

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

### **Daily Orders – Draft**

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

**Date: 2<sup>nd</sup> Dec 2020**

**1 CP/47/KOB/2020**

Learned counsel for the petitioner Smt Rema Smrithy as well as learned PCS for the respondent 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 this 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 though a person acting as proxy for the MD was present on the day. The signed document giving the said proxy was not shown to the petitioner even on request. The petitioner had also raised 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 promotor Director and not as a shareholder. Besides, no fee was also attached with

the application. Moreover, the petitioner is having only 1.81 percent of the share of the company. 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. Rejoinder to the counter, if any, be filed well before the next date fixed.

**List on 8.2.2021 for hearing.**

## 2 CA/98/KOB/2020

Learned counsel for the appellant Shri C.K. Karunakaran 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

It appears that the Appellant has not submitted the copy of latest Income Tax Return and Audited Annual Accounts/Financial statements along with the Application. The learned counsel for the Appellant submitted that the Appellant company is not an on-going concern and is under "dormant status". I have perused the Appeal. If no IT return is submitted, the Appellant may submit a "Nil" report to this effect. However, the Appellant is directed to submit the latest Financial statements before the next date fixed.

Registry is directed to issue notice to ROC through special messenger for his report. **List on 14.12.2020.**

## 3 MA/145/KOB/2020 IN MA/05/KOB/2020 IN TIBA/01/KOB/2019

Learned Liquidator Shri Shawn Jeff Christopher and learned counsel for the suspended Director Shri Simod Sivan appeared through VC. Registry reported that the counter filed by the suspended director is defective due to non-payment of required fees and non-stamping. Shri Simod Sivan submitted that he will cure the defects within a day. He may cure the defects and re-submit the same before the first half of 3.12.2020. Orders will be passed in the 2<sup>nd</sup> half of 3.12.2020. **List on 3.12.2020.**

## 4 IA/194/KOB/2020 IN IA/55/KOB/2019 IN TCP/20/KOB/2019

Learned counsel for the Applicant Shri A.M.Sreedharan as well as learned senior counsel for the Respondent Shri Joseph Kodianthara and learned counsel for R4 Shri Sankar P Panicker appeared through VC.

This IA is filed by the Applicant/petitioner under Sections 59, 213, 241 and 242 of the Companies Act, 2013 with the following prayers:

- (a) To reject the report dated 6.6.2020 of the 4<sup>th</sup> Respondent.
- (b) To appoint Mr. Paul K. Joseph, Partner, M/s. RSM & Associates, Chartered Accounts, Edappally, Cochin to go into the books of account of the R1 Company and report whether the R1 company received money in respect of all the allotments of shares, both equity and preference, from its members as on 31.12.2018, especially, R2 and R3 or the R2 and R3 utilised someone else money for the allotment of shares to them;
- (c) To direct to R1 to R3 to furnish the full name and address of Mr. Jayachandran to the applicant; and
- (d) Such other reliefs as this Tribunal may deem fit and proper in the facts and circumstances of the case.

It appears that R1 to R3 has already filed the counter. Learned counsel for R4 Shri Sankar P. Panicker sought two weeks' time to file the counter. Allowed. He may file the counter in this IA within 2 weeks positively. Both the parties may submit their written submissions in this IA before the next date fixed. Next date fixed for hearing. **List on 16.12.2020 at 2.30 pm for final hearing in this IA.**

#### 5 TIA/10/KOB/2019 IN TCP/20/KOB/2019

Learned senior counsel for the Applicants Shri Joseph Kodianthara as well as learned counsel for the Respondent Shri A.M.Sreedharan appeared through VC.

The applicant in this IA has sought the permission of this Tribunal to proceed with the proposed rights issue as well as divesting of a portion of the shareholding of the 2<sup>nd</sup> Respondent strictly in compliance with Articles 14 and 15 of the Articles of Association of the Company pending hearing and final disposal of the CP.

It appears that the relief sought by the Applicants are inter-connected with the main CP. Therefore, this issue will be considered while considering the TCP. Accordingly, **TIA/10/KOB/2019 IN TCP/20/KOB/2019 is disposed of.** However, registry is directed to keep the records of this IA along with the main CP, so that it can be referred to while passing orders in the main CP.

#### 6 IA/54/KOB/2020 IN TCP/20/KOB/2019

Learned senior counsel for the Applicants Sri Joseph Kodianthara as well as learned counsel for the R2 Shri A.M.Sreedharan appeared through VC.

