempted from Sections 286, 301, 297 and other provisions of The Act of 1956.

46. It was submitted that though Mrs. K. Pushpalatha retired from Respondent Company since July, 2007, Annexure 58(b) of the Petition show that Mrs. K. Pushpalatha was being paid a salary upto January, 2008.

47. The Petitioner and the Respondent No.1 to 3 filed the written submissions in support of the contentions raised. In the light of the contest put forth as above by the parties, the points that emerge for the consideration of this Tribunal are:

1. Whether the Petitioner can be dismissed as not maintainable as the Petitioner does not possess requisite criteria to maintain the Petition?

2. Whether the acts alleged in the Petition against the Respondents amount to oppression and mismanagement? If so, for what relief?

48. We have heard Mr. VS Raju, Ld. Counsel for Respondent No.1 to 3 and perused the record and the written submissions filed by both the parties. The 4th Respondent was struck down from array of the parties of this Company Petition on 23.01.2017 by the order of this Tribunal, since

because it was found that the 4th Respondent was not a necessary and a proper party to the present Petition.

49. At the outset it may be relevant to state that on 04.03.2022, Ld. Judicial Member Dr. Bhaskara Pantula Mohan (as he then was) recused himself from hearing the present petition for the reason that he earlier appeared in the matter while practicing as an advocate. Pursuant thereto, Hon'ble President on 15.03.2022, exercising the powers under Section 419 of The Companies Act, 2013, read with Rule 62 of NCLT Rules, 2016 transferred the matter to this Court-I of Hyderabad Bench. Even though the matter was to be listed before this Court on 24.03.2022, the matter was not listed for a long time, hence the Ld. Counsel for Respondents requested the Registry to list the matter for early hearing. The Registry thereto put up the matter before HOD and the HOD sought explanation of AR for not listing the matter for such a long time. The Assistant Registrar sought exoneration for the mistake and pleaded that it was an inadvertent mistake. Thereafter, on 04.07.2023, it was directed that the matter be listed as early as possible and send intimation to the parties. Accordingly, the matter was listed on 08.11.2023 and counsels for both the parties appeared on that date.

50. Ld. Counsel Mr. Tameem Moez for applicant, did not make submissions on the plea that Senior Counsel for applicant has some personal inconvenience and sought for adjournment. Accordingly, the matter was

adjourned to 28.11.2023 on condition that if submissions are not made by the applicant on that date, their opportunity stands forfeited and the matter would be posted for orders. However, on 28.11.2023, despite the conditional order, the petitioner as well as his counsel were absent. Therefore, *this Tribunal heard the Ld. counsel for the respondents and forfeited the opportunity of applicant to make oral submissions.* However, since both sides had already filed their written submissions, the same were perused and duly considered.

POINT I: Whether the Petitioner can be dismissed as not maintainable as the Petitioner does not possess requisite criteria to maintain the Petition?

51. Before, we decide on the points before us, we feel it useful to bring on record some important facts and events about this case. This petition was originally filed with Ld. Company Law Board in the year 2008 and the Ld. Company Law Board on 09.09.2008 passed an interim order with following directions:

“3. However, considering the apprehension of the petitioner and with a view to regulate the affairs of the Company in future, I direct as under:

(i) There shall not be any change in the shareholding pattern of the Company until disposal of the company petition;

(ii) The Company shall not convene any general meeting without leave of this Bench;

(iii) Any major decision taken by the Board of directors if the Company shall be subject to outcome of the main petition; and

(iv) The Company shall furnish to the Bench Officer a statement of all receipts and payments on account of the Company every month commencing from 01.10.2008, to be submitted within 7 days of succeeding month.”

52. The Ld. Company Law Board, through an order dated 17.07.2009, permitted the Respondent Company to carry on its business as per the Memorandum and Articles of Association.

53. This Tribunal, with the consent of both the parties, vide order dated 14.07.2017 appointed Nataraja Iyer & Co (Chartered Accountants) as the valuer. The relevant portion of the said order dated 14.07.2017 is as follows

“22. We have perused both the Memo’s filed by the parties and pending disposal of CP No. 53/HDB/2008, we pass the following orders:

a. We hereby appoint Nataraja Iyer & Co. (Chartered Accountants) to carry out audit of the books of accounts from the last financial year in which books of accounts of R1 company were audited, till the current financial year and also to arrive at fair value price per share of Vision Broadband Services Private Limited.

b. We also direct the CA firm to positively complete this assignment before 30.09.2017 and submit the report to NCLT.

c. Considering the nature of assignment, the CA firm may fix the fee in consultation with both the parties and Petitioner will bear 1/3 (one-third) of the CA’s fee for this assignment and Respondents will bear the balance fee.”

