

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 4th Dec 2020

- 1 **MA/114/KOB/2020 IN MA/515/2019/CHENNAI BENCH IN CP(IB)/315/2019 IN CP(IB)/689/2017**

Learned counsel for the Applicant Shri N.R.Krishnan Unni appeared through VC. Learned counsel for R1 Shri Vinod PV, also appeared through VC. Orders Pronounced. **MA/114/KOB/2020 IN MA/515/2019/CHENNAI BENCH IN CP(IB)/315/2019 IN CP(IB)/689/2017 IS DISMISSED VIDE SEPARATE ORDER.**

- 2 **MA/115/KOB/2020 IN MA/515/2019/CHENNAI BENCH IN CP(IB)/315/2019 IN CP(IB)/689/2017**

Learned counsel for the Applicants Shri N.R.Krishnan Unni appeared through VC. Learned counsel for R1 Shri Vinod PV, also appeared through VC. Order pronounced. **MA/115/KOB/2020 IN MA/515/2019/CHENNAI BENCH IN CP(IB)/315/2019 IN CP(IB)/689/2017 is disposed of as partly allowed**

- 3 **CA/77/KOB/2020**

Learned counsel for the Appellant Shri AK Muhammed Hashim appeared through VC. Orders pronounced. **CA/77/KOB/2020 is disposed of vide separate order.**

- 4 **IBA/39/KOB/2020**

Learned counsel for the Operational Creditor Shri NR Krishnan Unni appeared through VC. Learned PCS for Corporate Debtor Shri Sajeelv Kumar appeared through VC along with Smt. Midhuna KC. The learned counsel for CD submitted that the CD has no objection in admitting the IB Application. The CD is directed to file their submission in writing within two weeks. **List on 8.1.2021.**

- 5 **IBA/29/KOB/2020**

Learned counsel for the Operational Creditor Shri Vinod PV appeared through VC. Withdrawal memo filed by the OC is on record. Orders pronounced. **IBA/29/KOB/2020 is disposed of vide separate order.**

6 IA/204/KOB/2020 IN TCP/34/KOB/2019

Learned senior counsel for the Applicant Shri Joseph Kodianthara appeared through VC. Learned counsel for R1 & R2 Smt. Rema Smrithi VK and learned counsel for R3 Shri Vivek Kumar also appeared through VC.

The fact of the IA in brief is that the Applicant, who is the 1st Respondent Company in the Company Petition T.C.P 34 (KOB) of 2019 is constrained to approach this Tribunal seeking orders of this Tribunal in the matter of removal of the 1st Respondent and 3rd Respondent from the post of Director in the board of the Applicant Company. The R1 was reinstated to the board of the company by an order dated 31/12/19 which was a clarification Order to the Order dated 27/09/2019 of this Honourable Tribunal.

The applicant alleged that R1 abused the said Orders and has completely rendered himself both disentitled and undesirable to be retained on the board of the company. It is pointed out that the R1 only holds 1.81% percentage of the shares in the company. Taking advantage of the Orders of this Tribunal, the R1 has adopted an absolutely violent, unethical and criminal conduct at the AGM of the company as also with respect to the day to day running of the company. The continuance of R1 therefore as a Director is one that will defeat the whole object and purpose of the democratic process involved in the matter of appointment of directors to the board of the Company. The R1 has also taken undue advantage of orders of this Tribunal and under the shelter of these Orders has completely abused his position as a Director of the company. Continuance of R1 is therefore against the interest of the company compelling the Applicant Company to approach this Tribunal for appropriate relief.

On the other hand, learned counsel for the Respondents submitted that under Section 421 of the Companies Act, 2013, this Tribunal has no power to revise its own order. Besides the applicant has filed this IA before this Tribunal in view of the fact that time has already been lapsed to file an appeal against the order of this Tribunal before NCLAT.

I have heard the learned senior counsel for the Applicant and also the learned counsel for R1 to R3 and perused the whole case records. It appears to me that without perusing the counter it would not be justified to pass any order in this IA. Therefore, respondents are directed to file their counter within two weeks.

Next date fixed for hearing. List on 22nd January 2021.

7 IA/205/KOB/2020 IN IBA/35/KOB/2019

Learned IRP Shri Sathiq Buhari appeared through VC. This is an application filed by the Interim Resolution Professional under Section 33(2) of IBC, 2016 seeking

liquidation of the Corporate Debtor. I have heard the IRP and perused the whole case records. It is noted that the CD Company was lying closed without any manufacturing process for the last 1 ½ years. The suspended Directors have also not co-operated with the CD in the CIR Process.

