

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 12th March 2021

1 IA(IBC)/56/KOB/2021 IN TIBA/11/KOB/2019

Learned counsel for the Applicant Shri Akhil Suresh as well as learned RP Shri Bijoy Pulipra appeared through VC. Orders pronounced. **IA(IBC)/56/KOB/2021 IN TIBA/11/KOB/2019 stands dismissed vide separate order.**

2 MA/199/KOB/2020 IN IBA/17/KOB/2020

Orders not ready. Adjourned to 18.3.2021 for pronouncement of orders.

3 UNNUMBERED Company Application

Learned counsel for the Applicant Shri John Vadassery appeared through VC. Though the reliefs prayed under the petition comes under Section 242(2) of the Companies Act, this Petition was filed by the petitioner under Section Rule 11 of the NCLT Rules, 2016. Though Registry pointed out the defects to the learned counsel for the Petitioner Shri John Vadassery, but he insisted to list the case. Accordingly, the matter is listed as “unnumbered”. Today when the Bench also pointed out the defects, Shri John Vadassery has not insisted to proceed further with the matter. **Therefore this unnumbered Company Application filed by Shri Athish Mathew against Sofine Decors Pvt Ltd and another is dismissed as not pressed.**

4 CP/1/KOB/2021

Learned counsel for the Applicant Shri John Vadassery appeared through VC. This is a Company Petition filed under Section 98 of the Companies Act, 2013 by Shri Athish Mathew against M/s. Sofine Decors Pvt Ltd & another.

The petitioner herein and some other shareholders of the company requested for an extraordinary general meeting of the company vide request letter dated 10/09/2020 under section 100 (2) (a) of the Companies Act 2013 for discussing the state of affairs of the company and for taking possible remedial and corrective actions.

Since the Managing Director of the first respondent company, who is the officer in default, had not taken any initiative to convene the requisitioned extra ordinary

general meeting, the requisitionists themselves given notice to convene the requisitioned extra ordinary general meeting at M/s Floral Decoratives Naturals Office, adjacent to Sofine Decors (P) Ltd Office, Industrial Estate, Mayithara, Cherthala., Alappuzha on Saturday, the 14th November,2020 at 11.30.A.M.

The notice for convening the extra ordinary general meeting was issued by the requisitionists on 17/10/2020 on the belief that there would not be any prohibition to convene the meeting on 14/11/2020. But prohibitory order under section 144 of the Criminal Procedure Code (CrPC) of 1973 was further extended by the district administration due to aggravating Covid 19 situation in Alappuzha district. So, the applicant approached District Administration and District Police Chief for relaxation in prohibitory order under section 144 of the Criminal Procedure Code (CrPC) of 1973 for convening the said extra ordinary general meeting on 14/11/2020.

The District Police Chief declined the applicant's request for relaxation in prevailing prohibitory order under section 144 of the Criminal Procedure Code (CrPC) of 1973 for convening the extra ordinary general meeting of the first respondent company on 14/11/2020.

According to the Petitioner, the second respondent has been threatening and using pressure tactics with the help of political leaders, trade union leaders and others to refrain the requisitionists from holding the proposed extra ordinary general meeting. The second respondent had even gone to the extent of filing an injunction application in the court of the additional munsiff, Cherthala (IA No.01 of 2020 in suit No. OS No.536 of 2020) in order to prevent the applicant and others from entering into the place where the extra ordinary general meeting decided to be held.

The petitioner submitted that if the requisitioned meeting could not be held, it will cause irreparable loss and damage to the first respondent company and its shareholders.

Hence, this petition is filed for giving direction to the respondents for convening an extra ordinary general meeting of the company immediately and to appoint an observer for the said EOGM.

I have heard the learned counsel for the petitioner. The petition is **admitted**.

The petitioners are directed to issue fresh notice to the respondents through email and Registered Post with A/D and submit proof of service (A/d card or Postal Track Report) 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 two weeks. **List on 09.04.2021.**

5 CP/10/KOB/2021

Learned Advocate Mr.Javed appeared through VC for the petitioner along with Advocate Shri Pranoy Harilal. This is a Company Petition Filed by Dr. Kaveh Bazargan against the Respondents M/s. STM Document Engineering Private Ltd and 3 others.

STM DOCUMENT ENGINEERING PRIVATE LIMITED, which was originally called FOCAL IMAGE INDIA PRIVATE LIMITED 2001 (outsourcing arm Focal Image UK of which the Petitioner is the sole shareholder and director) is a Company incorporated under the Indian Companies Act, 1956.