54. The said auditor, Natraja Iyer & Co., submitted his report to this Tribunal on 29.11.2017 on *fair value price per share* of the R1 Company arrived at on the basis of *Net asset Value (Book Value) Method* and also on *realizable value of Assets / Fair Value Method*. The valuer has arrived at share price of **Rs (-)14.15 per share and Rs (-)90.66 per share**

on the basis of Net asset Value (Book Value) Method and realizable value of Assets / Fair Value Method respectively. We observe from the valuation report that the auditor has assessed the value of the shares on the basis of the financials dated 31.03.2017 for the Financial Year 2016-17. We further find that the auditor has taken 2,33,900 of shares while conducting the valuation. The scanned copy of the summary page of the said report is reproduced herewith:

Summary:
Considering what is stated above the Fair Value of assets are as below, and the fair value of share is arrived thereupon.

Amt in Rupees in Lakhs

	Book Value 31-03-2017	Fair Value
Land	111.04	82.04
Cables & Machineries	66.87	75.22
Vehicles	5.38	5.38
Other Fixed Assets	0.93	0.93
NCA Trade Receivables	60.46	0.00
Deferred Tax Asset	00.85	0.85
Short Term Loans (Pur & Exp)	66.13	2.85
Current Assets	11.61	11.61
Deposits	2.53	2.53
TDS	46.12	11.55
Sub Total	371.92	192.96
Liability to outsiders		
Share Application Money(Dir & Rel)	109.85	109.85
Unsecured Loans (Dir, Friends &Rel)	115.41	115.41
Outstanding Liabilities(Details N/A)	130.30	130.30
Other Liabilities	49.46	49.46
Sub Total	405.02	405.02
Net Worth	(33.10)	(212.06)
No of Equity Shares	233900	233900
Book/ Fair Value Price of each share in Rs.	Rs(14.15)	Rs.(90.66)

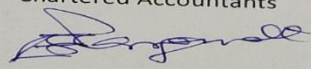
The value of assets are estimated at Rs.192.96Lakhs against the Book Value of Rs.371.92 Lakhs, the resultant depletion in value is Rs,178.96 Lakhs.


Conclusion
In the light of the above based on the details provided, as discussed and outlined herein above, in our opinion the value of each equity share of VBSPL is as below

	Amt in Rupees
Book Value (31-03-2017)	Rs.(14.15) Negative
Fair Value Price of each share (with diminution in value of assets)	Rs.(90.66) Negative

Place: Hyderabad
Date: 29.11.2017

For Nataraja Iyer & Co.,
Chartered Accountants


(E.S.Ranganath)
Partner



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The Submissions:

55. In the written submissions filed by the Petitioner, the Petitioner has not sought any leave of the Tribunal to waive the condition of minimum shareholding to maintain the petition and has relied on Annual Return of the Respondent Company for the Financial Year 2006-07, wherein the total issued equity capital of the Respondent Company is shown as 1,00,000 and he being the holder of 3,334 (33.34%) shares is eligible to file this petition.
56. Mr. VS Raju, Ld. Counsel for Respondent No.1 to 3 submitted that as on the date of filing the present Petition, the Petitioner holds only 1.42% of shares of the Respondent Company and hence, cannot maintain this Petition against the Respondents. Ld. Counsel further submitted that the Petitioner was relying on the Annual Return of the Respondent Company for the Financial Year 2006-07 but as on the date of filing the present Petition, the balance sheet for the year 2007-08 was also available and as per the same, the Petitioner do not hold the requisite criteria to maintain the present Petition. Therefore, this petition is liable to be dismissed on the ground of maintainability itself without going into the merits of the case.

Analysis and Findings:

57. The Petitioner herein admitted in the Petition at Para 6.1.19 that the shareholding percentage of petitioner was reduced to 1.43% from 33.34% when further issuance of shares of Respondent Company took place on

30.06.2007. In support of this plea, the Petitioner also produced Form 2 filed by the Respondent Company with the RoC (**Page 148 of the Petition**). This Form 2 finds a mention that a total number of 223,900 shares of Respondent Company were allotted on 30.06.2007, but there is no disclosure as to who are all the persons to whom these shares were allotted. The Petitioner also produced a document purporting to be the extract of the minutes of the alleged meeting of the Board of Directors of Respondent Company held on 30.06.2007. The same contains a statement as follows:

“Resolved that 2,23,900 number of shares of Rs.10/- each be and hereby allotted to the persons as per the statement submitted to this meeting and initialed by the chairman for the purpose of identification.”

58. This extract of minutes was followed by a document which mentions that these 223,900 shares were allotted to 19 different persons and the name of the Petitioner doesn't find a mention in the same.

59. In view of the above facts, indisputably, on the date of filing of petition, the petitioner was not having required percentage of shares in respondent company to become eligible to file the company petition as per Section 399 of The Act of 1956. But, in our view since petitioner has challenged the very issuance of shares on 30.06.2007 which makes him ineligible to file this petition, these shares may not be taken into account for working out his eligibility to file this petition. If we follow the above principle of not

considering the shares whose issuance itself is in dispute in this petition, the petitioner holds the requisite number of shares to maintain this petition.

