

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

### **Daily Orders – Draft**

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

Date: 16<sup>th</sup> Dec 2020

**1 TCA/68/KOB/2020**

None has appeared for the Appellant. Orders pronounced. **CA/87/KOVB/2020 is disposed of vide separate order.**

**2 CA/93/KOB/2020**

Learned PCA for the Appellant Shri Paulose Paul appeared through VC. Orders pronounced. **CA/93/KOVB/2020 is disposed of vide separate order.**

**3 CA/100/KOB/2020**

Learned Counsel for the Appellant Shri Jerin Asher Sojan appeared through VC. Orders pronounced. **CA/100/KOVB/2020 is disposed of vide separate order.**

**4 CP/52/KOB/2020**

Learned Counsel for the petitioner Shri C.Harikumar appeared through VC. This is a CP filed under Section 59 and 62 of the Companies Act, 2013.

The petitioner is one of the shareholders of R1 Company who is aggrieved by the act of the 2<sup>nd</sup> respondent which would have the effect of dilution of the value of the equity shares held by him.

Alleging oppression and mismanagement against R2, the petitioner submitted that there is substantial non-compliance in the allotment of equity shares in the R1 Company. The petitioner has also submitted that the property of the company would come to a net worth of more than Rs 250 crores. Thus, illegal allotment of shares in violation of the procedure has resulted in the dilution of the value of the shares held by the petitioner. Thus, the petitioner seeks the indulgence of this Tribunal for protecting his interest as well as the best interest of the company.

I have heard the learned counsel for the petitioner and also perused the records attached with the Petition.

The petitioner is 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. List **on 28.01.2021**.

## 5 CP/53/KOB/2020

Learned counsel for the petitioner Shri Sandeep Kumar S appeared through VC. This is a CP filed under Section 213, 241 and 242 of the Companies Act, 2013.

The Petitioner is a Promoter, Shareholder (holding 25% shares) and Director of the first Respondent Company. The Petitioner is one of the directors of the Respondent Company, along with Respondent No. 2 to 4. Respondent No. 2 was managing the day to day affairs of the Respondent Company and was acting in the capacity as Executive Director. The Petitioner, who was abroad, was always kept in the dark and the matters pertaining to the management of the affairs of the Respondent Company was concealed from the Petitioner. In addition to an Equity Capital Investment made by the Petitioner, Respondents 2 to 4 compelled the Petitioner to infuse an Unsecured Loan aggregating to Rs. 19,50,000/- (Nineteen Lakh Fifty Thousand Rupees) in the Respondent Company, which is reflected in the Financial statements filed by the Respondent Company with the Registrar of Companies as on 31st March 2019. The Respondents No. 2 to 4 had assured that the aforesaid unsecured loan amount infused by the Petitioner will be returned along with interest, once financial assistance is availed by the Respondent Company from Banks. Based on the above assurance from the Respondents 2 to 4, the Petitioner has also mortgaged his personal property in favour of South Indian Bank, Karukutty Branch, for an amount of Rs. 4,50,00,000 (Four Crore Fifty Lakhs Only) secured by the Respondent Company. All the above investments made by the Petitioner is in addition to the equity capital initially invested to the R1 Company in tune of Rs 10,000,00 (Rupees Ten Lakh Only). The Petitioner has singlehandedly invested Rs 29,50,000/- to the Respondent Company whereas the investments made by Respondents 2, 3 and 4 is merely Rs 10,00,000/- each.

Once the said loan was availed by the Respondent Company, the Petitioner expected that the unsecured loan infused by him will be refunded to him along with interest promised by Respondents 2 to 4. However, when the Petitioner started demanding the outstanding amount of the said unsecured loans, the Respondents 2to 4 conspired to exclude the Petitioner from the Respondent Company's Affairs. Huge amounts were invested by the Petitioner for the commencement and growth of the Company whereas the investment made by the Respondents 2to 4 was meagre.

