

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 10th Dec 2020

1 MA/148/KOB/2020 IN IBA/258/2019(CHENNAI BENCH)

Learned counsel for the Applicant Shri Ruben George appeared through VC. Orders pronounced. **MA/148/KOB/2020 IN IBA/258/2019(CHENNAI BENCH) is dismissed vide a common order.**

2 IA/189/KOB/2020 IN MA/148/KOB/2020 IN IBA/258/2019(CHENNAI BENCH)

Learned counsel for the Applicant's Proxy counsel appeared through VC. Orders pronounced. **IA/189/KOB/2020 IN MA/148/KOB/2020 IN IBA/258/2019(CHENNAI BENCH) is disposed of vide a common order.**

3 CA/87/KOVB/2020

Learned counsel for the Appellant Shri Nikhil George appeared through VC. Orders pronounced. **CA/87/KOVB/2020 is disposed of vide separate order.**

4 CA/92/KOB/2020

Learned counsel for the Appellant Shri Krishna Kumar G appeared through VC. Orders pronounced. **CA/92/KOB/2020 is disposed of vide separate order.**

5 CP/49/KOB/2020

Learned PCS for the petitioner Shri Vivek Kumar appeared through VC.

This is a CP filed under 241 under the Companies Act, 2013. The petitioners submitted that they are shareholders of the R1 Company. The Respondents and their relatives are the majority shareholders of the 1st Respondent Company and they control and manage the entire operations of the 1st Respondent Company. They manage the Company as a family concern of their own. The Respondents have never followed the letter and spirit of Companies Act, 2013.

The petitioners alleged in the petition that the funds of the 1st Respondent Company were used for the purpose of respondents own benefits and never bothered to disclose the related party transactions to the shareholders or to any other stakeholders. Ever since the financial year 2013-14 the shareholders were blind on the operations of the 1st Respondent Company. The Respondents have never bothered to share any information with the shareholders of the 1st Respondent Company.

Surprisingly one week before the petitioners have received notice of meeting calling Annual General Meetings for the financial years 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 without following the letter and spirit of Companies Act, 2013. According to the petitioners, they have never received notice earlier calling AGMs ever since becoming shareholders of the 1st Respondent Company. The Respondents cannot continue as Directors of the 1st Respondent Company and have no authority to call the Annual General Meetings for the financial years 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19. There exists no valid Board of Directors. The notices and financial statements were dispatched under the name of 2nd and 3rd Respondents but they have not signed either the notice or the financial statements. The notices were sent with an intention to deceive and mislead the minority shareholders.

Hence the petitioners have filed this CP seeking 6 main reliefs and also 3 interim reliefs from this Tribunal.

I have heard the learned counsel for the petitioners and also perused the records attached with the Petition. It appears that the AGM has already been held on 20.11.2020. Considering the materials on record, I think it would not be justified to pass any order on interim reliefs without perusing the counter of the respondents. However, the respondents are directed to maintain **the status quo as of today with regard to the properties and shareholding pattern of the 1st Respondent Company until further orders.**

The petitioners are directed to issue fresh notice to the respondents through email and 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. Respondents may file their counter within three weeks. Rejoinder, If any, be filed well before the next date fixed. List **on 27.01.2021.**

6 CP/50/KOB/2020

Learned counsel for the petitioner Shri Madhu Radhakrishnan appeared through VC. Learned counsel for the Respondents Shri A.N.Rajan Babu also appeared through VC. This is a Petition filed under Section 241 of the Companies Act, 2013.

The petitioner submitted that he is a member of the 1st respondent company having membership number 1153874 and is also the Secretary of Erumelli Union of the 1st respondent. The first respondent was originally registered under the Travancore Regulation 1(1063) ME) equivalent to Act 6 of 1882 and deemed to be registered under the Companies Act 1913 which was included in the Schedule XII of the Companies Act 1956, which has been replaced by Companies Act 2013.

This case is against the respondents 2 to 5 who are directors/office bearers of the 1st respondent conducting the affairs of the 1st respondent in violation of the mandatory provisions of Companies Act 2013 after being statutorily barred from holding office of the 1st respondent on account of the disqualification incurred under Section 164 (1)

(h) and Section 164 (2) (a) of the Companies Act. In utter disregard, they continued to hold their positions with the 1st respondent and further have been re-appointed to the said positions as well and are conducting activities which are prejudicial to the 1st respondent and to its members and against public interest.