60. In *Shri Kishan Khariwal vs The Ganganagar Industries Limited*, [2004] 118 COMP. CAS 626 (CLB), it was observed as follows:

“4. I have considered the pleadings and arguments. To maintain a petition under Section 397/398, the provisions of Section 399 have to be complied with. According to this Section, to maintain a petition under Section 397/398, the petitioners should hold either 10% or more shares of the subscribed capital or should constitute 10% or more of the total members in the company. In the present case, the petitioner has claimed that the shares held by him together with those of the members supporting him, account for 10.35% shares in the company and such the requirements of Section 399 are satisfied. This percentage is based on the share capital of the company before the issue of further shares impugned in the petition. This Board has always taken the view that if the shareholding of the petitioners is reduced below 10% of account of further issue of shares and if the issue of further shares is also challenged in the petition, then, the petition will not be dismissed as not maintainable in terms of Section 399. Instead, the allegation relating to the issue of further shares would be examined first as to whether the same is an oppressive act and if it is found to be so, then only other allegations in the petition would be examined. In the present case, the petitioner claims the support of those holding more than 10% shares and he has also impugned the further issue of shares, which has resulted in the holding of the petitioner and his supporters to around 1%. Therefore, this petition cannot be dismissed at the threshold before examining as to whether the issue of further shares could be considered to be an act of oppression against the petitioner and his supporters.”

61. Hence, we hold that this Petition cannot be dismissed on the basis of maintainability as the Petitioner does not have requisite criteria to maintain the present Petition. **Hence, point no 1 is answered accordingly.**

POINT II: Whether the acts alleged in the Petition against the Respondents amount to oppression and mismanagement as to the Petitioner? If so, for what relief?

62. At the outset, we wish to caption the pleaded allegations of oppression and mismanagement by Petitioner as below:

A. Allocation of works amongst the Directors in respect of the affairs of the Respondent Company

The Submissions:

63. In the written submissions filed by the Petitioner, it was submitted that as per an agreement, the Petitioner used to look after the marketing of the Respondent Company and Respondent No.2 & 3 were taking care of administration of the Respondent Company which included banking operations. That by taking advantage of this position, the Respondent No.2 & 3 have acted in a manner oppressive to the interests of the Petitioner and prejudicial to the interests of the Respondent Company.

64. Per Contra, by placing reliance on Page 21 to 40 of the Petition, Ld. Counsel for Respondent No.1 to 3 submitted that the Petitioner dealt with the Finance and Accounts of Respondent Company and executed agreements on behalf of Respondent Company. Learned counsel further submitted that it was the Petitioner who acted in a manner prejudicial to the interests of the Respondent Company.

Our Observations and Findings:

65. To delve upon this issue, it would be appropriate to peruse at Section 291 of The Act of 1956 which is as follows:

“291. GENERAL POWERS OF BOARD

(1) Subject to the provisions of this Act, the Board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:

Provided that the Board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting:

*Provided further that in exercising any such power or doing any such act or thing, the Board shall be subject to the provisions contained in that behalf in this or any other Act, or **in the memorandum or articles of the company**, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting.*

(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.”

66. An understanding of the above provision makes it clear that the Board of Directors can exercise all powers and do all acts on behalf of the Company subject to the conditions mentioned in The Act of 1956 and also in the Memorandum and Articles of Association.

67. A perusal of the Memorandum and Articles of Association of the Respondent Company which was annexed as Annexure A-4 of the Petition also shows that there was no division of powers between the Board of Directors of the Respondent Company. Moreover, there was no Board Resolution or Agreement amongst the directors, showing that the powers

to act on behalf of the Respondent Company were distributed amongst the Directors in whatsoever manner.

68. In lieu of this fact, we do not find any merit in the contentions of both the sides that the Petitioner and the Respondent No.2 & 3 separately used to look after certain acts individually on behalf of Respondent Company. It is further observed that all the Directors i.e., Petitioner, Respondent No.2 and Respondent No.3 are equally empowered and duty bound to perform the necessary acts on behalf of the Respondent Company. At the same time, with these powers, the consequences arising from the exercise or non-exercise of these powers and duties also follow making all the Directors equally liable.

69. Considering the above, we *reject* contentions of Petitioner that respondents did some acts of oppression and mismanagement taking advantage of allocation of works amongst the directors.

B. Non – issuance of notice of meetings and Changes in Share-holding

The Submissions:

70. In the written submissions of the Petitioner it was submitted that the authorized share capital of the Respondent Company was increased without conducting any Board Meeting and General Meeting and also without issuing any notice to the Petitioner. It was also submitted on behalf of the Petitioner that there was further issuance and allotment of 2,23,900

equity shares of Rs.10/- each of Respondent Company on 30.06.2007 and the Board Meeting for issuance of these shares was also conducted without issuing any notice to the Petitioner. It was also submitted that the Petitioner was on a trip to USA during this time and the Respondent No.2 & 3 were aware of this fact. The Petitioner alleged that these shares were allotted to family and friends of Respondent No.2 & 3 and that by this allotment, the shareholding of Petitioner reduced to a minority of 1.43%. It was submitted by the Petitioner that this act of Respondents is violative of Sections 286, 171, 172, 173 of The Act of 1956.

