

NCLT, KOCHI**Daily Orders – Draft****In the Bench of: Shri. Ashok Kumar Borah, Member (Judicial)**

Date:19th June 2020

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

Learned counsel for both parties in IA sought an adjournment through email. Adjourned to 29.7.2020.

2 IBA/46/KOB/2019

Learned counsel for the FC and CD sought an adjournment through email. It appears from records that the CD filed an appeal against the Order of this Tribunal in IA/9/KOB/2020. The appeal was dismissed by Hon'ble NCLAT as being premature leaving it open to this Tribunal to decide the application on merit and in the event of appellant being aggrieved under Section 7, it shall open to the appellant to raise the issues in this regard. Adjourned to 29.7.2020.

3 TCP/13/KOB/19

Shri Harikumar G., learned counsel for the Respondent appeared through VC. In the hearing dated 16.3.2020 learned counsel for the petitioner submitted that he will produce the stay order of the Hon'ble High Court of Kerala in this case on the hearing of this Tribunal on 20.5.2020. However, in view of Covid-19 the case was re-notified to 3.6.2020 and then adjourned to today. Today the case is posted for filing the order of the Hon'ble High Court of Kerala. But none has appeared for the petitioner. Registry is directed to inform the petitioner through email in addition to normal procedure for taking steps to comply the proceedings of this Tribunal dated 16.3.2020. List on 24.7.2020.

4 TCP/21/KOB/2019

Learned counsel for the petitioner Shri A.C.Venugopal and learned counsel for the Administrator Shri Manuel Vivera appeared through VC. None has appeared for the respondents.

It appears from records that the Hon'ble NCLT, Chennai vide order dated 20.8.2018 in CP 29/2017 has appointed an Interim Administrator. It was also ordered that the Administrator will manage the affairs of the Company immediately and he will look into the allegations raised by the petitioners of the CP and also examine as to

whether the disbursement of the funds is in accordance with the Articles of Association or not. Accordingly, retired Justice Shri K.Narayana Kurup was appointed as Administrator of the R1 Company. On creation of NCLT Kochi Bench, the case was transferred to NCLT Kochi Bench and renumbered as TCP/21/KOB/2019.

Thereafter, the Administrator of R1 Company filed an IA/29/KOB/2020 in TCP/21/KOB/2019 with the following prayers:

- (i) Direction or order to Respondent No.13 (RoC Kerala and Lakshadweep) herein, or other competent authority to investigate the instances of non-compliances and violation of the provisions of the Companies Act 2013 and also contravention of the MoA and AoA.
- (ii) a direction to Respondent No.13, to prosecute the offenders and take appropriate action under Section 439(2) of the Companies Act, 2013; and
- (iii) to appoint an auditor of the Company from Annexure A2 List.

After hearing both the parties, this Tribunal has passed an order on 11.3.2020 directing the Serious Fraud Investigation Office (SFIO), Chennai to investigate the affairs of M/s. Bhagyodayam Company and to submit a report in this regard within two months before this Tribunal and also appointed M/s. Babu A. Kallivayalil and Company, Firm Regn No.053745, Chartered Accountants, Kochi-682021 as Auditor of M/s. Bhagyodayam Company.

It appears from records that aggrieved by the above order dated 11.03.2020 of this Tribunal, Shri V.J.Paul Joseph, R2 preferred Writ Petition (OP) before the Hon'ble High Court of Kerala. But the Hon'ble High Court of Kerala vide order dated 16.3.2020 in OP (C) No.733 of 2020 passed the following order:

"It has been submitted that the Tribunal had already passed an order on Ext.P1 on 11.03.2020. Since an order had been already passed, there is remedy by way of appeal under Section 421 of the Companies Act. Since there is provision for appeal, I am not inclined to entertain this Original Petition filed under Article 227 of the Constitution of India.

In the result, this OP (C) stands closed."

Today, learned counsel for the Petitioner as well as learned counsel for the Administrator submitted that they have not yet received any notice from Hon'ble NCLAT. Therefore, they presume that R2 did not prefer appeal in Competent Court. R2 or any other respondents have not yet filed any application before this Tribunal with regard to any appeal pending before Hon'ble NCLA. Therefore, the order passed by this Tribunal on 11.03.2020 is still exist. By the above order, the Serious Fraud Investigation Office, Chennai was directed to submit its report within two months, ie. on or before 11.5.2020. But may be due to lock-down and may be R2 preferred Writ Petition before the Hon'ble High Court of Kerala, the, SFIO has not yet completed their investigation.

Therefore Serious Fraud Investigation Office, Corporate Bhawan, Ground Floor, No.29, Rajaji Salai, Chennai-600 001 is directed to complete the investigation into the affairs of the Bhagyodhayam Company as ordered in IA/21/KOB/2020 in TCP/21/KOB/2019 and submit its report before this Tribunal before the next date fixed positively.

M/s. Babu A. Kallivayalil and Company, Firm Regn.No.053745, Chartered Accountants, PT Usha Road, Koch-682 011 is also directed to file their report before this Tribunal before the next date fixed positively.

Registry is directed to inform the directions of this Tribunal both the Serious Fraud Investigation Office and M/s. Babu A. Kallivayalil and Company through email in addition to normal procedure

List the case on 10.08.2020.

5 TCP/01(KOB)/2020

No response from both the parties. List on 30.7.2020.

6 CA(CAA)/01/KOB/2020

No response from both the parties. Vide order dated 25.2.2020 Shri P.K.Balakrishnnan, Advcoate, Kannur was appointed as Chairperson to conduct the meeting of the Shareholders and Creditors and file a report on or before 9.4.2020. Registry informed that no report has been received till date. List on 30.7.2020 before that date the Chairperson is directed to file his report. Registry is directed to communicate this order to the Chairperson.