

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU
(Through web-based video conferencing platform)

ITEM No.05
C.A. Nos.71, 72 & 76/2024 in
C.P. No.18/BB/2024

IN THE MATTER OF:

M/s. MIH Edtech Investments B.V. & Ors.	...	Petitioners
Vs.		
M/s. Think & Learn Pvt. Ltd. & Ors.	...	Respondents

Order under Sections 241-242 of Companies Act, 2013

Order delivered on: 12.06.2024

CORAM:

SH. M. S. S. SUNDARAM
HON'BLE MEMBER (JUDICIAL)

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

PRESENT:

For the Petitioners	:	Shri Sudipto Sarkar, Sr. Adv., Shri Satish Parasaran, Sr. Adv. with Advs. Shankh Sengupta, Sampath Kumar, Tine Abraham, Yogesh Singh, Akshaya R., Aubert Sebastian, Manasa S., Rangam Sharma, Lavanya B. Ananth, Sujoy Sur, Angelika Awasthi, Neha Dhavalikar, Aneeta Mathew, Prarthna Bathija, Subhang N.
For the Respondent No.1	:	Shri Dhyan Chinnappa, Sr. Adv. with Advs. Manmeet Singh, Dr. Rishab Gupta, Ishu Gupta, Nidhi, Sairam Subramanian, Siddharth Doshi, Saloni Shah, Ashika Jain i/b Saraf & Partners
For Respondent Nos.2-4	:	Shri K.G. Raghavan, Sr. Adv. with Advs. Manmeet Singh, Dr. Rishab Gupta, Sairam Subramanian, Siddharth Doshi, Saloni Shah, Ishu Gupta, Ashika Jain, Priyanka i/b Saraf & Partners
For the Respondent No.5		Shri Akshay Manjunath and Ms. Jakhari
For the Impleading Applicant in CAs 76 & 77/2024	:	Shri Dhananjay Joshi Sr. Adv. With Shri Pavan Srinivas
For the RBI	:	Ms. Khusboo Kapur

ORDER**C.A. Nos.71 & 72/2024**

1. **C.A. No.71/2024** has been filed by General Atlantic Singapore TL Pte. Ltd. & Sofina S.A. ('Applicants') under Section 242(4) of the Companies Act, 2013 r/w Rules 11 & 32 of the NCLT Rules, 2016 *inter alia* seeking to the following reliefs:
 - a. Pass an order injuncting (i) the offer letters dated 11th May, 2024 and 13th May, 2024; (ii) any action pursuant to the offer letters dated 11th May, 2024 and 13th May, 2024; (iii) any further issuance of shares, *inter alia*, in furtherance of the impugned second rights offer letter dated 11th May, 2024 and the revised offer letter dated 13th May, 2024;
 - b. Direct that any corporate actions taken on the basis of the illegally revised shareholding pattern of the Respondent No.1 Company after the date of hearing on 27th February 2024 by kept in abeyance;
 - c. Ad-interim orders in terms of the prayers above.
2. **C.A. No.72/2024** has been filed by General Atlantic Singapore TL Pte. Ltd. & Sofina S.A. ('Applicants') under Section 242(4) of the Companies Act, 2013 r/w Rules 11 & 32 of the NCLT Rules, 2016 *inter alia* seeking to the following reliefs:
 - a. Set aside any actions undertaken by the Contesting Respondents (Respondent Nos.1 to 5) in violation of the order of this Tribunal dated 27th February 2024, including allotment of the Company's shares to certain shareholders (including the Respondent No.3) on 02nd March, 2024;
 - b. Set aside any corporate actions taken on the basis of the revised shareholding pattern of the Company;
 - c. *Ad interim* orders till the adjudication of this application in terms of the prayers above.
3. It needs to be mentioned that main petition C.P. No.18/BB/2024 has been filed under Section 241-242 of the Companies Act, 2013 read with the other provisions of the Companies Act, 2013 *inter alia* alleging various acts of oppression and mismanagement committed by the Respondents.
4. This Tribunal on the basis of the undertakings given by the Respondents through their counsels passed an order on 27.02.2024 that there will be no allotment of shares without increasing the Authorized Share Capital of the Respondent No.1 Company and the funds received by the Respondent No.1 Company in respect of the rights issue should be kept in a separate Escrow account and it should not be withdrawn till the disposal of this matter.