The 2nd respondent has issued a show cause notice raising various untenable, false allegations against the Petitioner and directed him to give reasons as to why his membership should not be terminated from the 1st respondent company. Though the allegations were false and frivolous, the Petitioner had issued a reply to the show cause notice. However, the 2nd respondent by his order dated 13-11-2020 has suspended the membership of the Petitioner from the 1st respondent for a period of 6 years.

Due to these circumstances, the actions of respondents 2 to 5 are prejudicial to the interests of its members and the 1st respondent and attempts are being made to materially change the management and control of the 1st respondent by taking action against its members arbitrarily and thus prejudicially affecting the affairs of the 1st respondent and its members, it has become highly necessary to declare their disqualification and remove them from their positions.

I have heard the learned counsel for both the parties and have perused the records.

It appears to me, on a thorough perusal of the case records and hearing of the learned counsel for both the parties that it will not be justified to pass orders on any of the reliefs sought by the petitioners without perusing the counter of the respondents.

Learned counsel Shri Rajan Babu filed Vakalath for Respondent No.1. However, he has submitted that he is filing Vakalath for Respondents 1 to 5.

The Petitioners are directed to issue fresh notice to Respondent 6 and 7 through email and 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 R6 and R7 through email in addition to normal procedure.

All Respondents are directed to file their counter within two weeks. The petitioner may file their rejoinder, if any, before the next date fixed.

List on 29.12.2020 for hearing.

7 CP/51/KOB/2020 WITH IA/213/KOB/2020

Learned counsel for the petitioner Shri Madhu Radhakrishnan appeared through VC. Learned counsel for the Respondents Shri A.N.Rajan Babu also appeared through VC. This is a Petition filed under Section 241 of the Companies Act, 2013.

The petitioner submitted that he is a member of the 1st respondent company having membership number 1153874 and is also the Secretary of Erumelli Union of the 1st respondent. The first respondent was originally registered under the Travancore

Regulation 1(1063) ME) equivalent to Act 6 of 1882 and deemed to be registered under the Companies Act 1913 which was included in the Schedule XII of the Companies Act 1956, which has been replaced by Companies Act 2013.

This case is against the respondents 2 to 5 who are directors/office bearers of the 1st respondent company conducting the affairs of the company in violation of the mandatory provisions of Companies Act 2013 after being statutorily barred from holding office of the 1st respondent on account of the disqualification incurred under Section 164 (1) (h) and Section 164 (2) (a). In utter disregard, they continue to hold their positions with the 1st respondent and further have been re-appointed to the said positions as well and are conducting activities which are prejudicial to the 1st respondent and to its members and against public interest.

According to the Petitioner, the 2nd respondent without the right to function as the General Secretary has also called for Annual General Body meeting to be held at the Sakhas to elect their representatives for the purpose of AGM of the 1st respondent and also had passed proceedings superseding the democratically elected Erumeli Union of which the petitioner is the Union Secretary, arbitrarily without any valid reason.

Due to these circumstances the petitioner submitted that the action of respondents 2 to 5 are prejudicial to the interests of its members and the 1st respondent and attempts are being made to materially change the management and control of the 1st respondent by taking action against its members arbitrarily and thus prejudicially affecting the affairs of the 1st respondent and its members, it has become highly necessary to declare their disqualification and remove them from their positions.

I have heard the learned counsel for both the parties and have perused the records.

It appears to me, on a thorough perusal of the case records and on hearing the learned counsel for both the parties, it will not be justified to pass orders on any of the reliefs sought by the petitioner without perusing the counter of the respondents.

Learned counsel Shri Rajan Babu filed Vakalath for R1. However, he has stated that he is filing vakalath for Respondents 2 to 5 also

The Petitioners are directed to issue fresh notice to Respondents 6 and 7 through email and 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 R6 and R7 through email in addition to normal procedure.

All Respondents are directed to file their counter within two weeks. The petitioners may file their rejoinder, if any, before the next date fixed.

List on 29.12.2020 for hearing.

IA/213/KOB/2020: This IA has been filed by the applicant in CP 51/KOB/2020 for staying Annexure A6 notice issued by the 2nd respondent. The learned counsel for the respondents Shri Rajan Babu strongly opposed this IA. He has stated that

Annexure A6 notice is not a notice issued for conducting the AGM of the Yogam. However, he has stated that the Yogam General Body Meeting will not be held on or before 29.12.2020. This submission of the learned counsel for Respondents is recorded. List the IA **on 29.12.2020**.

