

***NCLT, KOCHI*****Daily Orders – Draft**

In the Bench of: Shri Ashok Kumar Borah, Member (Judicial)

Date: 24<sup>th</sup> August 2020

**1 IBA/21/KOB/2020**

Learned counsel for the Operational Creditor Shri Sojan James appeared in the VC. Learned counsel for the Corporate Debtor Shri Vishnu Hari K. also appeared in the VC. Though CD has filed the counter, registry reported that the same is defective due to non-notarisation and insufficient copies filed. Learned counsel for the CD submitted that he will rectify the defects within two days. He may do so positively within two days. Shri Sojan James submitted that he has already received copy of the counter. Since CD has already served the copy of the counter to the learned counsel for the OC, the OC is directed to file his rejoinder, if any, within a week. List for hearing on 16.9.2020.

**2 IBA/25/KOB/2020**

Learned counsel for the Financial Creditor Shri Leo George appeared in the VC. Learned counsel for the Corporate Debtor Shri Jithin Saji Issac also appeared in the VC. . Meanwhile CD filed a maintainability petition, which registry reported is defective due to insufficient stamp in the vakkalath. CD is directed to file counter to the IBA. **List on 17.9.2020**, before that date the Financial Creditor is directed to file their rejoinder, if any, in the IBA as well as reply, if any to the counter of the CD.

**3 IBA/26/KOB/2020**

Learned counsel for both sides intimated their willingness through email to appear through VC. Learned counsel for Corporate Debtor Shri PV Alias entered appearance by filing vakkalath and sought time to file counter to the IBA. The learned counsel for the Operational Creditor submitted an email stating that he had served a scanned copy of IBA to the CD intimating the date of posting. Registry is directed to issue notice to the CD through email in addition to normal procedure. Learned counsel for the OC is directed to send a hard copy of the IBA to the CD by post and file proof of service before the next date fixed. CD is directed to file counter within 2 weeks and OC may file rejoinder, if any, within one week thereafter. List on 17.9.2020.

#### **4 TCP/20/KOB/19 WITH TIA/10/KOB/2019**

Learned counsel for the petitioner submitted an email stating his willingness to appear through VC. However, learned counsel for respondents submitted an email seeking an adjournment. List 7.10.2020.

#### **5 IA/54/KOB/2020 IN TCP/20/KOB/2019**

Learned counsel for the petitioner submitted an email seeking an adjournment. Learned counsel for respondent submitted an email stating his willingness to appear through VC and stated that he has filed the Counter for R2 through email endorsing a copy to the opposite side. He may submit the hard copy of the counter to the petitioner by post. List 7.10.2020.

#### **6 TCP/26/KOB/2019 (CP/716/19) WITH IA/62/KOB/2020**

No information from the petitioners. Learned counsel for the respondents submitted an email seeking a short time to file their hard copy of counter in IA/62/KOB/2020 . List on 7.10.2020

#### **7 TCP/51/KOB/19**

Learned counsel for the petitioner submitted an email stating his willingness to appear through VC. No response from respondents. It appears from records that on the last 3 posting on 26.5.2020, 8.6.2020 and 25.6.2020 there was no response from the respondents. List 7.10.2020. There shall be no further adjournment in this matter.

#### **8 TCP/52/KOB/19 (CP/7/2017) WITH IA/77(KOB)/2020**

Learned counsel for the applicants in IA Shri Rony Jose appeared in the VC. None has appeared for the respondents. It appears from records that the respondents have already filed their counter in the TCP. This IA is filed under Rule 53 of NCLT Rules 2016 read with Rule 11 and along with other relevant sections of the Companies Act, 2013 for impleading the legal representatives of the deceased 5<sup>th</sup> respondent in the Company Petition as additional Respondents 5.1 to 5.3. It is submitted that R1 is a Public Limited Company. The Company was originally registered as a private limited company on 23.7.1970 with ROC, Ernakulam under the name "Synthite Industrial Chemicals Pvt Ltd." The R1 Company subsequently became a deemed Public Company by virtue of Section 43A of the Companies Act, 1956, The name of the Company underwent change on 15.9.2008 and presently the name of the Company is "Synthite Industries Limited".

The 5th Respondent holds 2308 shares in the R1 Company aggregating to 2.17% of the paid-up share capital of the Company and was the Managing Director of the R1 Company. He died on 26.11.2019. He was survived by his wife Mrs. Liza George and his children Ms. Miria George and Mr. Paolo George. According to the knowledge and belief of the applicants, there are no other legal representatives of the deceased R5. The applicants declared that they have not instituted any other

application and/or proceedings in respect of the subject matter of the present Company Petition and or the present application save and except what is filed before this Tribunal. Hence prayed to implead the legal representatives of the deceased R5 as Respondents 5.1 to 5.3 in the Company Petition.

