

## ***NCLT, KOCHI BENCH***

### **Daily Orders – Draft**

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

**Date: 14<sup>th</sup> Dec 2020**

#### **1 MA/177/KOB/2020 IN TIBA/11/KOB/2019**

Learned counsel for the Applicant Ms Merin Thaliath appeared through VC. Learned RP Shri Bijoy P. Pulipra also appeared through VC. **Orders pronounced. MA/177/KOB/2020 IN TIBA/11/KOB/2019 is disposed of vide separate order.**

#### **2 MA/205/KOB/2020 IN MA/140/KOB/2020 IN TIBA/11/KOB/2019**

Learned RP Shri Bijoy Prabhakaran Pulipra appeared through VC. Learned GP Shri Muhammed Fazil MP also appeared through VC. This MA is filed by the RP under Section 60(5) of the IBC, 2016 seeking clarifications on our order dated 4.11.2020 in MA/140/KOB/2020. The RP in his MA prayed for the following reliefs:

- (i) Issue necessary clarification to the Applicant as to whether the Resolution Professional has the authority under Regulation 13 and 14 of the CIRP Regulations to file an appeal before the Joint Commissioner, GST as part of the verification and determination of a claim submitted by the GST department in Form B.
- (ii) Issue necessary clarifications to the Applicant as to whether the judgement, decree or order, if any. passed by the Appellate Authority under CGST Act pursuant to the Appeal, against the Corporate Debtor shall be binding on Corporate Debtor when the moratorium declared by the Hon'ble National Company Law Tribunal Bench by virtue of section 14 of the Insolvency and Bankruptcy Code is in effect.
- (iii) Issue necessary clarifications to the Applicant as to whether the requirement of the pre-deposit of Rs. 3,79. 64,304/- (Rupees Three Crore Seventy-Nine Lakh Sixty-Four Thousand Three Hundred and Four Only) mandated under Section 107 of the GST Act, shall be prejudicial to the interest of the Corporate Insolvency Resolution Process, as the said Section is inconsistent with Regulation 13 and 14 of the CIRP Regulations due to the overriding effect of Insolvency and Bankruptcy Code, 2016 over the Goods and Service Tax Act, 2017.

I have heard both the parties and have thoroughly perused the records. The learned GP, who appeared for the Respondent (State Tax Officer, SGST Department, Kerala State) submitted that he will file a counter to the MA within two weeks. He may do so positively within two weeks. **List for hearing on 5.1.2021.**

### 3 IBA/40/KOB/2020

Learned counsel for the Operational Creditor Shri Jack Thalakkottur appeared through VC. This is an application filed under Section 9 of the IBC 2016. It appears from records that the Debt amount is Rs.6,79,377/-. The learned counsel for the OC submitted that Demand Notice was served on 6.3.2020. After that talks were held between the parties, but there was no positive outcome, hence this IB application has been filed now.

The Operational Creditor is directed to issue fresh notice to the Corporate Debtor 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 CD through email in addition to normal procedure. List on **7.1.2021 for hearing.**

### 4 REPORT NO.123/KOB/2020 IN IBA/04/KOB/2020

None has appeared for the RP. **Report of the RP is taken in record.** Registry is directed to place the report in the appropriate file.

### 5 MA/198/KOB/2020 IN IBA/17/KOB/2020

No response from the learned IRP. Hence adjourned to **18.1.2021.**

### 6 MA/199/KOB/2020 IN IBA/17/KOB/2020

No response from the learned RP. Hence, adjourned to **18.1.2021.**

### 7 MA/197/KOB/2020 IN MA/05/KOB/2020 IN TIBA/01/KOB/2019

Learned Liquidator Shawn Jeff Christopher appeared through VC. This MA is filed by the Liquidator with the prayer to implead the EPFO Department giving them reasonable opportunity to establish their cause before the Adjudicating Authority and to issue appropriate directions to the Liquidator for dealing with the cause of EPFO Department, under Section 3(6) read with Regulation 20 of Liquidation Process Regulation, 2016 and Sections 35(1)(n) & 60(5) of IBC, 2016 to discharge the duties of the Liquidator.

Heard the liquidator and perused the records. It appears from records that EPFO is a necessary party in this case and without their presence it is difficult to proceed further in this matter. Learned liquidator submitted that he received a call from a counsel for the EPFO, Trivandrum who stated that the Vakalath will be filing during the course of the day and he sought time to file counter to the MA 176/KOB/2020. The EPFO is directed to file their counter within a week. The prayer of the liquidator in this **MA is allowed**. The EPFO Department is impleaded as Additional Respondent in **IA/176/KOB/2020 IN MA/05/KOB/2020 IN TIBA/01/KOB/2019**. **Registry is directed to carry out the impleadment in IA/176/KOB/2020.**

**8 IA/176/KOB/2020 IN MA/05/KOB/2020 IN TIBA/01/KOB/2019**

Learned Liquidator Shawn Jeff Christopher appeared through VC. Today vide order in **MA/197/KOB/2020 IN MA/05/KOB/2020 IN TIBA/01/KOB/2019** this Tribunal has impleaded the EPFO as additional respondent in this IA. **Newly impleaded respondent may file counter to the IA within two weeks. List on 5.1.2021 for hearing.**

**9 MA/141/KOB/2020 IN MA/33/KOB/2019 IN MA/12/KOB/2019 IN CP(IB)/91/CB/2018**

Learned counsel for the Liquidator Ms. Midhuna KC and Ms Merin Thaliath appeared through VC. Learned counsel for the erstwhile directors of Corporate Debtor Shri Harikumar G. Nair also appeared through VC. Shri Harikumar G.Nair sought an adjournment for filing the counter. The CD is directed to file their counter within 2 weeks. The Liquidator may file his rejoinder, if any, before the next date fixed. **List on 11.1.2021.**