5. Now, these applications have been filed under Section 242(4) of the Companies Act, 2013 r/w Rules 11 & 32 of the NCLT Rules, 2016; alleging that when the main C.P. is pending for consideration, the first Respondent has once again proposed a second rights issue by way of offer letter dated 11.05.2024 which has opened on 13.05.2024 and scheduled to end on 13.06.2024.
6. Heard the Ld. Senior Counsels for the Applicants and Ld. Senior Counsels for the Respondents No.1, 2 to 4 and perused the records.
7. Shri.Sudipto Sarkar, the Learned Senior Counsel for the Petitioner No.1 contended that the Enforcement Directorate (ED) and Ministry of Corporate Affairs (MCA) investigations going on against the Respondent No.1 Company and also there is LOC against the main Promoters/Respondent No.2 by the ED, since he is outside India for a substantial period of time. He further referred to the Letter of Offer dated 27.01.2024 at Page-1315 onwards of the main C.P stating that the offer was on the basis of Section 62 (1) (a) of the Companies Act, 2013 and the TimeLine was from 29.01.2024 to 28.02.2024. Further, in the reply filed by the Petitioner vide Dy.No.2128 dated 04.04.2024 it was contended that 8,14,530 additional shares were allotted to Mr.Riju Ravindran on 02.03.2024 which was also accepted by the Respondents in their reply filed vide Dy. No.2448 on 23.04.2024 at Para-22 & 23. Moreover, the additional shares allotted to Shri Riju Ravindran was also utilised for voting and passing of the resolution for increasing the authorised share capital. The Ld. Senior Counsel objected to the submissions made at Para 27 and 28 of the reply filed vide Dy.No. 2448 dated 23.04.2024 in which it was emphasised by the Respondent that they had a headroom available for allotment of additional shares on 02.03.2024 to the extent available authorised share capital. He stated that this is not permissible and this allotment requires to be set-aside for which the prayer has been made in C.A No.72 of 2024. It is also stated that for rights issue entitlement the Respondents have combined the equity shares and preference shares of the shareholders on a fully diluted basis which was violation of Section 62(1) (a) of Companies Act, 2013. However, the procedure prescribed in Section 62 (1) (c) regarding passing of Special resolution and arriving at the share price according to a valuation report was not carried out. The Ld. Senior Counsel further pointed out that there is a breach of Section 179 of the Companies Act, 2013 since no resolution of the Board was passed in respect of Second Rights Issue. Further, it cannot be approved by circulation otherwise than as provided under Section 175 of the Companies Act, 2013. He further stated that for violation of the order of this Tribunal dated 27.02.2024, they have

filed a Contempt Petition No.06 of 2024 against the Respondents. In this connection, he referred to judgement of Hon'ble Madras High Court in the matter of *Century Flour Mills Limited vs. V.S Suppaiah and others* 1975 SCC Online Mad 73: (1975) 88LW 285.

8. Shri Satish Parasaran, the Ld. Senior Counsel for the Petitioner No.2 pointed out the various allegations against the Respondents including the matter pending in Delaware Court in USA regarding the siphoning of funds to the tune of US\$ 533 million. Moreover, it is contended that the Respondents have not even filed the financials for the FY 2022-23; and even for FY 2021-22 it was filed very late. He further mentioned Para-10 of the order dated 27.02.2024 in which an undertaking of the Ld. Senior Counsel for the Respondents No.2 to 4 was recorded that *there will not be "any" allotment of shares without increasing the Authorised share capital* and there was no mention of any existing headroom. It was also stated by him that the Respondents have admitted in their reply filed vide Dy.No.2461 at Para 65 that only the money received from 28.02.2024 has been kept in the Escrow Account in accordance with the order dated 27.02.2024. He also further referred to the judgment of Hon'ble Supreme Court in case of *Suman Chadha and Another vs. Central Bank of India (2021) 20 Supreme Court Cases 365* in respect of wilful breach of undertaking given to the court.
9. Shri K.G. Raghavan, the Ld. Senior Counsel for the Respondents No. 2 to 4 stated that the Petitioner is indulged only in forum shopping referring to cases filed before multiple courts including in USA and also before the Civil Court in Bengaluru; and actually there is no violation of this Tribunal's order dated 27.02.2024.
10. Shri Dhyan Chinnappa, the Ld. Senior Counsel for the Respondent No.1 contended that the shares were not allotted in respect of only Shri Riju Ravindran but all the eligible Applicants to the extent of the headroom available and subsequently the authorised share capital was increased utilizing their votes to pass the resolution. **Accordingly, the Respondents are directed to file the complete details of the allotment made on 02.03.2024 before the increase of authorised share capital, giving the information such as the name, equity shares held on 27.01.2024, their entitlement as per rights offer and equity shares allotted on 02.03.2024; and also equity shares allotted after increased of Authorised share capital, amount paid by each of such persons along with date; and the amount utilized towards the allotment of rights issue shares with dates in Tabular Form.** Similar details are also to be given for the Preference shareholders to whom

shares were allotted on 02.03.2024, and also allotted after increase of Authorised Share capital to them, if any. The Ld. Senior Counsel stated that the Petitioners have also filed the contempt petition for violation of order dated 27.02.2024, therefore the C.A No.71 & 72 of 2024 are not maintainable; when the Contempt petition is pending. He also reiterated that not even a single penny was withdrawn after the order dated 27.02.2024 passed by this Tribunal and the undertaking given was only prospective in nature. He also referred to the proviso of Section 42 (4) of the Companies Act, 2013 stating that the bar of utilizing the money raised through share application before the allotment was in respect of Private Placement only and not for the Rights issue of shares. Accordingly, there was no violation of order dated 27.02.2024. He also referred to the Article 43 of Article of Association (AoA) along with Shareholders Agreement and said that for entitlement of rights issue they have included the preference shareholders. He further relied on the following judgements:

