

Aditya&Tushar

Petitioner

v.

**Britton Capital, Nurture Capital,
Amber, Sherryl& Olive Investment Ltd.
&RentandDrive.com Pvt Ltd**

Respondent

1. Aditya, a final year student at a leading engineering school and Tushar, his roommate who comes from a wealthy family in Nagpur got talking about how car rental business had become successful in India. They came up with the idea of making Luxury car travel more efficient in India by mobilising vintage and high end luxury cars owned by the rich, to the customers who can afford the luxury to take on rent basis the same. Tushar's family contributed a dozen of such cars to the fleet that it manage to make available because of business connections (valued at about Rs. 40 Crores) and Aditya assigned all the current and future copyright in the software, all rights to the idea, the business plan and processes and all other IPR (as commonly understood around the world), whether registerable in India or not, to the company. Rent and Drive.com Pvt Ltd was established in Nagpur with Aditya and Tushar each owning 50% of the Rs 3,000,000 invested as initial share capital.
2. With some financial help from Tushar's family and Aditya's programming skills they were able to create a prototype and design for their online service which they presented to a group of potential investors at an event organised by a local angel network in Bangalore in August 2013. While there was interest from several investors in their idea, Britton Capital ("**Britton**") and Nurture Capital ("**Nurture**"), both angel investors incorporated in Australia convinced the founders that they were best placed to partner with them. After months of negotiations, on December 31, 2013 Britton and Nurture LLP invested in optionally convertible debt of Rent and Drive.com for a cash consideration of Rs. 100 Crores.
3. The founders were assured by the investors as well as their legal advisors M/s CARMA LEGAL, a leading Indian law firm that the contract perceived by the investors is how generally transactions are made by the venture capitalists and the same is to protect the interests of all stakeholders and ensure efficient closing of the deal.
4. While the process of drafting the investment agreement and seeking various government approvals was under way, Ms.Deepti Kumar, an employee of Britton, and Ms.AditiDhir, a partner of their firm of legal advisors were inducted on to the board of directors of the company so that the founders could benefit from the immense experience of experts.The founders, Aditya and Tushar, and the investors, Britton and Nurture, and the company

represented by Ms.Dhir signed the investment agreement in the offices of legal advisors. The key terms of the investment agreement included:

- a) Aditya was designated as the CTO and Tushar as the Chief Marketing Officer.
 - b) Consequences of company failing to achieve the key business targets were: (i) adjustment in the conversion price of the debt to equity to the investors and (ii) preferential right, by themselves or their affiliates, to provide all further equity and debt to the company (iii) at the option of the investors, either put or call all the securities owned by the founders and their assignees.
 - c) Founders and investors' directors had to approve the appointment of all key management personnel.
 - d) Founders' and investor directors' consent was required for key decisions involving the company.
 - e) All rights granted by the investment agreement to a party would terminate if that party (together with affiliates and permitted assignees) held less than 10% shareholding in the company on a fully diluted basis assuming conversion of investor debt based on the EBITDA of the preceding fiscal quarter. However, each of the parties was bound to offer company's securities to the others before selling it to any person who was not a shareholder in the company.
5. The company's articles of association were amended to incorporate all these terms and were effective on January 01, 2014. In addition to Aditya and Tushar, the board of directors included Ms.Deepti Kumar, Ms.AditiDhir, a partner at CARMA LEGAL nominated by Nurture.
 6. Aditya, because of his expertise was able to attract some of the best software talent to work with him. While the App for the service was being developed, Tabula Rasa began a national publicity campaign to socialise RentandDrive.com's business plan amongst prospective users and luxury car owners. RentandDrive.com was the title sponsor of fashion shows in the key Indian cities.
 7. While it was still early days for the business, the company was not even close to reaching the business and financial targets set out in the investment agreement and the articles of association. Despite all the marketing and publicity, the venture wasn't able to pick up;factors

such as young owners, inexperience were credited to the same.