However, when the Petitioner repeatedly demanded the outstanding amount of the said unsecured loans due to him, the relationship between the Petitioner and the Respondents started to get constrained. The Respondents neither revealed to the Petitioner the day today affairs of the Company nor provided satisfactory answers, whenever the Petitioner raised objection in relation to the bad corporate governance practices that were being followed in Respondent Company. The situation got much worse that from the financial year 2019-2020 onwards neither the notices of Board Meetings were issued nor served to the Petitioner. The Petitioner was not served the financial statements for the financial year 2018-19, or books of accounts of the Respondent Company by Respondents 2 to 4. The Petitioner came to know from the Portal of Ministry of Corporate Affairs that the Audited Financial statements of the Respondent Company and the Annual Return as on 31st March 2019 has been filed with the Registrar of Companies, Kerala. Having being the majority stake holder of the Company, the Petitioner was not served copy of the said financial statements and he was not informed of the Board or shareholders meeting wherein the said financial statements were considered for approval.

The petitioner further submitted that as per the financial statements filed by the Respondent Company with the Registrar of Companies, Kerala, for the financial year ended 31 March 2019, the 2nd Respondent has taken an amount of Rs. 5,10,000/- as remuneration, whereas, the remuneration taken for the previous year was only Rs 1,05,000/-. The said enhancement of remuneration to the executive director i.e., Respondent 2 was never informed to the Petitioner. To add further, from the perusal of financial statements for the year ended 31st March 2019, it is found that, one Ms. Joicy has drawn remuneration amounting to Rs. 2,70,000 (Rupees Two Lakh Seventy Thousand Only). Ms. Joicy is the sister of Respondent 2 to 4. This related party transaction was not informed to the Petitioner and hence is a gross violation of provisions of Section 188 of the Companies Act, 2013. Since the copy of financial statements were never served to the Petitioner, the Petitioner suspects fund siphoning by Respondents 2 to 4 through related party transactions which are transacted without the necessary approval of Board of Directors. To utter shock and dismay of the Petitioner, it is found that huge amount were withdrawn by Respondent 3 and 4 which is reported as Related Party transactions in the Financial Statements for the year ended 31st March 2019 filed with the Registrar of the Company. Respondents 3 & 4 have withdrawn an amount of Rs. 10,77,546.00 (Rupees Ten lakh Seventy Seven Thousand Five Hundred Forty Six Only) & Rs. 10,90,439.23 (Rupees ten Lakh Ninety thousand four Hundred Thirty Nine Only) respectively which is shown as expenses without the Board approval. All the above Related Party Transactions were not informed to the Petitioner. The Petitioner further apprehend that in the disguise of related party transactions, the Respondent 2 to 4 are taking back their entire investments without disclosure to the Petitioner and without complying with the provisions of companies Act 2013. Before withdrawing huge funds clandestinely by the Respondent 2 to 4, they should have shown a courtesy to return the outstanding unsecured loans due to the Petitioner, who has made the majority investment in the Company.

The Petitioner has an apprehension that he may be removed from the Directorship and the Respondents may usurp the power of the Company.

In the above context, Petitioner prays before this Tribunal "to provide an exit opportunity to the Petitioner as the Director and shareholder of the Company upon the full and final settlement of his equity investments by taking valuation of the shares of the Company, repayment of unsecured loans amounting to Rs. 19,50,000/- (Nineteen Lakhs fifty Thousand) along with the interest at the rate of 12% and relinquish the Petitioner from acting as personal guarantor for all the financial facilities availed by the Respondent Company from South Indian Bank and relieve the Petitioner's personal property mortgaged for the Respondent Company" and hence this Petition.

I have heard the learned counsel for the petitioner and also perused the records attached with the Petition. The learned counsel for the petitioner in his argument has sought certain interim reliefs. Considering the materials on record, the respondents are directed to **maintain 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 04.02.2021.**

#### 6 CP/54/KOB/2020

Learned counsel for the petitioner Shri John Vadassery appeared through VC.