- a. *Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and others* (2013) 5 Supreme Court Cases 397
- b. *Balwantbhai Somabhai Bandari v. Hiralal Somabhai Contractor (Deceased) rep. by LRS & others, in Civil Appeal No.4955/2022;*
- c. *Sangramsingh P Gaekwad and others vs. Shantadevi P. Gaekwad and others* (2005) 11 Supreme Court Cases 314;

11. Shri K.G. Raghavan, the Ld. Senior Counsel for Respondents No.2 to 4 stated that as per Page 1316 at Para 6 of the Board Resolution, timeline was given and also bank account details for the amounts received through rights issue was also given at Page 1317 and further stated that no amount was withdrawn from the account from the date of passing of order by this Tribunal on 27.02.2024. **The Respondents are directed to file the complete details of the concerned Escrow bank accounts from the opening of the right issue on 29.01.2024 till date.** He further stated that Section 62 (1) (a) of the Companies Act, does not bar the preference shareholders though it mentioned only equity shareholders. He also referred to the Hon'ble Apex Court judgement in the case of *Needle Industries (India) Ltd., and others v. Needle Industries Newey (India) Holding Ltd., and others* (1981) 3 Supreme Court Cases 333. It was stated that the balance of convenience is infavour of the Respondents and not infavour of the Petitioners. Moreover, Section 62 (1) (a) of the Companies Act, 2013 has to be read harmoniously with the Articles of Association and therefore, the preference shareholders were not prohibited to participate in the rights issue.

12. The Ld. Senior Counsel for the Petitioner No.1 reiterated that due to the siphoning off funds by the management, the Company is in dire straits; therefore they should not be allowed to raise further money by going ahead with the Second Rights Issue.
13. The Ld. Senior Counsel for the Petitioner No.2 contended that there is a clear violation of Section 62 (1) (c) of the Companies Act, 2013. He also referred to Rule 2 (1) (c)(vii) of the Companies (Acceptance and Deposits) Rules 2014.
14. The matter regarding the issue raised in C.A No.72 of 2024 is primarily for violation of order dated 27.02.2024 including the allotment of shares on 02.03.2024 and utilisation of funds out of the Escrow account. It is noticed that the same issue is also raised in the contempt petition No.06 of 2024 in which the Tribunal has given two weeks' time to the Respondents to file their reply and the matter is listed on 04.07.2024. Accordingly, the contention raised in C.A No.72 of 2024 will be considered along with the Contempt Petition.
15. After going through the prayers, in this application and also on the facts that when the matter regarding first Rights Issue is pending before this Tribunal for consideration; the subsequent Rights Issue during the pendency of the Company Petition i.e. CP No. 18/BB/2024 comes very much in the purview of this Tribunal for necessary orders.
16. Therefore, in the present facts and circumstances of the matter, this Tribunal hereby restrains the Respondents from going ahead with the present rights issue which is in progress till the disposal of the main CP No. 18/BB/2024. The Respondents are further directed to keep the amounts collected so far since opening of the second rights issue in relation to this offer in a separate account which should not be utilised till the disposal of the main petition in CP No. 18/BB/2024. Further, **status quo** with regard to existing shareholders and their shareholding shall be maintained till the disposal of the main petition CP No. 18/BB/2024.
17. The Respondents are directed to comply with the directions given in Para- 10 and 11 above, regarding the details of allotment of shares on 02.03.2024 and the details of the Escrow banks accounts by filing a compliance affidavit with a memo within a period of 10 days; duly serving the copy on the otherside.

- 18.** List this matter before regular bench on **04.07.2024** along with main petition i.e. CP No. 18/BB/2024 for further consideration.

C.A. No.76/2024

- 1.** Heard the Ld. Senior Counsels and Ld. Counsels appearing for the Parties.
- 2.** The Ld. Counsels for the Respondents accepted notice and requested time to file their reply. They are permitted to file the same, within a period of ten days from today, after duly serving the copy on the other side. The Applicants shall file rejoinder, if any, within a period of one week thereafter, after duly serving the copy on the other side.
- 3.** List the matter on **04.07.2024**.

-Sd-

MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

-Sd-

M. S. S. SUNDARAM
MEMBER (JUDICIAL)