

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P.No.06/BB/2021
U/s 271 & 272&, other Applicable provisions
of Companies Act, 2013

Between:

Antrix Corporation Ltd.

*Represented by its Authorised Signatory,
Chairman and Managing Director*

Registered office at
Antariksh Bhavan Campus,
Near New BEL Road,
Bangalore-560094

... Petitioner

And

1.Devas Multimedia Pvt. Ltd.
Represented by its Director.
First Floor, 29/1, Kaveriappa Layout,
Millers Tank, Bund Road,
Bangalore – 560052

--- Respondent No.1

2.Ministry of Corporate Affairs
Represented by its Secretary.
5th Floor, 'A' Wing, Shastri Bhawan,
New Delhi – 110001

... Respondent No. 2

Date of order: 19th January, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Tushar Mehtha, SG
Shri N. Venkataraman, ASG
Mr. Arjun Krishnan
Ms. Poornima Hatti

For the Respondent No.1 : Shri Rajiv Nayar, Senior Counsel



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Shri Sajjan Poovayya, Senior Counsel
Shri Dharmendra Chatur,
Shri Nandish Patel,

For the Respondent No.2 : Shri M.M Juneja, DG COA(OSD)
Shri. Sanjay Shorey, Director (Legal &
Prosecution)
Shri Sajeevan.C.V, ROC, Karnataka

ORDER

Per: *Rajeswara Rao Vittanala, Member (J)*

1. The Company Petition bearing C.P.No. 06/BB/ 2021 is filed by Antrix Corporation Ltd. ("Antrix") U/s 271 & 272 and other applicable provisions of Companies Act, 2013 by inter alia seeking to wind up the Respondent No 1 Company with all consequential directions as Main reliefs, and to suspend its Board of Directors with immediate effect; to appoint the Official Liquidator, Bangalore attached to the Hon'ble High Court of Karnataka at Bangalore, as Provisional Liquidator for the Respondent No. 1 Company, who shall function as per the provisions of the Companies Act, 2013; to direct the existing management of the Respondent No. 1 Company to peacefully cooperate with the Provisional Liquidator to carry out his duties under the Companies Act, 2013, as interim reliefs, pending finalisation of the main Company Petition.
2. Brief facts leading to the filing of the present Petition are as follows:
 - 1) Antrix Corporation Ltd. (hereinafter referred to as "Petitioner"), is a wholly owned Government of India Company under the administrative control of Department of Space (hereinafter also referred to as 'DoS') and it was incorporated on 28.09.1992 under the Companies Act, 1956. It is the commercial arm of Indian Space Research Organization (hereinafter also referred to as



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'ISRO') and it promotes and commercially markets the products and services emanating from the Indian Space Programs.

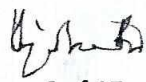
- 2) Devas Multimedia Pvt. Ltd., (hereinafter referred to as Respondent No.1) is a Company incorporated on 17.12.2004, having its registered office at First Floor, 29/1, Kaveriappa Layout, Millers Tank, Bund Road, Bangalore - 560052, Karnataka, and registered with the Registrar of Companies, Bangalore under the Companies Act, 1956 with CIN U92132KA2004PTC035261.
- 3) It is stated that the 'then officials' of Antrix Corporation Limited ('then officials' to distinguish them from the Petitioner company and hereinafter referred to as the 'then officials'), including its then Chairman, had executed contract dated 28/01/2005 in favour of the Respondent No. 1 Company, which was ultimately led to its termination by letter dated 25.02.2011, as it was obtained fraudulently in connivance with the then officials. Further, various Statutory Authorities have unearthed the fraud in the executing the Agreement. This fraud has been the subject matter of investigation by two premiere investigation agencies namely, the CBI and Enforcement Directorate (ED). The CBI had filed two charge sheets dated 11.08.2016 and supplementary charge sheet dated 08.01.2019. The ED had issued show-cause notice dated 06.06.2016 and 24.12.2018. Further, the adjudication order dated 30.01.2019 was passed under the Foreign Exchange Management Act, besides initiating PMLA proceedings in O.C. 703 of 2017. When the Ministry of Corporate Affairs had initiated investigation and they were proceeding to issue show cause notices to adjudicate the matter, the Respondent No.1 had filed Writ Petition No. 8554/2011 before



the Hon'ble High Court of Delhi and obtained Interim Order stalling the process.

