

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 1st Dec 2020

1 CA(CAA)5/KOB/2020

Learned PCS for the Applicant Shri Gokul RI appeared through VC. Orders pronounced. **CA(CAA)5/KOB/2020 is disposed of vide separate order.**

2 IA/175/KOB/2020 IN IBA/34/KOB/2020

Learned counsel for the Applicant/Corporate Debtor Shri Sharad Kodianthara as well as learned counsel for the Respondent/Operational Creditor Shri Akhil Suresh appeared through VC. Orders pronounced. **IA/175/KOB/2020 IN IBA/34/KOB/2020 stands dismissed vide separate order.**

3 MA/187/KOB/2020 IN IBA/34/KOB/2020

Learned counsel for the Applicant/Operational Creditor Shri Akhil Suresh as well as learned counsel for the Respondent/Corporate Debtor Shri Sharad Kodianthara appeared through VC. This is an application filed by the Applicant/OC under Order 1 Rule 10 of CPC 1908 read with Rule 11 of the NCLT Rules 2016 with the prayer to implead M/s. VFS Global Services Private Limited as Additional Corporate Debtor in the IB Application. I have heard the learned counsel for the Respondent. He prayed time to file his counter/reply. He may file the counter within 2 weeks. Next date fixed for hearing. **List on 15.12.2020.**

4 IBA/34/KOB/2020

Learned counsel for the Operational Creditor Shri Akhil Suresh as well as learned counsel for the Corporate Debtor Shri Sharad Kodianthara appeared through VC. Counter has already been filed by the CD. Learned counsel for the OC submitted that he will file the rejoinder against the counter. He may do so within two weeks. Next date fixed for hearing. **List on 15.12.2020.**

5 CP/48/KOB/2020

Learned counsel for the Petitioner Smt. Rema Smrithi VK as well as learned PCS for the Respondents Shri PP Zibi Jose appeared through VC. This is a petition filed under Section 119(3)(4) read with the relevant rules of NCLT Rules, 2016.

The Petitioner in his petition submitted that the petitioner is the promoter Director of the 1st respondent company. The annual general meeting of the respondent company for 2019-2020 was held on 27.09.2020 at Hotel Yuvarani Residency, Jos Junction at Ernakulam. The petitioner had attended the said meeting in his capacity as director and member of the 1st respondent company. While so the petitioner noticed that the statutorily appointed Company Secretary and Auditor of the 1st respondent company were not present at the meeting. Neither was the 2nd respondent Chairman of the respondent company (who is an NRI) present at the meeting. The petitioner pointing out the lapses as stated above filed his objections before the person acting as Chair of the meeting.

The petitioner further submitted that apprehensive of the minutes that were recorded at the time of the AGM, he sent an email dated 08/10/2020 requesting for copy of the minutes within the statutorily stipulated time. Reminder was also sent 27/10/2020 to handover copy of the minutes of the said AGM. Till date no copy of the minutes has been given to the petitioner. Hence this petition is filed aggrieved by the inaction and blatant disregard of law in the functioning by the Respondents.

Along with the main relief, the petitioner has sought interim relief to direct the Respondents to not take any action as per the resolutions passed in the AGM dated 27/09/2020 until such objections if any are filed by the Petitioner after receipt of the Minutes of the said AGM.

I have heard the learned counsel for both the parties. Learned counsel for the petitioner submitted that the petitioner has a statutory right to attend the meeting and also eligible to get the copy of the minutes of the meeting. On the other hand, learned PCS for the respondents submitted that there is no default in not providing the minutes of the meeting since the petitioner was attended the meeting as a promoter Director and not as a shareholder. Besides, no fee was also attached with the application. Therefore, the petitioner is not entitled to get the copy of the minutes of meeting of the AGM.

I have thoroughly perused the whole records. Upon hearing the parties and having gone through the records, the respondents are directed not to take any action on the resolutions passed in the AGM dated 27.09.2020 until further orders. Respondents are directed to file their counter within 2 weeks.

The petitioner is directed to take steps to correct the serial numbers of the respondents in the cause title, since it is mentioned as 3 and 4 instead of 1 and 2. Registry is directed to issue copy of this order to both the parties. **List on 8.2.2020.**

6 IBA/26/KOB/2020

Learned counsel for the Operational Creditor Shri Reji George appeared through VC. It appears from the counter filed by the Corporate Debtor that the applicant has filed a Civil Suit as O.S.No.12/2020 before the principal Sub Court Ernakulam against the Corporate Debtor for realizing the very same amount. It is further submitted that the applicant has filed two complaints against the Corporate Debtor alleging offences punishable under section 138 of the Negotiable Instruments Act as S.T. No. 48/2020 and [S.T.No.](#) 49/2020 before the Judicial First-Class Magistrate Court Thripunithura. According to the CD if any amount is due from the Corporate Debtor to the applicant, its remedy lies elsewhere and not under the Insolvency and Bankruptcy Code,2016.