71. Learned Counsel for Respondents No.1 to 3 submitted that the authorized share capital of the Respondent Company was increased over a period of time on three occasions by conducting Board Meetings and general body meetings and that the petitioner was also issued a notice in this regard.

72. Learned Counsel for Respondents No.1 to 3 submitted that the Respondent Company was in requirement of funds and that the same was done through further issuance of shares. That, the Petitioner was aware of the Board Meeting dated 30.06.2007 but chose not to attend the same.

Our Observations and Findings:

73. Though admitted by both the sides, neither party submitted any document relating to General Meetings and Board Meetings wherein authorized share capital of the Respondent Company was increased. The only document

produced in this regard by Petitioner is Form-5 filed by the Respondent Company with the RoC which carry the dates viz., 15.06.2005, 26.12.2005, 19.02.2007 as the dates on which the authorized share capital of the Respondent Company was increased. (**Annexure A-10(a) to A-10 (c)**). Further we find that no document relating to the alleged act of issuance of shares on 30.06.2007 is filed except the purported extract of minutes of Board Meeting dated 30.06.2007 produced by the Petitioner at Page No. 151 of the Petition. This document dated 30.06.2007 does not show as to who all attended the Board Meeting. In the absence of any proper document, it is difficult to arrive at any view as to the legality or illegality of this alleged act of the Respondents with respect to the alleged Board Meeting dated 30.06.2007. It was stated on behalf of Respondents No.1 to 3 that since all the Directors were working Directors, there was no practice of sending prior written notices through post in respect of the meetings and oral intimation was used to be given to the Directors and Petitioner was aware of this practice and also entered into certain agreements on behalf of the Respondent Company wherein decisions were taken through these meetings held on the basis of oral intimation.

74. In this regard, it is relevant to point to Section 286 of The Act of 1956:

“286. NOTICE OF MEETINGS

(1) Notice of every meeting of the Board of directors of a company shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.

(2) Every officer of the company whose duty it is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to one thousand rupees.”

75. In the same way, Sections 171, 172, 173 of The Act of 1956 deals with the notices to be issued to the members of the company in respect of the meetings of company and the manner in which these notices are to be issued. It can be observed that all these notices to be issued for Board Meetings and Meetings of the Company are to be in writing. No provision of The Act of 1956 provides for issuance of an oral notice. Hence, it is clear that the notice for Board Meeting and other Meetings of the Company must be in written form.

76. With respect to the burden of proof of notice of a meeting, it is relevant to point to the following observation made by The Company Law Board in ***Ms. Varshben S. Trivedi vs M/s. Shree Sadguru Switch Gears Pvt. Ltd. & Ors.***, 2014 SCC Online CLB 314:

“21. By virtue of Section 53(b) of the Act (The Companies Act, 1956), a Company may serve a notice upon on any member personally or by post at his address in India, as recorded in the Company's register through post at certificate. However, such notice should be properly addressed and stamped. In the present case, the Respondents have stated to have served the notice by hand delivery as well as through UPC, However, the Petitioner has denied the service of Notice upon her. It is a well settled proposition of law that if the party denies having received the notice, the burden lies upon the other Party to prove that

such notice was delivered to the Addressee. In catena of decision, it has been held that service through UPC is a rebuttable presumption and unless it is proved by other corroborative piece of evidence, the service of notice cannot be presumed sufficiently.

22. In the present case, there is no corroborative material on record to show that the notice was duly served upon the Petitioner either by hand delivery or through UPC.....”

77. From this observation, it is clear that in the present case, the burden is on the Respondent Company to show that a notice was issued to the Petitioner in respect of the meetings. As the Respondent Company failed to produce any proof to show issuance of notice to the Petitioner, this Tribunal holds that the Petitioner was not issued any notice of the meetings which are under consideration in the present Petition.

78. Now, it is to be seen as to whether the non-issuance of notice of these meetings, which is a contravention of law i.e., The Act of 1956 amounts to oppression and mismanagement.

In *Needle Industries (India) Pvt. Ltd. vs. Needle Industries Newey (India) Holdings Ltd. & Ors.*, 1981 3 SCC 333, it was observed as follows:

*“49. The question sometimes arises as to whether an action in contravention of law is per se oppressive. It is said, as was done by one of us, Bhagwati, J., in a decision of the Gujarat High Court in *Seth Mohanlal Ganpatram v. Sayaji Jubilee Cotton & Jute Mills Co. Ltd.* that “a resolution passed by the directors may be perfectly legal and yet oppressive, and conversely a resolution which is in contravention of the law may be in the interests of the shareholders and the company”. On this question. Lord President Cooper observed in *Elder v. Elder*:*

“The decisions indicate that conduct which is technically legal and correct may nevertheless be such as to justify the application of the “just and equitable” jurisdiction, and, conversely, that conduct involving illegality and contravention of the Act may not suffice to warrant the remedy of winding up, especially where alternative remedies are available. Where the “just and equitable” jurisdiction has been applied in cases of this type, the circumstances have always, I think, been such as to warrant the inference that there has been, at least, an unfair abuse of powers and an impairment of confidence in the probity with which the company's affairs are being conducted, as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy.”