This is a CP filed under Section 97 of the Companies Act, 2013 with the prayer to give direction to the respondents to convene the AGM of the R1 Company for the financial year 2018-19 immediately.

I have heard the learned counsel for the petitioner and also perused the records attached with the Petition.

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 2.2.2021.**

#### 7 CP/55/KOB/2020

Learned PCS for the petitioner Shri Vinu Thomas appeared through VC.

This CP is filed under Section 241 and 242 of the Companies Act, 2013. The petitioner holds 14% and the R2 to R4 hold the remaining 86% shareholding in the

R1 Company. The Petitioner in his Petition has alleged oppression and mismanagement against the respondents.

I have heard the learned counsel for the petitioners and also perused the records attached with the Petition. It appears from records that the petitioner has sought 6 Nos of main reliefs in addition to 19 Nos of Interim reliefs. Considering the materials on record, 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 **01.02.2021.**

**8 CA/107/KOB/2020**

None has appeared for the Appellants. This is an Appeal filed by the Appellant for restoring the name of the Appellant Company in the Register of ROC. Admitted. Registry is directed to issue notice to ROC through special messenger for his report. List on **29.12.2020.**

**9 CA/108/KOB/2020**

Learned counsel for the appellant Shri Nebil Nizar appeared through VC. This is an Appeal filed by the Appellant for restoring the name of the Appellant Company in the Register of ROC. Admitted. Registry is directed to issue notice to ROC through special messenger for his report. List on **28.12.2020.**

**10 CP/24/KOB/2020 WITH WITHDRAWAL MEMO**

Learned senior counsel for petitioner Shri Joseph Kodianthara as well as learned counsel for the respondents Smt Telma Raju appeared through VC. Both the counsel submitted that the dispute has been settled between the parties and a withdrawal/settlement memo filed. Heard both sides. Orders passed. **CP/24/KOB/2020 is disposed of as withdrawn vide separate sheets.**

**11 CP/29/KOB/2020 WITH WITHDRAWAL MEMO**

Learned senior counsel for petitioner Shri Joseph Kodianthara as well as learned counsel for the respondents Smt Telma Raju appeared through VC. Both the counsel submitted that the dispute has been settled between the parties and a withdrawal/settlement memo filed. Heard both sides. Orders passed. **CP/29/KOB/2020 is disposed of as withdrawn vide separate sheets.**

**12 REPORT NO.125/KOB/2020 IN IBA/45/KOB/2019**

Learned Liquidator Shri K.R.Dileep appeared through VC. **Report of the Liquidator is taken on record.** Registry is directed to place the Report in the appropriate file.

**13 MA/206/KOB/2020 IN CA/57/KOB/2020**

Learned counsel for the applicant Shri Mohan Pulickkal appeared through VC. This MA is filed under Rule 154 read with Rule 11 of NCLT Rules 2016 for rectification of our order dated 9.10.2020 in CA/57/KOB/2020. Registry is directed to issue notice to ROC through special messenger for his reply. **List on 21.01.2021.**

**14 MA/209/KOB/2020 IN TCP/8/KOB/2019**

No response from the Applicant. Learned counsel for the Respondents Shri A.M.Sreedharan submitted an email stating his willingness to appear through VC. Adjourned to 5.1.2021.

**15 IA/215/KOB/2020 IN CP/38/KOB/2020 c/w CP/126/KOB/2019**

Learned counsel for applicants Shri Philip Mathew as well as learned PCS for R1 Shri PP Zibi Jose also appeared through VC.

IA/215/KOB/2020 has been filed by the applicants in CP/38/KOB/2020 for appointment of a Chairman to conduct the 32<sup>nd</sup> and 33<sup>rd</sup> Annual General Meeting of the 1<sup>st</sup> respondent company for the years 2018-19 and 2019-20 respectively in accordance with the provisions of the Companies Act, 2013 and the relevant rules in supersession of the alleged 32<sup>nd</sup> Annual General meeting allegedly held on 30.10.2019 and keeping in abeyance the proposed 33<sup>rd</sup> Annual General Meeting intended to be held on 31<sup>st</sup> December, 2020 and all further steps by the 1<sup>st</sup> responded company pursuant to Annexure A8 notice.