- 4) It is stated that the Petitioner itself a victim of the fraud and corruption, to which its then Chairman and other officials were party, and on account thereof has suffered an Arbitral Award dated 14.09.2015, passed in Case No. 18051/CYK titled as 'Devas Multimedia Pvt. Ltd. Vs. Antrix Corporation Ltd.', running into more than half a billion dollars, which with interest, comes to more than a billion dollars today. The Petitioner has preferred an Application before the Hon'ble High Court of Delhi, against the impugned Arbitral Award dated 14.09.2015, and various Criminal and other penal proceedings are presently underway, under the Prevention of Corruption Act, 1988, the Indian Penal Code, 1872, the Prevention of Money Laundering Act, 2002 ('PMLA') and the Foreign Exchange Management Act, 1997 ('FEMA'), against the individuals/entities concerned, including CMD and Directors of the Respondent No. 1 company, as well as the then Secretary to the Government of India in the Department of Space, and other government officials.
- 5) The Respondent No.1 has filed an Application U/s 9 of the Act for securing the sum in the Award before the Hon'ble Delhi High Court on 25.09.2015. Further, the Petitioner amended the Application U/s 9 of the Act pending before the City Court, Bangalore to restrain the SLP Petitioner viz., Devas Multimedia Private Limited, from implementing or enforcing the award. On 28.02.2017, learned Single Judge of the Delhi High Court held that Application U/s 9 of the Act filed by SLP petitioner before the Delhi High Court was maintainable. However, the Division Bench of the High Court set-aside the judgment of the learned Single




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Judge on 30.05.2018, with the result that the proceedings before the City Civil Court, Bangalore would proceed. The Application filed by the Respondent under Section 34 of the Act, stands transferred to the Delhi High Court. The Hon'ble Supreme Court of India directed that the issue in question shall be kept in abeyance till the Delhi High Court decides the Application for stay in the Application filed under Section 34 of the Act. The suit pending before City Civil Court was transferred to Delhi HC in terms of Apex court order dated 04.11.2020.

- 6) The Respondent No. 1 Company has siphoned away, out of the country, almost the entirety of the foreign investment made in India in the guise of spurious payments to its own subsidiary entities. The genesis and entire objective of the Respondent No. 1 company, the subsequent actions taken by the said company including manipulated/ fraudulent FIPB approvals, the fraudulent foreign investments brought into India and then laundered out to USA, the illegal execution of the Antrix-Devas agreement dated 28/01/2005 for services which were not even in vogue, using technologies not even in the ownership of the Respondent No. 1 company, by way of concealment in conspiracy with the officials of Antrix, DoS and other, clearly establishes the fact that the Respondent No. 1 company had no real substratum except as conduit for committing illegal actions. It is also evident that the foreign investors/shareholders were hand-in-glove with the Respondent No. 1 Company in committing the illegalities, including money laundering activities. The circumstances narrated above clearly show that the objective of the Respondent was to harm public interest and monies, for personal illegal gains of the shareholders/owners of the Respondent No. 1 Company. It



is stated that significant public interest is involved in the matter as the Respondent No. 1 company had fraudulently sought to use Rs. 269 Crores of public money for building satellites for exclusive and personal gain of a few, in clear violation of the extant provisions of the law and policy regarding such matters. Hence the present petition praying the relief as mentioned supra.