Neither the judgment of Bhagwati, J. nor the observations in Elder are capable of the construction that every illegality is per se oppressive or that the illegality of an action does not bear upon its oppressiveness. In Elder a complaint was made that Elder had not received the notice of the Board meeting. It was held that since it was not shown that any prejudice was occasioned thereby or that Elder could have bought the shares had he been present, no complaint of oppression could be entertained merely on the ground that the failure to give notice of the Board meeting was an act of illegality.”

79. In the present case, also the Petitioner did not show as to what prejudice was caused to him by the acts of Respondent No.2 & 3 in not issuing the notice of meetings and thereby increasing the authorized share capital of the Respondent Company and issuance of additional shares. The Petitioner did not show as to what prejudice was caused by this further issuance and allotment of 2,23,900 equity shares of Rs.10/- each of Respondent

Company on 30.06.2007. It was not submitted as well as no document was produced evidencing that the Petitioner could have bought the shares had he been present in the alleged Board Meeting dated 30.06.2007. The prayer made by the Petitioner in this regard is also not for allotment of shares of R1 Company in the same proportion as allotted to other shareholders but the prayer is to cancel the allotment of shares allotted in the alleged Board Meeting.

80. We observe that the Financial Statement for the Financial Year 2005-06 which are not challenged by the Petitioner and during which period Petitioner was Director of the Company, shows an amount of Rs. 22,39,000 as share application money which means that the Company was under obligation to issue shares to these subscribers from whom it has collected share application money. Petitioner has not filed any record showing his objection to this share application money received by the company. Therefore, this collection of share application money by R1 Company has acquiescence of the Petitioner and now he cannot plead the cancellation of shares. Moreover, Section 81 of The Act of 1956 is not applicable to the Respondent Company for being a private Company.

“Section 81. Further issue of capital

(3) Nothing in this section shall apply –

(a) to a private company; or

(b) to the increase of the subscribed capital of a public company caused by the exercise of an option attached to debentures issued or loans raised by the company –

(i) to convert such debentures or loans into shares in the company, or

(ii) to subscribe for shares in the company”

81. In lieu of the above, the plea of the Petitioner that the principles of Section 81 be adhered to cannot be given due weight. Also, the Petitioner failed to show the prejudice caused by this further issuance and allotment of shares.

82. In the absence of any prejudice shown by the Petitioner, this Tribunal observes that no oppression was made on the Petitioner by the acts of Respondents in relation to the non-issuance of notice of meetings, further issuance and allotment of shares and increase in shareholding of the Respondent Company.

C. Manipulation or variations in Financial Statements, Balance Sheets and Books of Accounts of Respondent Company

The Submissions:

83. In the written submissions, it was submitted by the Petitioner that the Respondent No. 2 & 3 manipulated the books of accounts of the Respondent Company. It was submitted that in the loan application wherein a loan of Rs.2 crores was sought by the Respondent Company, different figures were mentioned in the audited Financial Statement & Balance Sheet for the year ended on 30.03.2006 when compared with the

actual documents filed with the RoC. It was submitted that this act was done by Respondent No.2 to 4 in connivance with each other. It was stated that the Petitioner only signed the declaration & guarantee document of this loan application and the rest of the documents were signed by Respondent No.2 to 4.

84. Learned Counsel for the Respondent No.2 & 3 stated that there was a human error crept in during the preparation of the audited financial statement and balance sheet, and that the same was rectified later. Learned Counsel submitted that after rectification, the documents were filed with RoC, IT Authority and the Bank. It was submitted that the rectification was not done in the original document submitted to the Bank. Learned Counsel stated that the figures pertaining to the year 2005-06 were also mentioned in the Balance Sheet of 2006-07 and the same shows that the mistake which crept in the documents was a bonafide one.

Our Observations and Findings:

85. We observe that Company has to file the audited Financial Statement and the Balance Sheet with the RoC as per the law and from the submissions of the parties herein, it is clear that there were no errors in the documents submitted to the RoC, but there was an error in the documents submitted to the Bank. We also take a note that there was no objection by the Bank in this regard and the said loan for which this balance sheet was filed could

not be disbursed. As observed earlier, by placing reliance on *Needle Industries (supra)*, the Petitioner herein failed to show what prejudice was caused to him as a member of the Respondent Company by this error in the documents submitted to the Bank by the Respondent Company.