Annexure A8 is a notice dated 14.12.2020 issued by Mr.K.V.Geever, Chairman for Vyapar Mandir Palarivattom (P) Limited stating that the Annual General Meeting of the company will be held on Tuesday 31<sup>st</sup> December, 2020 at 3.00 pm at Vyparbhavan Hall, Palarivattom. All the shareholders of the company were requested to be present at the meeting. Main agenda is to re-appointment of Mr.Joly Sebastian, Director who retire by rotation at this Annual General Meeting being eligible and offered himself for appointment as Director as also presentation of Income and Expenses for 2019-20.

Shri Philip Mathew, learned counsel for the applicants appeared through Video Conferencing. Shri Zibi Jose, learned PCS also appeared for R1 through video conferencing. I have heard the arguments advanced by them.

Shri Zibi Jose, appearing for R1 stated that the 32<sup>nd</sup> Annual General Meeting of the respondent company has been held on 30.10.2010 legally and all the then shareholders as per the Register attended the meeting. Thereafter the financial statements and annual returns were filed before the Registrar of Companies. He has further stated that he has no objection in keeping abeyance the proposed Annual General Meeting to be held on 31<sup>st</sup> December, 2020.

**After hearing the learned counsel on either side, this Tribunal is of the view that the proposed AGM to be held on 31<sup>st</sup> December, 2020 may be held as proposed. Ordered accordingly. However, the decision taken in the said AGM shall be kept in abeyance until further orders.**

Applicant shall issue notice to Respondents 2 to 8 and produce proof of service with an affidavit before the next date fixed. Respondents may file their counter to the IA within a week. List the IA for hearing on **29.12.2020**.

**16 IA/216/KOB/2020 IN MA/05/KOB/2020 IN TIBA/01/KOB/2019**

Learned Liquidator Shri Shawn Jeff Christopher appeared through VC. This IA is filed by the Liquidator under Section 32 and 33 of the Liquidation Process with the prayer to grant leave for sale of assets of the CD to discharge the duties as the Liquidator. I have heard the liquidator and perused the records. **The prayer is allowed.** The liquidator is directed to strictly comply Regulation 33 of IBBI (Liquidation Process) Regulations 2016. **IA/216/KOB/2020 IN MA/05/KOB/2020 IN TIBA/01/KOB/2019 is disposed of accordingly.**

**17 IA/124/KOB/2020 IN IBA/16/KOB/2020**

Learned representative for the RP Shri Jasin Jose as well as learned counsel for the Applicant/Corporate Debtor Shri Vino Jose appeared through VC. Vide our order dated 10.11.2020 the OC and CD were directed to cooperate with the RP for filing the FA and they were also directed to share the fee of the RP equally and pay the fee to RP before 16.12.2020. The learned representative for the RP submitted that the fee fixed by this Tribunal after negotiation for Rs.90,000/- has not yet been paid and FA has not yet been filed in this case. The OC and CD are directed to equally share and pay the professional fee of Rs.90,000/- to the RP and file Form FA before the next date fixed positively. Registry is directed to issue copy of this order to the RP, OC and CD through email. **The parties may please bear in mind that there shall be no adjournment in this case. List on 11.01.2021.**

**18 IA/125/KOB/2020 IN IBA/16/KOB/2020**

Learned representative for the RP Shri Jasin Jose as well as learned counsel for the Corporate Debtor Shri Vino Jose appeared through VC. Vide our order dated

10.11.2020 the OC and CD were directed to cooperate with the RP for filing the FA and they were also directed to share the fee of the RP equally and pay the fee to RP before 16.12.2020. The learned representative for the RP submitted that the fee fixed by this Tribunal after negotiation for Rs.90,000/- has not yet been paid and FA has not yet been filed in this case. The OC and CD are directed to equally share and pay the professional fee of Rs.90,000/- to the RP and file Form FA before the next date fixed positively. Registry is directed to issue copy of this order to the RP, OC and CD through email. **The parties may please bear in mind that there shall be no adjournment in this case. List on 11.01.2021.**