3. Heard Shri Tushar Mehta, Learned SG, Shri N.Venkataraman, Learned ASG a/w Ms. Poorinma Hatti AOR for the Petitioner and Shri Rajiv Nayar, Learned Senior Counsel and Shri Sajjan Poovayya, Learned Senior Counsel a/w Shri. Dharmendra Chatur and Shri. Nandish Patel, for the Respondent No.1 and Shri. M.M Juneja, Director General, COA (OSD) and Shri. Sanjay Shorey, Director (Legal & Prosecution) and Shri. Sajeevan.C.V, ROC for the Respondent No.2 through Video Conference. We have carefully perused the pleadings of the Parties and the law on the issue.
4. Shri Tushar Mehta, SG and Shri.N. Venkatarama, Learned ASG for the Petitioner, while reiterating various averments made in the Company Petition, has interalia further submitted as follows:
 - a. The Respondent No.1 Company (R1 Company) is a company incorporated only on 17.12.2004 and within a span of hardly one and half month, the Respondent No1 was managed to get contract on 28.01.2005. The initial Memorandum of Association of the Respondent No. 1 did not contain any reference regarding provision of internet services, which was added at a later point of time. The authorized share capital and paid-up capital of the company as Rs. 5 Lakh and Rs. 1 Lakh respectively, divided into 10000 equity shares of Rs. 10 each. It currently stands at Rs. 20 Lakh and paid-up share capital at Rs. 18,37,150/- (Rupees



Eighteen Lakhs Thirty-Seven Thousand One Hundred and Fifty). The Agreement dated 28.01.2005 was terminated vide letter dated 25.02.2011.

- b. The R1 Company is suffering various cases under the Prevention of Corruption Act, 1988, the Indian Penal Code, 1872, the Prevention of Money Laundering Act, 2002 and the Foreign Exchange Management Act, 1997 ('FEMA'), against the individuals/entities concerned, including CMD and Directors of the Respondent No. 1 company.
- c. The Respondent No.1 is a private limited Company, started by two individuals, one was a former employee of ISRO and another former employee of ISRO joined thereafter, as a Director in the Respondent No. 1 Company. Further, the project involved the use of a combination of technologies, i.e., satellite and terrestrial systems, for providing SDMB services. It has now come on record that the technology necessary for providing these services was not even in existence at the time the contract was awarded, and was developed years later by French scientists who had patented it. The Respondent No. 1 Company did not even possess the necessary technology, when it was awarded contract dated 28/01/2005. Further the capital of the Respondent No. 1 Company was only Rs. One lakh, however it agreed to pay millions of dollars to the Petitioner under the Agreement dated 28.01.2005.
- d. The R1 Company which was incorporated without any commercial antecedents and hardly in existence for six months, sold its shares at exorbitant rates, as high as Rs. 1.26 Lakhs per share, to foreign investors without any justification. DT Germany through DT Asia, after investing Rs. 430 Crores in R1



Company, obtained only 19% shareholding in R1 Company. However, the four Mauritius investors after investing Rs. 150 Crores, obtained 37% shareholding in R1 Company and this split in shareholding defies any market practice especially when there is a huge difference in the amounts invested.

- e. When the R1 Company applied for FIPB approvals, the approval for the investment was Rs. 579 crores and the reason for investment was stated to be the provision of "Internet Services". The rendering of SDMB services, which is a hybrid service, and the contract dated 28/01/2005 were concealed from the FIPB authorities. In FIPB application, the R1 promised that around 1000 people would get employment in India, whereas in fact only about half a dozen persons were actually employed in India. The investment of 579 crores were resulted for activities for money laundering viz., around Rs. 75 Crores were sent out of India by creating a wholly owned subsidiary with the Directors of R1 Company controlling the subsidiary. Over Rs. 180 Crores were sent out as payments towards business support services, without receiving either assets or services and writing them off as losses in the books and over Rs. 233 Crores moved out of India under the guise of litigation services and in Rs. 92 Crores remained in India, out of which a sum of Rs. 21 crores was lying in fixed deposits, which have been seized by the PMLA authorities and Rs. 59 Crores was paid as upfront capacity fee to Petitioner. The balance monies were paid out as salaries to the Directors of the R1 Company. The investors/Shareholders worked hand in glove with the illegalities including money laundering activities.