The learned counsel for the OC submitted that he will file rejoinder to the Counter. He may do so within two weeks. Next date fixed for hearing. **List on 5.1.2021.**

7 IBA/29/KOB/2020

Learned counsel for the Operational Creditor Shri Vinod PV as well as learned PCS for the Corporate Debtor Shri Gokul RI appeared through VC. The Respondent has already filed his counter. Meanwhile Shri Vinod PV submitted that they have already settled the matter and wants to file the withdrawal memo and that he will be filing the withdrawal memo today afternoon. **List on 4.12.2020 for disposal.**

8 CP/122/KOB/2019

Learned counsel for the Petitioner Shri Renjith Rajappan as well as learned senior counsel for R1 Shri Joseph Kodianthara and learned PCS for R2 Shri Zibi Jose appeared through VC. The Arguments of the R1 heard partly. **List on 16.12.2020 as Part Heard for further arguments of Respondents.**

9 CONTEMPT PETITION (KOB)/01/2020 IN IA/74/KOB/2019 IN TCP/34/KOB/2019

Learned counsel for both the parties appeared through VC. List on 22.1.2021.

10 CONTEMPT PETITION(KOB)/02/2020 IN IA/23/KOB/2019 IN TCP/34/KOB/2019

Learned counsel for both the parties appeared through VC. List **on 22.1.2021.**

11 IA/50/KOB/2019 IN TCP/34/KOB/2019

Learned counsel for both the parties appeared through VC. List **on 22.1.2021.**

12 **IA/66/KOB/2020 IN TCP/34/KOB/2019**

Learned counsel for both the parties appeared through VC. List on **22.1.2021**.

13 **IA/67/KOB/2020 IN TCP/34/KOB/2019**

Learned counsel for both the parties appeared through VC. List on **22.1.2021**.

14 **TCP/34/KOB/2019**

Learned counsel for both the parties appeared through VC. List on **22.1.2021**.

15 **TIA/131/KOB/2020 (CA/228/CHENNAI BENCH) IN
TCP/53/KOB/2019 (CP/33/2017/CHENNAI BENCH)**

Learned counsel for both the parties appeared through VC. List on **22.1.2021**.

16 **TCP/53/KOB/2019 (CP/33/17)**

Learned counsel for both the parties appeared through VC. List on 22.1.2021.

17 **CP/12/KOB/2020**

Learned counsel for the petitioner Shri. Jagan Abraham M George, learned counsel for the respondents Shri Issac Thomas and learned counsel for the impleaded R5 Shri Terry V. James appeared through VC. R5 has filed his counter. Learned counsel for impleaded R5 submitted that he has filed an IA, but it has not been listed today. Registry is directed to verify and number, if it is in order.

Learned counsel for the petitioner submitted that he has filed an IA to modify the order of this Tribunal passed on 13.3.2020. Registry reported that the said IA was initially defective, which is received today after rectification and the same has been numbered as IA 190/KOB/2020. However, the same is also not listed today.

Learned counsel for the Respondents submitted that the pen drive attached along with the Reply Statement of the petitioners (rejoinder) as Annexure 18 is not readable. Learned counsel for the petitioners submitted that he will furnish another pen drive to the Respondents. He may do so.

Registry is directed to list IA filed by R5 and the IA/190/KOB.2020 of the petitioner along with the main CP on 18.1.2021. The respondents in the respective IAs may file their counter within one week.

18 TCP/15/KOB/2020 (CP/39/2015/HIGH COURT OF KERALA)

Originally this is a winding up petition filed before the Hon'ble High Court of Kerala (CP/39/2015) as per Section 433(e) and 434 read with Section 439(1)(b) of the Companies Act, 1956 and the petition was transferred to this Tribunal through an order dated 27.02.2020 by the Hon'ble High Court of Kerala and the same was renumbered by the Registry as TCP/15/KOB/2020. The petitioner vide his application dated 24.09.2020 has filed IB application under Section 9 of the IBC 2016 read with Rule 6 of the IBC (Application to Adjudicating Authority) Rules 2016. The petitioner has also paid the required fees and cured defects under IBA.

Section 434 of the Companies Act, 2013 (18 of 2013) read with sub-section (1) of section 239 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) read as follows:

5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.—(1) All petitions relating to winding up under clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Act, exercising territorial jurisdiction and such petitions shall be treated as applications under sections 7, 8 or 9 of the Code, as the case may be, and dealt with in accordance with Part II of the Code:

Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with Rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal within sixty days from date of this notification, failing which the petition shall abate.

In view of the above, the **TCP/15/KOB/2020 stands disposed of as converted into IBA.**

The Applicant is directed to comply the relevant rules applicable under IBC, 2016.

Registry is directed to number IBA only after the compliance of relevant rules under IBC, 2016 by the Applicant and list the same when it is ready.

19 TCP/(CAA)/04/KOB/2020 (CA/337/CAA/2019/CB)

Learned counsel for the Applicant Shri J. Ravikumar appeared through VC. He submitted that the paper publication was affected on 14.11.2020 in Times of India (English) and Janmabhoomi (Malayalam). Copies of the newspaper publications are placed on record. It appears that paper publication has been affected on 14.11.2020 and none has filed objection against the Scheme of the Applicant Companies. The learned counsel for the petitioner has also submitted that the Appointed date has also been changed from 1.4.2017 to 1.4.2019. The Scheme has also been revised taking into consideration of the comments of the Official Liquidator and Registrar of

Companies and the same was communicated to them. The submission of the learned counsel for the Applicant is taken on record. **Reserved for orders. List for pronouncement of orders on 29.12.2020.**