86. In this regard, we also find it relevant to embark upon the following provisions of The Act of 1956:

“210. ANNUAL ACCOUNTS AND BALANCE SHEET

(1) At every annual general meeting of a company held in pursuance of section 166, the Board of directors of the company shall lay before the company –

(a) a balance sheet as at the end of the period specified in sub-section (3), and

(b) a profit and loss account for that period.

(2) In the case of a company not carrying on business for profit, an income and expenditure account shall be laid before the company at its annual general meeting instead of a profit and loss account, and all references to "profit and loss account", "profit" and "loss" in this section and elsewhere in this Act, shall be construed, in relation to such a company, as references respectively to the "income and expenditure account", "the excess of income over expenditure", and "the excess of expenditure over income". (3) The profit and loss account shall relate –

(a) in the case of the first annual general meeting of the company, to the period beginning with the incorporation of the company and ending with a day which shall not precede the day of the meeting by more than nine months ; and

(b) in the case of any subsequent annual general meeting of the company, to the period beginning with the day immediately after the period for which the account was last submitted and ending with a day which shall not precede the day of the meeting by more than six months, or in cases where an extension of time has been granted for holding the meeting under the second proviso to sub-section (1) of section 166, by more than six months and the extension so granted.

215. AUTHENTICATION OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT

(1) Save as provided by sub-section (2), every balance sheet and every profit and loss account of a company shall be signed on behalf of the Board of directors –

(i) in the case of a banking company, by the persons specified in clause (a) or clause (b), as the case may be, of subsection (2) of section 29 of the Banking Companies Act, 1949 (10 of 1949);

(ii) in the case of any other company, by its manager or secretary if any, and by not less than two directors of the company one of whom shall be a managing director where there is one.

(2) In the case of a company not being a banking company, when only one of its directors is for the time being in India, the balance sheet and the profit and loss account shall be signed by such director; but in such a case there shall be attached to the balance sheet and the profit and loss account a statement signed by him explaining the reason for non-compliance with the provisions of sub-section (1).

(3) The balance sheet and the profit and loss account shall be approved by the Board of directors before they are signed on behalf of the Board in accordance with the provisions of this section and before they are submitted to the auditors for their report thereon.

216. PROFIT AND LOSS ACCOUNT TO BE ANNEXED AND AUDITORS' REPORT TO BE ATTACHED TO BALANCE SHEET

The profit and loss account shall be annexed to the balance sheet and the auditors' report (including the auditors' separate, special or supplementary report, if any) shall be attached thereto.

217. BOARD'S REPORT

(1) There shall be attached to every balance sheet laid before a company in general meeting, a report by its Board of directors, with respect to –

(a) the state of the company's affairs;

(b) the amounts, if any, which it proposes to carry to any reserves in such balance sheet ;

(c) the amount, if any, which it recommends should be paid by way of dividend ;

(d) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance sheet relates and the date of the report ;

(e) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed.

.....

(2AA) **The Board's report shall also include a Directors' Responsibility Statement, indicating therein, -**

(i) that in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(ii) that the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit or loss of the company for that period;

(iii) that the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(iv) that the directors had prepared the annual accounts on a going concern basis."

87. The above extracted provisions of The Companies Act of 1956, clearly show that the Board of Directors are duty bound to maintain all the books of accounts of the Company in a proper manner and are also accountable in this regard as the representatives of the Company. In view of this

position of law, the Petitioner, who was a Director and thus a part of the management of the Respondent Company in the FY 2005-06 , cannot plead ignorance of the alleged mistakes/manipulation of accounts and figures of the Respondent Company in the audited Financial Statement and Balance Sheet for the year ended on 30.03.2006.

88. Even assuming the allegation levelled herein as true and established, this Tribunal finds that the Petitioner himself did not exercise the expected ordinary prudence and diligence in the capacity of Director and also as a Personal Guarantor in verifying the documents submitted to the Bank in the loan application, at least during signing the same. In lieu of this observation, the Petitioner cannot plead ignorance to escape the liability by stating that only the declaration of loan application was signed by the Petitioner. These allegations, if proved to be true, also makes the Petitioner herein equally liable along with Respondent No.2 & 3, for the reasons that all being the directors of the Respondent Company.

89. In the backdrop of the points as discussed above , we reject the allegation of the petitioner that oppression was caused to him because of mistakes or falsification of accounts for the year 2005-06.

D. Siphoning off funds of the Respondent Company

The Submissions:

90. In the written submissions, the Petitioner has alleged siphoning off of funds of the Respondent Company by the Respondent No.2 & 3 during the period between the Financial Years 2005-06 to 2007-08. Per Contra, the Ld. Counsel for Respondents denied and refuted all these contentions raised by the petitioner.

Our Observations and Findings:

91. We observe from the records that Petitioner ceased to be a Director of the Respondent Company on 22.05.2008. Therefore, it is clear that the Petitioner, being a Promoter-Director of the Respondent Company and also the subscriber to the Memorandum and Articles of Association, is associated with the Respondent Company as Director during the period for which allegations of siphoning off funds are levelled. As observed earlier, the Petitioner and Respondent No.2 & 3 are placed at equal footing in respect of the powers, duties and responsibilities to be exercised with regard to the Respondent Company. In such scenario, we observe that the Petitioner is equally liable for the alleged acts of siphoning off funds of the Respondent Company, if proved to be true.