The CoC meeting held on 23.11.2020 has resolved as follows:

“The Code and Regulations stipulates certain mandatory processes to be done to pursue the CIRP within the time frame as provided in Section 12 of IBC, 2016. In the present circumstance without the cooperation of CD it is impossible to complete the CIRP, even if an extension petition is filed under Section 12 of IBC, 2016. The CoC consists of one Financial Creditor having 100% voting power to take a decision for liquidation. The CoC hereby decided to go for liquidation and authorised the IRP to file a liquidation intimation petition on or before 30.11.2020 under Section 33(2) of IBC, 2020 before the AA (NCLT)”.

But the IRP has moved this IA only on 1st December 2020.

The CIR Process was initiated in this case against the CD on 22.4.2020.

It is also noted that the IRP has not resorted to the invitation for expression of interest in Form G through paper publication at the earliest, not later than seventy-fifth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans as laid down under Regulation 36A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

According to the IRP, the respondents have filed a Writ Petition before the Hon'ble High Court of Kerala which is coming up for hearing today.

Considering the above, I think it would not be justified to pass any order on liquidation of CD without getting the outcome of the Writ Petition pending before the Hon'ble High Court of Kerala.

The learned RP is directed to file an affidavit within two weeks explaining why he has not complied the Regulation 36A of the IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 in this CIRP Proceedings. The delay in filing this IA may also be explained. The learned IRP is also directed to report to this Tribunal the status of the Writ Petition filed by the CD before the Hon'ble High Court of Kerala.

List on 8.1.2021 for hearing.

8 CA(CAA)/07/KOB/2020

Learned counsel for the Appellants Shri Pawan Jhabakh appeared through VC. The memo filed by the Applicant Companies in response to our order dated 13.11.2020 is on record. Heard and perused the records. Orders reserved. **List for pronouncement of orders on 5.1.2021.**

**9 TMA/42/KOB/19 (MA/ 450/IB/18(C.B.)) IN
CP/689/IB/2017/(C.B.)**

Learned counsel for the RP Shri T.Ravichandran as well as learned counsel for R2 to R4 Shri S.R.Raghunathan appeared through VC. Pleadings are complete. This is an old pending case. Heard both the parties. **List on 5.1.2021 at 2.30 pm for final hearing.** Before that date both the parties may file their written submissions. There shall be no further adjournment in this case.

10 IBA/25/KOB/2020

Learned counsel for the applicant sought time to file rejoinder. Learned counsel for the respondent Corporate Debtor is ready to argue the matter. Rejoinder, if any, be filed within two weeks from today. Adjourned to **12.1.2021**.

11 IA/195/KOB/2020 IN TCP/6/KOB/2019

Shri Anil D Nair, learned counsel for the applicant intimated his willingness to appear through VC. However, no response from the respondents in the IA. Hence Adjourned to **12.1.2021**. The counter to the IA, if any, be filed well before the date fixed.

12 TCP/6/KOB/2019

Shri Anil D Nair, learned counsel for the R2 intimated his willingness to appear through VC. However, no response from the petitioner or his counsel Hence Adjourned to **12.1.2021**.

13 IA/206/KOB/2020 IN CP/41/KOB/2020

Learned counsel for the applicants Shri Sukumar Nainan Oommen as well as learned PCS for the Respondent Shri PP Zibi Jose appeared through VC. Learned counsel for R1, R2, R3, and HUF3 Shri Sanjay submitted that he has not received the copy of the IA. But, learned counsel for the Applicants submitted that only the petitioner in the CP/41/KOB/2020 has been made respondent in this IA and hence the notice to R1, R2, R3 and HUF3 is not required.

Respondent in this IA may file counter within two weeks. List on **19.1.2021**.

14 IA/207/KOB/2020 IN CP/41/KOB/2020

Learned counsel for the applicants Shri Sukumar Nainan Oommen as well as learned PCS for the Respondent Shri PP Zibi Jose appeared through VC.

Learned counsel for the applicants Shri Sukumar Nainan Oommen as well as learned PCS for the Respondent Shri PP Zibi Jose appeared through VC. Learned counsel for R1, R2, R3, and HUF3 Shri Sanjay submitted that he has not received the copy of the IA. But, learned counsel for the Applicants submitted that only the petitioner in the CP/41/KOB/2020 is made respondent in this IA and hence the notice to R1, R2, R3 and HUF3 is not required.

Respondent in this IA may file counter within two weeks. List on **19.1.2021**.

15 CP/41/KOB/2020

Learned PCS for the Petitioner Shri PP Zibi Jose appeared through VC. Learned counsel for R1 to R3 and HUF 3 Shri P. Sanjay, learned counsel for HUF 1 , learned counsel for HUF 2 & 4 Shri Sukumar Nainan Oommen also appeared through VC.

Since the respondents have not yet filed counter in the CP, learned counsel for the Petitioner prayed to pass orders on interim reliefs prayed for. Since the question of maintainability of this Petition has been raised filing an IA, it is not justified to pass interim orders without perusing the counter. Therefore, respondents are directed to file their counter with 2 weeks. List on **19.1.2021.**