8. By a majority vote, on July 21, 2014, it was decided that the company needed an experienced CEO for the business to be credible. Abhinav Gaur, an IIM Kolkata graduate, who was linked with various start-up success stories was proposed for the same.
9. Aditya and Tushar were not appeased by the idea of making such an expensive recruitment hire and voted in the board meeting on September 22, 2014 against the appointment of Abhinav Gaur. However, the majority of the directors on the board of the company disagreed with them and Abhinav Gaur was appointed as the CEO with immediate effect. He was given 10% Class A equity stake (same class as the founders) in the company, \$1 million per annum of stock options which would vest at a nominal price of Rs. 100 over a period of 3 years and an annual salary of Rs. 1 Crore. He was free to sell the shares to the investor, founders or the company at the fair market value immediately upon exercise of the stock options.
10. Abhinav started acting upon the minced situation of the startup immediately and started contacting agencies and luxury and vintage car owners and signing up a few of them to participate in the rally being organised in various cities all across the country. By December 2014, the service was ready for launch and Rent and Drive.com made news all over the country.
11. In an unexpected turn of events, Rent and Drive.com had stiff competition from Viscars. Viscars was able to raise over Rs. 500 Crores in initial equity and also obtain additional finance from Indian and international finance companies. With these financial resources, it was able to buy, or in some cases, get long term leases from global small and medium size business luxury car manufacturers.
12. In the board meeting on February 07, 2014 it was obvious to all the directors that the company needed more money very quickly to take on the unexpected competition. The management team led by Abhinav Gaur was ready with a financing plan and immediately set about on an elaborate international road show to raise Rs. 500 Crores. The board of directors also obtained a legal opinion from the company's counsel, that the investors had the right under the investment agreement and the articles to make further investment in equity and debt.
13. Instead, the board approved, by a majority vote (the founders dissenting), a financing arrangement with Amber, Sherryl & Olive Investment Ltd, a 100 year old listed Indian NBFC and affiliate of the two angel investors to provide a bridge loan of Rs. 20 Crores to enable the company to pay its routine expenses until next round of equity was successfully raised.
14. In hindsight the bridge loan was a bad decision, on February 14, 2014 and most of the cash was used to finance the dry lease of cars flown in from all over the world to be made available for the Indian clientele. At the board meeting held on April 10, 2015, the investors' nominee directors expressed concern that the road shows had not yielded any positive result and the

company was in financial difficulty again despite the bridge finance.

15. On July 21, 2015, Britton and Nurture novated the investment agreement to over 20 of their affiliates since they had reached the end of the investment term and were required, under the terms of their constitution, to liquidate and distribute all their assets to their investors. CARMA LEGAL provided an opinion to the company that the novation was valid under the articles of association and the transfer of shares by Britton and Nurture should be registered. Britton and Nurture assured the founders that the change in shareholding was merely a legal requirement and as the composition of the board of directors remained unchanged, for all practical purposes, nothing had changed at an operational level for the founders.
16. On August 07, 2015, all the affiliates of Britton and Nurture notified the company that they wished to convert 50% their debt into equity with immediate effect based on the EBITDA as set out in the unaudited accounts dated June 30, 2015. On the same day, their nominee directors gave notice of a board meeting to be held on July 14, 2016 in the offices of CARMA LEGAL to allot and issue Class B equity shares to the investors, calling an EGM on the same day and venue, to amend to the articles of association and reconstitute the board of directors. Despite the founders' protest, all three resolutions were approved by a majority of the board of directors. The company issued shares in demat form to the investors immediately after the board meeting and as a result the shareholding of each of Tushar and Aditya was reduced to 8% of the equity share capital. In the EGM, new articles of association were adopted by the company and Tushar and Aditya were removed from the board. The articles of association allowed all decisions to be taken by a majority vote of shareholders. Aditya and Tushar did not attend the EGM, in protest against the recent actions of the other shareholders.
17. On August 16, 2016, lawyers as, instructed by Tushar and Aditya wrote to CARMA LEGAL that the termination of the investment agreement, the amendments to the articles of association and the removal of the founders from the board of directors was illegal. The letter also contained an offer by the founders to purchase all the securities of the company owned by the investors at a fair market value. Legal proceedings were threatened if these actions were not immediately reversed.

You need to advice Aditya and Tushar about their future course of action, draft their petition and present the same before NCLT.