92. Even assuming that the Petitioner is ignorant of the above-mentioned acts, the Petitioner failed to show the *bona fides* as to what steps were taken by the Petitioner as a Director and shareholder of the Respondent Company in tackling the acts alleged, when the same came to the notice of the

Petitioner. Nothing was brought before this Tribunal to show as to what confrontation did the Petitioner make against the Respondent No.2 & 3 as a responsible Director and an interested shareholder of the Respondent Company in respect of the transactions the Petitioner is questioning herein.

93. Therefore, we hold that these allegations by the petitioner are not maintainable against the respondents as he is also equally responsible for all these acts.

E. Removal of Petitioner as Director of the Respondent Company

The Submissions

94. In the written submissions, the Petitioner submitted that when the Petitioner questioned Respondent No.2 & 3 about the acts done which are detrimental to the interests of the Respondent Company, Respondent No.2 & 3 filed Form-32 with the RoC stating that the Petitioner ceased to be a Director of Respondent Company from 22.05.2008 and the reason for such cessation was vacation under Section 283 of The Act of 1956. The Petitioner further submitted through his rejoinder submission that the contention of the respondents that he has joined another Company called Digicable Network (India) Private Limited as vice President and this act of his is oppressive against R1 Company is not correct as Petitioner joined this Company to earn livelihood as the Respondent Company stopped paying the salaries for a long time and that the business of Digicable

Network (India) Private Limited is different from that of the Respondent Company.

95. The Learned Counsel for Respondent No.1 to 3 submitted that the Petitioner was not attending the Board Meetings since May, 2007 and when questioned, it was stated by the Petitioner that he is pursuing different field of business and also relinquished rights and interests in the Respondent Company. Ld. Counsel submitted that the Petitioner herein acted against the interests of the Respondent Company and joined in Digicable Network India Private Limited, a rival of the Respondent Company on full time employment as Vice President. Learned Counsel further submitted that the Petitioner started neglecting the business of the Respondent Company to develop his own business and was not interested to bring in funds by way of equity or loans into the Respondent Company. Learned Counsel further submitted that it was Respondent No.2 & 3 who invested the money in the Respondent Company by way of equity and also gave their properties as collateral securities to the bank.

Our Observations and Findings:

96. We reproduce herein relevant portion of Section 283 of The Act of 1956 which is relevant to decide the issue before us.

“283. VACATION OF OFFICE BY DIRECTORS.

(1) The office of a director shall become vacant if –

.....

(g) he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board;”

97. Though it was stated by the Respondents that the Petitioner was removed from the position of director for vacation of office on account of non-attendance to Board Meetings but no material was brought before this Tribunal to show as to on what dates the Board Meetings of the Respondent Company were conducted for which the Petitioner did not show up. Even Petitioner has also not produced any document or detail that he attended the meetings and therefore his removal as director from the company is illegal.

98. In the absence of proper documents, it is difficult to arrive at a conclusion whether removal of petitioner from directorship is as per law or contrary to it. Even assuming the said allegation to be true, as observed earlier by quoting *Needle Industries (supra)*, this act of illegally removing the Petitioner as a Director in itself do not amount to oppression. In the case of *Tata Consultancy Services Limited vs Cyrus Investments Pvt Ltd, (2021) 9 SCC 449*, it was observed by the Hon’ble Supreme Court as follows:

“118. An important aspect to be noticed is that in a petition under Section 241, the Tribunal cannot ask the question whether the removal of a Director was legally valid and/or justified or not. The question to be asked is whether such a removal tantamounts to a conduct oppressive or prejudicial to some members. Even in cases where the Tribunal finds that the removal of a Director was not

in accordance with law or was not justified on facts, the Tribunal cannot grant a relief under Section 242 unless the removal was oppressive or prejudicial.

119. There may be cases where the removal of a Director might have been carried out perfectly in accordance with law and yet may be part of a larger design to oppress or prejudice the interests of some members. It is only in such cases that the Tribunal can grant a relief under Section 242. The Company Tribunal is not a Labour Court or an Administrative Tribunal to focus entirely on the manner of removal of a person from Directorship. Therefore, the accolades received by CPM from the Nomination and Remuneration Committee or the Board of Directors on 29-6-2016, cannot advance his case.

.....

121. As we have pointed out above, the validity of and justification for the removal of a person can never be the primary focus of a Tribunal under Section 242 unless the same is in furtherance of a conduct oppressive or prejudicial to some of the members. In fact the post of Executive Chairman is not statutorily recognised or regulated, though the post of a Director is. At the cost of repetition it should be pointed out that CPM was removed only from the post of (or designation as) Executive Chairman and not from the post of Director till the company petition was filed.”