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- f. The pendency of the various cases before the Hon'ble High Court of Delhi and Hon'ble Supreme Court of India relates to different subjects and it is not related to issue raised in the instant case. Therefore, the Tribunal is competent to entertain this Petition and can pass appropriate order in the interest of justice. Therefore, the learned Senior Counsels for the Petitioner urged the Tribunal to pass Interim Orders as prayed for.
5. Shri Rajiv Nayar, and Shri Sajjan Poovayya, Learned Senior Counsels for the R1 Company, while accepting notice for the Respondent No.1 asked for some time to file short reply with reference to interim reliefs as sought by the Petitioner, has interalia further submitted as follows:
- a. The proviso under Section 273 (1) of the Companies Act, 2013 mandates that *"the Tribunal before appointing the Provisional Liquidator under Clause (c) should afford a reasonable opportunity to the Respondent to make its representation, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice"*. Therefore, they sought short time to file a reply to the Interim reliefs as sought for.
 - b. The cause of action arose, long time back and there is no urgency for the Petitioner to file the instant application in a hurried manner. The R1 Company is suffering various litigations and some of the properties of the Company are also attached by the Statutory Authorities. Even though CBI has filed a charge sheet, the case is still pending.
 - c. The filing of the Application itself is contrary to the rules made under Provisions of Section 273. Further, vide notification dated 24th January 2020, Ministry of Corporate Affairs GSR 46E has issued Company winding up rules namely:



"The Petition for winding up:

(1) For the purposes of sub-section (1) of section 272, a Petition for winding up of a company shall be presented in Form WIN 1 or Form WIN 2, as the case may be, with such variations as the circumstances may require, and shall be presented in triplicate.

(2) Every Petition shall be verified by an affidavit made by the Petitioner or by the Petitioners, where there are more than one Petitioners, and in case the Petition is presented by a body corporate, by the Director, Secretary or any other authorised person thereof, and such affidavit shall be in Form WIN 3".

Therefore the Petition itself is not maintainable and it cannot be numbered and taken on file of this Tribunal and thus it liable to be rejected by the Tribunal on this ground alone.

6. Shri M.M Juneja, DG, COA, Shri Sanjay Shorey, Director, Legal & Prosecution and Shri Sajeevan.C.V, ROC, while accepting the notice for the Respondent No.2, has supported the case of the Petitioner. They have pointed various documents filed in the case to support winding up of R1 Company. So continuing the name of R1 Company on the rolls of Registrar of Companies is not at all warranted and it should be wound up and before passing final order, it is necessary to appoint provisional Liquidator in the meanwhile to take control of the affairs of Company. Therefore, they have urged the Tribunal to pass an Interim Orders as prayed for.
7. In the light of various contentions raised by the Parties, the main points arise for consideration at present are whether the subject matter falls under the jurisdiction of this Tribunal; whether the Petitioner has made out prima facie so as to grant interim relief as prayed for; whether the R1 Company should be granted opportunity before passing any interim order as prayed for.



8. So far as, the jurisdiction of this Tribunal to deal with the subject matter is concerned, the Tribunal is conferred with exclusive jurisdiction to deal all matters arise out of provisions of Companies Acts, 1956/2013, as case may be. Section 430 ousts jurisdiction of Civil Court over the matters, the Tribunal is having jurisdiction. In this regard, it is relevant to extract section 430 of Companies Act, 2013, which reads as under:

Section 430

'No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.'

Since the instant Petition is filed under U/s 271 & 272 of Companies Act, 2013, the Tribunal is having jurisdiction over the subject matter. Though the Parties have approached various judicial forums right from City Civil Court to Delhi High court and the Apex court as detailed supra, subsequent to passing an Award dated 14.09.2015 in question, they are not relating to winding up R1 Company, which is the subject matter in the instant Petition. Therefore, the Tribunal is having jurisdiction over the subject matter to decide.

9. It is relevant to quote relevant provisions of Companies for winding up of a Company. Section 271(c) provides that a Company may be wound up by the Tribunal on a petition filed u/s 271.



By [Signature]

Section 271 (c)

"if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up."

10. As detailed in the Company Petition, and the contentions of Learned ASGIs, it is prima facie proved that the Respondent No.1 has resorted various frauds, misfeasance, connived with officials etc., in obtaining Contract dated 28.01.2005. Though the Contract was annulled after following due process of law, the R1 Company was able to get an Award dated 14.09.2015 in question in its favour, which leads to filing several cases before several judicial forum. By perusal of investigation reports by CBI and the actions taken by other statutory Authorities, we are of prima facie opinion that the incorporation of R1 Company and obtaining a contract in a fraudulent manner that too within a short time, without having requisite experience, would not justify its continuance on the rolls of Registrar of Companies, Bangalore. Though various proceedings are pending against the Award in question, there is no bar to initiate the present proceedings. It is unheard that a Company incorporated hardly one and half months earlier, can able to get a Contract from the Govt. of India, that too without having any technical experience in the relevant field. Therefore, without prejudice to the rights of Parties in the litigation pending before the Hon'ble High Court of Delhi and the Hon'ble Supreme Court, the Tribunal can exercise its



powers conferred on this Tribunal, under Chapter XX Part 1 of Companies Act, 2013, to appoint provisional Liquidator before passing final winding up order, which would be decided after hearing the Parties.