8 CA/103/KOB/2020

Learned PCS for the petitioner Shri Vinu Thomas appeared through VC. This is an Appeal filed by the Appellant for restoring the name of the Appellant Company in the Register of ROC. The documents submitted by the Appellant in his Appeal include the following:

- (i) Master Data
- (ii) Memorandum of Association and Articles of Association
- (iii) Latest Income Tax Return acknowledgement
- (iv) Financial Statements for the years from 2015-16 to 2018-19

Admitted. Registry is directed to issue notice to ROC through special messenger for his report. List on 18.12.2020.

9 IA/211/KOB/2020 IN TCP/7/KOB/2019

Learned counsel for the applicant Shri C.K.Karunakaran appeared through VC. Learned counsel for R1 & R2 Shri Madhu Namboodhiripad and learned counsel for R3 & R4 Shri Keerthivas Giri also appeared through VC. This IA is filed by the applicant for advancing the hearing of the TCP/7/KOB/2019 from 28.12.2020 to any date prior to 11.12.2020. I have heard both the parties. Since today is 10.12.2020 it is not possible to prepone the case prior to 11.12.2020. **Therefore, IA/211/KOB/2020 has become infructuous and hence dismissed.**

10 IA/212/KOB/2020 IN TCP/7/KOB/2019

Learned counsel for the applicant Shri C.K.Karunakaran appeared through VC. Learned counsel for R1 & R2 Shri Madhu Namboodhiripad and learned counsel for R3 & R4 Shri Keerthivas Giri appeared through VC. This IA is filed for considering the interim reliefs prayed for. Heard both sides. Interim orders passed. **IA/212/KOB/2020 IN TCP/7/KOB/2019 is disposed of vide separate sheets.**

11 MA/184/KOB/2020 IN IA/129/KOB/2020 IN TIBA/07/KOB/2019

Learned RP Shri Jasin Jose appeared through VC. But learned counsel for the respondent Shri S.Easwaran submitted an email seeking an adjournment stating that

10.12.2020 being the Election Day, he may not be available since he is going to cast his vote in the election. **Adjourned to 07.01.2021.**

12 IA/191/KOB/2020 IN IBA/21/KOB/2019

Learned RP Shri Jasin Jose appeared through VC. Learned counsel for the related parties Shri Harikumar G Nair also appeared through VC.

It appears from records that this IA is filed by the RP seeking direction to the related parties to pay back the corresponding amount immediately to the CD Company M/s Churakulam Tea Estate Pvt Ltd. The learned counsel for the related parties submitted that all the related parties are not made as parties to the IA and copy of the IA has not been served on them. The learned RP submitted that he will file an IA to implead them as parties in this IA. He may do so within a week. He may serve copy of the present IA/191/KOB/2020 also on the newly impleaded respondents, who may file counter to IA 191/KOB/2020 before the next date fixed. **List on 04.01.2021.**

13 IA/62/KOB/2020 IN TCP/26/KOB/2019

Learned counsel for the applicants Shri Niranjan Sudheer as well as learned PCS for the respondents Shri KS Ravi Chandran appeared through VC. Registry reported that another IA to accept certain documents has been filed, which has not been listed today. Respondents may file their counter in the said IA also, within two weeks. **List on 07.01.2021.**

14 TCP/26/KOB/2019 (CP/716/19)

Learned counsel for the applicants Shri Niranjan Sudheer as well as learned PCS for the respondents Shri KS Ravi Chandran appeared through VC. **Pleadings are complete. List on 07.01.2021.**

15 IA/151/KOB/2020 IN TCP/45/KOB/2019

Learned counsel for the applicant Shri Cyriac Tom as well as learned counsel for the respondents Shri S. Eshwar appeared through VC. Shri Cyriac Tom sought an adjournment stating that his senior, who has to argue this matter, is under home quarantine due to Covid 19 positive. **Adjourned to 27.01.2021.**

16 TCP/45/KOB/2019

Learned counsel for the Petitioner Shri Cyriac Tom as well as learned counsel for the respondents Shri S. Eshwar appeared through VC. Shri Cyrian Tom sought an adjournment stating that his senior, who is to argue this matter, is under home quarantine due to Covid 19 positive. Adjourned to **27.01.2021**.