99. In the present case, the Petitioner once again failed to show as to what prejudice was caused to his interest on being removed as the Director of the Respondent Company. On the contrary, as admitted by him also, he has joined another company as vice president. Though no details/ documents are produced by the respondents’ giving details of absence of petitioner in Board Meetings but logically it has some merit because petitioner after joining another company as vice president would have lost interest in attending Board Meetings and other responsibilities of R1 company.

100. Therefore, in backdrop of above discussion, we do not find any act of oppression in removing petitioner as director.

F. Appointment of Mrs. K. Pushpalatha as Managing Director/Director/Manager of the Respondent Company

The Submissions:

101. In the written submissions, it was submitted by the Petitioner that in contravention of Section 314 of The Act of 1956, Mrs. K. Pushpalatha, the wife of Respondent No.2 was appointed as the Manager of the Respondent Company with a salary of Rs.50,000/- and that there was no resolution passed in this regard by the Board of the Respondent Company. The Petitioner, in support of this contention relied on the Ledger Account statements of both Mrs. K. Pushpalatha and the Respondent Company **(Annexure A-55 to A-58 of the Petition)**.

102. Learned counsel for the Respondents submitted that all the three Directors viz., Petitioner, Respondent No. 2& 3 mutually decided and appointed Mrs. K. Pushpalatha as Manager (Admn.) on a monthly remuneration of Rs.40,000 plus perquisites not exceeding Rs.10,000/-. Learned counsel further submitted that this appointment of Mrs. K. Pushpalatha was approved by the members in the extraordinary general meeting dated 15.06.2005.

Our Observations and Findings:

103. After perusing the ledger account statements filed in this regard by the Petitioner, and not contradicted by respondents, we conclude without any doubt that at least for the period from 01.04.2005 to 31.03.2006, Mrs. K. Pushpalatha was appointed as the General Manager (mentioned as GM in the ledger account statement) of the Respondent Company on a monthly salary of Rs.50,000/-. This appointment of Mrs. K. Pushpalatha, being wife of Respondent No.3 (a Director of Respondent Company) must be in compliance with the procedure as provided in Section 314 of The Act of 1956. Though, Respondents pleaded that there was a special resolution dated 15.06.2005 and also the approval of board of directors in this regard but did not provide any such document i.e., any minutes of these meetings. In the absence of the same, the appointment of Mrs. K. Pushpalatha can be termed as contravening Section 314 of The Companies Act of 1956.

104. We find that this appointment was made in the year 2005 and the Petitioner was a director during this period. The Petitioner did not bring any substance to show as to what steps were taken by the Petitioner when it was known that the appointment of Mrs. K. Pushpalatha was illegal and in contravention of Section 314 of The Act of 1956. Therefore, we conclude that Petitioner was also a party to this decision making or at least his implied consent was there to her appointment. Therefore, Petitioner

now cannot claim that her appointment was an act causing prejudice and oppression to him.

105. Therefore, in the light of our discussion and the observations, it is clear that the Petitioner is well aware of all the alleged acts and now he is taking shelter under Sections 397 and 398 of The Act of 1956, which in our considered view is not bonafide. We also observe that though there is “no oppression” as against the Petitioner herein or the Respondent Company, in view of our discussion and the observations made above, we are of the firm view that the affairs of the Respondent Company were not managed properly and acts of mismanagement are established. **The point no 2 is answered accordingly.**

106. Hence, in the light of our findings on the points above, we pass order as under:

- (1) The Respondents No. 2 and 3 are not found involved in acts of ‘prejudice’ and / or oppression against the Petitioner or 1st Respondent Company. Hence prayer as sought by petitioner is hereby rejected.
- (2) That the Petitioner as well as Respondent No. 2 and 3 are found involved in the “acts of mismanagement” of the affairs of the 1st Respondent Company and also non-compliance of various provisions of the Companies Act, 1956.

(3) That in view of our findings in point no (2) as above, we hereby appoint Ms. Devangi Kariya, Company Secretary, whose contact details are:

Address: R/o. 101, Sumadhura Acropolis,

Financial District, Hyderabad, Telangana.

Email: kdevangi@gmail.com

Contact: 9704630066

to conduct 'compliance audit' of the 1st Respondent Company and file a report before this Tribunal within 30 days from the date of receipt of the copies of this order. The fee of the Company Secretary is tentatively fixed at Rs. 1,50,000/- per month to be payable by the Petitioner and Respondent No. 2 & 3 and the expenses as per actuals.

(4) The present management of 1st Respondent Company is directed to comply with all non-compliances reported in the report within a period of one month from the date of report and file a certificate to this effect to the Tribunal.

107. All necessary directions/compliances that are required/necessary to be issued will be considered by this Tribunal after the report from the Company Secretary whom we have appointed as above.

108. In view of the above directions, this petition is disposed off, however without costs.

Sd/-

Charan Singh
Member (Technical)

Sd/-

Dr. Venkata Ramakrishna Badarinath Nandula
Member (Judicial)