**10 IBA/22/KOB/2020**

Learned counsel for the Operational Creditor Sri Cimil C. Kottalil appeared through VC. None appeared for the respondents /Corporate Debtor. It appears from records that in spite of direction given to the Operational Creditor vide our order dated 2<sup>nd</sup> Nov 2020 to issue paper publication and submit proof of publication on or before 14.12.2020, the OC has not done so. But today the learned counsel for the OC stated that a draft paper publication is being filed today, for approval. He may proceed with the paper publication immediately and submit the proof of publication with an affidavit before the next date fixed. **List on 06.01.2021 for hearing.**

**11 IBA/23/KOB/2020**

Learned counsel for the Operational Creditor Sri Cimil C. Kottalil appeared through VC. None appeared for the respondents /Corporate Debtor. It appears from records

that in spite of direction given to the Operational Creditor vide our order dated 2<sup>nd</sup> Nov 2020 to issue paper publication and submit proof of publication on or before 14.12.2020, the OC has not done so. But today the learned counsel for the OC stated that a draft paper publication is being filed today, for approval. He may proceed with the paper publication immediately and submit the proof of publication with an affidavit before the next date fixed. List on **06.01.2021 for hearing**

**12 IA/179/KOB/2020 IN CP/11/KOB/2020**

Learned counsel for the Applicant Shri Philip Mathew appeared through VC. This IA is filed by the applicant/petitioner under Rule 11 of the NCLT Rules, 2016 seeking direction to conduct the AGM of the R1 Company for the years 2018-2019 and 2019-2020 by a Chairman appointed by this Tribunal. The Respondents remain absent in all proceedings of this Company Petition despite paper publications carried out on 5.8.2020 as directed by this Tribunal. Today this IA is posted for final hearing and none has appeared for the respondents. Since the prayers made in the I.A is similar to the prayer made in the Company Petition, the Company Petition itself can be disposed of. Hence in IA 179/KOB/2020 no orders are necessary. **IA/179/KOB/2020 IN CP/11/KOB/2020 stands disposed of.**

**13 CP/11/KOB/2020**

Learned counsel for the Applicant Shri Philip Mathew appeared through VC. The Respondents remain absent in all proceedings of this Company Petition despite paper publications carried out on 5.8.2020 as directed by this Tribunal. Today this CP is posted for final hearing and none has appeared for the respondents. The learned counsel for the petitioner has suggested the name of Shri K.R.Jinan (Retired District and Sessions Judge and former Judicial Member of NCLT) as Chairman for the proposed AGMs. The petitioner is directed to file an affidavit stating the name of the Chairman for the AGMs along with his consent to act as Chairman to enable this Tribunal to issue necessary orders in this regard. Arguments heard. **Reserved for orders. List for pronouncement of orders on 12.01.2021.**

**14 CP/37/KOB/2020**

Learned counsel for the petitioner Shri K. Biju appeared through VC. Vakalath has already been filed on behalf of R1 and R2 by Shri V. Premchand, Advocate and appeared through VC for them. Learned counsel for R1 and R2 sought two weeks' time to file the counter. Request is allowed. He may file the counter positively within two weeks with a copy to the petitioner, who may file his rejoinder, if any, before the next date fixed. List on **20.01.2021.**

15 CA/98/KOB/2020

Learned counsel for the Appellant Shri C.K.Karunakaran appeared through VC. The Appellant has filed the IT return and financial statements as directed by this Tribunal vide order dated 2<sup>nd</sup> Dec 2020. The Report of ROC is also on record. **Reserved for Orders. List for pronouncement of orders on 18.12.2020.**

16 CP(CAA)/01/(KOB)/2020

Learned counsel for the petitioner Ms Telma Raju appeared through VC. Today the case is posted for the Report of RD/ROC. The ROC in his report submitted that the RD had examined the Scheme with reference to the material papers made available to him and accordingly decided not to make any objection to the scheme of arrangement (Demerger) and advised the ROC, Kerala to file affidavit as the case may be before this Tribunal. Accordingly, it appears that the RD/ROC has no objection to the Scheme of the Petitioner.

The Petitioner is directed to issue paper publication within ten days as per Rule 16 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in the same newspapers in which the notice of the meeting was advertised by them. They shall produce the proof of publication with an affidavit before the next date fixed. **List on 07.01.2020 for final hearing.**

17 CP(CAA)/02/(KOB)/2020

Learned counsel for the petitioner Ms Telma Raju appeared through VC. Today the case is posted for the Report of RD/ROC. The ROC in his report submitted that the RD had examined the Scheme with reference to the material papers made available to him and accordingly decided not to make any objection to the scheme of arrangement (Demerger) and advised the ROC, Kerala to file affidavit as the case may be before this Tribunal. Accordingly, it appears that the RD/ROC has no objection to the Scheme of the Petitioner.

The Petitioner is directed to issue paper publication within ten days as per Rule 16 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in the same newspapers in which the notice of the meeting was advertised by them. They shall produce the proof of publication with an affidavit before the next date fixed. **List on 07.01.2020 for final hearing.**

18 IA//80/KOB/2019 IN IBA/46/KOB/2019

Learned counsel for applicant Shri Santhosh Mathew and learned senior counsel for the respondent Shri Joseph Kodianthara also appeared through VC. Arguments of both sides concluded. Reserved for orders. List for pronouncement of orders on 12.01.2021.

19 IBA/46/KOB/2019

Learned senior counsel for financial creditor Joseph Kodianthara as also learned counsel for the respondents/corporate debtor appeared through VC. List on 12.01.2021.