**19 IBA/38/KOB/2020**

Learned counsel for both the parties submitted an email stating willingness to appear through VC. But due to paucity of time adjourned **to 06.01.2021.**

**20 CP/122/KOB/2019**

Learned senior counsel for R1 Shri Joseph Kodianthara and learned PCS for R2 Shri PP Zibi Jose appeared through VC. Shri Joseph Kodianthara submitted that the related matter is posted on 22.1.2021 and hence sought an adjournment of this CP to the said date. Allowed. **List on 22.01.2021.**

**21 IA/56/KOB/2020 IN TCP/61/KOB/2019**

Learned counsel for the applicant submitted an email seeking an adjournment. Learned counsel for the Respondents Mrs.Manjula Devi submitted an email stating willingness to appear through VC. **Adjourned to 9.2.2021.**

**22 IA/57/KOB/2020 IN TCP/61/KOB/2019**

Learned counsel for the applicant submitted an email seeking an adjournment. Learned counsel for the Respondents Mrs.Manjula Devi submitted an email stating willingness to appear through VC. **Adjourned to 9.2.2021.**

**23 TCP/61/KOB/ 2019 (CP/531/2019)**

Learned counsel for the petitioner submitted an email seeking an adjournment. Learned counsel for the Respondents Mrs.Manjula Devi submitted an email stating willingness to appear through VC. **Adjourned to 9.2.2021.**

**24 CA/95/KOB/2020**



Learned PCS for the Appellant Shri Yogindunath S appeared through VC. Report of ROC is on record. **Reserved for orders. List for pronouncement of orders on 18.12.2020.**

25 **IA/194/KOB/2020 IN IA/55/KOB/2019 IN TCP/20/KOB/2019**

List this IA along with TCP 20/KOB/2019 **on 27.1.2021 2.30 pm.**

26 **TCP/20/KOB/2019**

Mr.AM Sreedharan, learned counsel for the applicant/petitioner, Shri Joseph Kodianthara, learned senior counsel for R 1 to 3 as also Shri Sankar Panicker learned counsel for R4 appeared through Video Conferencing. The learned counsel for petitioner stated that he wants to hear the IA 194/KOB/2020 first. However, learned senior counsel for the Respondents Shri Joseph Kodianathara stated that the CrI.MC No.457 of 2019 pending before the Hon'ble High Court of Kerala has been disposed of on 25.11.2020. In para 20 of the order, it is stated that:

“On being queried as to whether the 2<sup>nd</sup> respondent herein has taken any steps seeking any expeditious hearing and disposal of the main matter in Annexure A7 TCP/20/KOB/2019 now on the file of the NCLT, Kochi Bench, Sri S.Rajeev, learned counsel for the 2<sup>nd</sup> respondent would submit that the 2<sup>nd</sup> respondent will immediately move requisite application before the NCLT, Kochi Bench for the expeditious hearing and disposal of the said company petition without any further delay, if the same has not so far been done”

In view of the above, the learned senior counsel stated that the TCP/20/KOB/2019 itself has to be heard and disposed of at the earliest and that the IA is only offshoot of the main company petition.

Learned senior counsel has stated that he wants to make a proposal before the petitioner that the respondents are ready to receive the shares of the petitioner with a negotiable payment. However, learned counsel for petitioner stated that the respondents have to make some other payments also to the petitioner. Both parties are directed to explore the possibility to settle the matter.

List TCP along with IA for hearing on **27.1.2021 at 2.30 pm.** Both parties are directed to file their written argument notes not exceeding 5 pages before the next date fixed. Since the petitioner stated that he has not filed rejoinder, he may file rejoinder in the TCP before the next date fixed.