Rule 53 of NCLT Rules, 2016 reads as follows:

***“Substitution of legal representatives*** (1) *Where a party to a proceedings pending before a Bench dies or is adjudged insolvent or, in the case of a company, being wound up, the proceeding shall not abate and may be continued by or against the executor, administrator or other legal representative of the parties or by or against the assignee, receiver or liquidator, as the case may be.*

*..... Provided that for good and sufficient reasons shown, the Tribunal may allow substitution of the legal representatives of the deceased at any time before disposing the petition on merits.”*

In view of the aforesaid provision, the IA filed for impleading the legal representatives of the deceased 5<sup>th</sup> respondent is allowed. The petitioners are permitted to implead Mrs. Liza George, Ms. Miria George, and Mr. Paolo George as Respondents 5.1, 5.2 and 5.3 respectively in the Company Petition. Registry is directed to carry out the impleadment in the CP and issue notice to them accordingly. Petitioners are also directed to issue notice to the above newly impleaded respondents 5.1 to 5.3 through email and also by Registered with A/d and submit proof of service with an affidavit before the next date fixed. **IA/77/KOB/ 2020 Is disposed of as above.** List the CP on 8.10.2020

#### **9 TCP/61/KOB/ 2019 (CP/531/2019) WITH IA/56/KOB/2020 & IA/57/KOB/2020**

Learned counsel for petitioner submitted an email seeking an adjournment. Learned counsel for respondent submitted an email seeking a short time to file counter of the respondents in both the IAs. List on 8.10.2020.

#### **10 CP/08/KOB/2020**

Learned counsel for the petitioner Shri Yogindunath S appeared for the petitioner. Affidavit filed by the learned counsel for the petitioner regarding serving of notice to R1 is taken on record. Today none has appeared for the respondents. It appears from records that on the last date of hearing on 16.7.2020, learned counsel for R2 and R3 submitted that he wants to file a sur-rejoinder to the rejoinder filed by the petitioner. Today the learned counsel for R2 & R3 has submitted an email requesting to grant 3 weeks time for filing the sur-rejoinder. Allowed. R2 and R3 are directed to file the sur-rejoinder within 3 weeks. Both the parties are directed to file synopsis of arguments before the next date fixed. Registry is directed to issue a copy of this order to the Respondents. List on 23.9.2020 for final hearing.

#### **11 CP/18/KOB/2020 WITH 101/KOB/2020 & 104/KOB/2020**

Learned counsel for the Petitioners Smt. Deepthi Susan George appeared in the VC. None has appeared for the respondents. Today the case is posted for considering

(1) IA/101/KOB/2020 ie. to condone the delay in re-presenting the Petition and (2) IA/104/KOB/2020 ie. to waive the condition under section 244 of the Companies Act, 2013 and allow the petitioner's who did not have the qualifying shares to prefer the Company Petition under section 241 of the Companies Act.

I have heard the learned counsel for the Petitioners. There were certain defects that were marked by the registry in the petition filed by the applicants earlier such as incomplete data sheets, defective vakalath, correction in form numbering, English translation of a police complaint and notarization of affidavit. Since the applicants are residents of Kozhikode, the affidavit had to be sent back for re-execution and notarization. Although the document was sent back for re-execution, there was delay in receiving the documents due to the current pandemic situation. The defects in the petition filed by the applicants were to be rectified in 9 days from 29.6.2020. However, there is delay of 9 days in re-presenting and curing the defects. The Petitioner submitted that the delay is not wilful or intentional.

It appears that the petitioners have cited sufficient cause to condone the delay. **Therefore IA/101/KOB/2020 is disposed of as allowed.**

**IA/104/KOB/2020 is disposed of vide separate order.**

In the CP, the petitioners are directed to issue notice to the respondents through email and also by Registered post with A/D and submit proof of service with an affidavit before the next date fixed. Registry is also directed to issue notice to the respondents through email in addition to normal procedure. Respondents are also directed to file their counter/objection to the CP, if any, before the next date fixed. List of 13.10.2020.

#### 12 CA/36/KOB/2020

No response from both the parties. It appears from records that vide order dated 28.7.2020 the appellant was directed to produce the financial statements of the company for the FY 2018-19 along with GST returns. Even though two adjournments were given, the appellants have not produced the same. Hence appellant is given a last opportunity to produce the documents before the next date fixed. List on 17.10.2020.

#### 13 CA/37/KOB/2020

Learned counsel for the Appellant Shri Yogindunath appeared in the VC. He submitted that the Appellant Company is an ongoing concern. Report of ROC is on record. **Orders reserved. List for pronouncement of orders on 27.8.2020.**

#### 14 CA/38/KOB/2020

Learned counsel for the Appellant Shri John Vadassery appeared in the VC. He submitted that the Appellant Company is an ongoing concern. Report of ROC is on record. **Orders reserved. List for pronouncement of orders on 28.8.2020.**