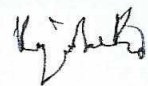
11. Since the R1 Company has suffered various adverse findings with cogent evidence at the hands of various Statutory Authorities, as detailed supra, it would not be proper to permit R1 Company to continue its name on the rolls of Registrar of Companies, Bangalore. Therefore, in terms of provisions of Section 283 of Companies Act, 2013, it would be just to permit Provisional Liquidator to forthwith take into his or its custody or control all the property, effects and actionable claims to which the R1 Company is or appears to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the R1 Company and to avoid misuse of its property.
12. So far as the contentions of the Learned Counsels for the R1 Company, as detailed supra, are concerned, it is settled position of law that principles of natural justice mandates judicial forums to afford reasonable opportunity to other side before passing any order by judicial Authorities. However, Courts/Tribunal are empowered to pass appropriate Ad Interim/interim order at the stage of admission itself, if circumstances, in a case justifies for passing such interim order(s). In the instant case, it is not in dispute that R1 Company was given notice though it was short for duration and thus their Counsels appears before the Tribunal and advanced their arguments on merits of the case. So far as the allegation that the Petition is not filed in accordance prescribed rules is concerned, it is to be mentioned here that mis-quoting wrong rule may not fatal to the case and the Tribunal under its inherent powers can condone those




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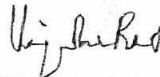
mistakes and it can also permit the Parties to rectify it. So far as the other contention that there is no necessity to appoint a Provisional Liquidator and the R1 Company is ready to furnish the required information and several of properties of the Company are already attached by Statutory Authorities is concerned, it is relevant to mention here that the instant petition is filed for ultimate Winding Up of R1 Company, and not mere taking possession of affairs of the Company by Provisional Liquidator.

13. For the aforesaid reasons and circumstance of the case, and the law on the issue, we are of the considered opinion that prima facie case is made out by the Petitioner in favour of granting interim order as prayed for. It is just and proper to appoint Provisional Liquidator to take control of the affairs of R1 Company pending final adjudication of main petition for winding up.
14. In the result, by exercising powers conferred on the Tribunal, especially under Section 273 and other extant provisions of Companies Act, 2013, under Chapter, XX, Part 1, we hereby pass the following directions pending finalization of winding up petition:
 - (1) We admit the Company Petition and the Respondents are granted time to file their Replies;
 - (2) We appoint the Official Liquidator, Bangalore attached to the Hon'ble High Court of Karnataka at Bangalore, as Provisional Liquidator for the R1 Company;
 - (3) We direct the existing Management of the R1 Company to extend full cooperation to the Provisional Liquidator to carry out his duties under the extant provisions of Companies Act, 2013;




- (4) The Provisional Liquidator is permitted to initiate appropriate action in accordance with extant provisions of Companies Act, to take control of Management of R1 Company and to take custody or control all the property, effects and actionable claims to which the R1 Company is or appears to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the R1 Company and to avoid misuse of its property;
- (5) The Provisional Liquidator is further directed to strictly adhere to the extant provisions as applicable to the instant case, as mentioned under Chapter XX, Part 1 of Companies Act, 2013.
- (6) And this order is passed without prejudice to the rights of the Parties in the pending litigation before the Hon'ble High court of Delhi and the Hon'ble Supreme Court of India;
- (7) Post the case on **08th February, 2021** for further hearing.
- (8) The Registry is directed to communicate this order to all the Parties to the case and also to the Official Liquidator.


(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL



CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL


Deputy Asst. Registrar
National Company Law Tribunal
Bengaluru Bench