This IA is filed under Rule 32 of the NCLT Rules 2016 for early hearing of the main Company Petition. It appears that the petitioner in the main CP has filed an

IA/194/KOB/2020 with the prayer to reject the report dated 6.6.2020 of the R4 Chartered Accountant and to appoint Mr. Paul K. Joseph, Partner, M/s. RSM & Associates, Chartered Accounts, Edappally, Cochin to go into the books of account of the R1 Company. The learned counsel for the Petitioner submitted that the relief sought in IA/194 is an important one which may lead amendment of the Company Petition also. Therefore, he prayed for the hearing of IA/194/KOB/2020 first and then consider the hearing of the main CP. Heard the learned counsel for both the parties. **Registry is directed to list IA/194/KOB/2020 on 16.12.2020 at 2.30 PM for hearing. The main TCP will be heard if time permits on the said date. Accordingly, IA/54/KOB/2020 in TCP/20/KOB/2019 is disposed of.**

**7 TCP/20/KOB/2019**

Learned counsel for the Petitioner Sri A.M.Sreedharan as well as learned senior counsel for the R1 to R3 Shri Joseph Kodianthara appeared through VC.

Heard both sides. **List on 16.12.2020 at 2.30 pm for hearing.**

**8 IA/193/KOB/2020 IN CP/121/KOB/2019**

No response from the learned counsel for the applicant. List on

**9 CP/121/KOB/2019**

No response from the learned counsel for the petitioner. List on

**10 CP/02(KOB)/2020**

Learned senior counsel for the Petitioners Shri Aravind Pandian as well as learned senior counsel for the respondent Shri Ramji Sreenivasan along with the learned PCS Shri K.S.Ravi Chandran appeared through VC.

Even though this case is posted for final hearing today and in the last hearing on 4<sup>th</sup> Nov 2020 it was directed that there shall be no further adjournment in this case, the learned senior counsel for the petitioners prayed two weeks' time to file the rejoinder stating that the Respondents have submitted some new documents in their counter, which requires careful scrutiny. Allowed. The petitioner may file his rejoinder within two weeks.

Learned senior counsel for the Respondents submitted that the appeal filed before NCLAT against the order of this Tribunal dated 15.9.2020 in IA/44/KOB/2020 is posted for hearing on 19.1.2021. So, he prayed to post this CP in the first week of Feb 2021. The Respondents have also filed an IA/203/KOB/2020 with the prayer to adjourn the final hearing of the Company Petition to any date after the Appeal of the Applicants is heard by the Hon'ble NCLAT and in any case to any date after the Hon'ble NCLAT concludes hearing of the appeal. On the other hand, learned senior counsel for the petitioner submitted that there is no stay order and during the last

date of hearing the Hon'ble NCLAT has advised both the parties that this Tribunal is free to proceed with the case.

I have heard both the parties. Considering the submissions of the senior counsel of both the parties, the **CP is posted for final hearing on 28.1.2021 at 2.30 pm**. Both the parties are directed to file their written submissions before that date. Registry is directed to issue a copy of this order to both the parties through email.

11 **CP/06/KOB/2020**

Learned counsel for the petitioner Shri Nebil Nizar appeared through VC.

The report filed by ROC is on record. ROC in his report submitted that the Competent Authority on behalf of the Central Government has examined the Scheme of Reduction of Capital with reference to the material papers made available to him and accordingly decided not to make any objection to the above scheme or reduction of capital and this Tribunal may decide the case on merits.

Heard the arguments of Shri Nebil Nizar. He submitted that he will submit the written submissions before the next date fixed. Allowed.

**Orders reserved. List for pronouncement of orders on 31.12.2020.**

12 **MA/172/KOB/2020 IN CA/46/KOB/2020**

Learned PCS for the Applicant Shri Abhilash Nediyaalil Abraham appeared through VC. Vide our order dated 29.09.2020 the ROC was directed to restore the original status of the Appellant Company as if the name of the Company has not been struck off from the Register of Companies and take all consequential actions like change of Company's status from 'Strike off' to Active (for e-filing), to restore and activate the DINs if applicable, to intimate the bankers about restoration of the name of the Company so as to defreeze its accounts. The learned PCS for the Applicant submitted that DIN has not yet been reactivated by ROC till date, even though he sent reminders.

Even after issuance of notice, ROC has not filed any report till date. However, as a last opportunity, ROC is directed to file his report within two weeks. In default, orders will be passed according to the procedure of law. Registry is directed to issue copy of this order to ROC through special messenger.

**Reserved for orders. List on 4.1.2021 for pronouncement of orders.**