The Respondent Company is engaged in digital text processing of documents with STM (Science, Technical and Medical) content of a higher academic nature to generate deliverables that can be used to print in paper media and deliver in the internet in various formats, which conforms with the main objects of the Company. In 1998 the Petitioner and the 2nd & 3rd Respondents came to a revised commercial understanding and agreed to work together on certain terms for the purpose of outsourcing. In 2001, the Focal Image India formed as a Pvt Ltd company as outsourcing arm for Focal Image UK of which the Petitioner is sole shareholder and director and (FII is | now called STM DOCUMENT ENGINEERING PRIVATE LIMITED) and the Company started receiving outsourcing work from the Petitioner. In 2007, the Petitioner at the request of the Respondent Company remitted large sums of monies from his Company and his father's to provide infrastructure pay salaries etc, as well as technical knowhow to the Respondent Company along with outsourcing work. The promoters of the Respondent Company falsely represented that this could be treated as a loan when the Reserve Bank would not grant permission for this and this was in the knowledge of the promoters. The Petitioner having advanced large amount of monies to the Respondent Company which could not be repaid through legal channels was compelled to have these | monies converted in to equity in the Respondent Company and that at premium which was calculated on the basis of the assets and goodwill of the Company which was the contribution of the Petitioner.

The Petitioner was appointed as a Non-Executive Director of the Respondent Company on 10th February 2010. On 24th September he was removed as a director of the Respondent Company

The petitioner has alleged certain oppression and mismanagement against the R2 to R4 in the R1 Company.

Hence the petitioner filed this CP seeking 7 main reliefs along with 3 interim reliefs. Learned PCS Shri Zibi Jose, who appeared for R2 & R3 submitted that he will file the counter. Registry informed that R1 and R4 have also filed Vakkalath after today's proceedings in this case.

I have heard the learned counsel for the petitioners and also perused the records attached with the Petition. **Company Petition is admitted.** The learned counsel for the petitioners during argument has insisted to pass orders on interim reliefs sought in item (i) and (ii) of the CP. After perusal of the whole case records, I think it would not be justified to pass any order on interim reliefs without perusing the counter of the respondents.

All Respondents are therefore directed to file their counter within 3 weeks. **List on 21.04.2021.**

6 MA/75/KOB/2020 IN TIBA/31/KOB/2019 & TIBA/10/KOB/2019

Learned RP Shri P.D.Vincent appeared through VC. Learned counsel for R1 & R2 Akhil Suresh and learned counsel for R6 Ms Manjula Devi appeared through VC.

Learned RP submitted that the stay order by NCLAT against the order passed by this Tribunal in IA/3/KOB/2020 and IA/4/KOB/2020 dated 12.03.2020 still exists and the case is posted before NCLAT on 25.03.2021. Since the matter has been stayed by NCLAT, we cannot pass any order in this MA. Hence adjourned to **26.04.2021.**

7 MA/168/KOB/2020 IN TIBA/31/KOB/2019 & TIBA/10/KOB/2019

Learned RP Shri P.D.Vincent appeared through VC. Learned Authorised representative (R1) Shri K. Parameswaran also appeared through VC.

Learned RP submitted that the stay order by NCLAT against the order passed by this Tribunal in IA/3/KOB/2020 and IA/4/KOB/2020 dated 12.03.2020 still exists and the case is posted before NCLAT on 25.03.2021. Since the matter has been stayed by NCLAT, we cannot pass any order in this MA. Hence adjourned to **26.04.2021.**

8 MA/174/KOB/2020 IN TIBA/31/KOB/2019

Learned counsel for the Applicant Shri Akhil Suresh as well as learned RP Shri P.D.Vincent appeared through VC.

Learned RP submitted that the stay order by NCLAT against the order passed by this Tribunal in IA/3/KOB/2020 and IA/4/KOB/2020 dated 12.03.2020 still exists and the case is posted before NCLAT on 25.03.2021. Since the matter has been stayed by NCLAT, we cannot pass any order in this MA. Hence adjourned to **26.04.2021.**

9 MA/202/KOB/2020 IN TIBA/31/KOB/2019 & TIBA/10/KOB/2019

Learned counsel for the Applicants Shri Bijoy P. Pulipra as well as learned RP Shri P.D. Vincent appeared through VC.

Learned RP submitted that the stay order by NCLAT against the order passed by this Tribunal in IA/3/KOB/2020 and IA/4/KOB/2020 dated 12.03.2020 still exists and the case is posted before NCLAT on 25.03.2021. Since the matter has been stayed by NCLAT, we cannot pass any order in this MA. Hence adjourned to **26.04.2021.**

10 MA/190/KOB/2020 IN MA/45/KOB/2019 IN IBA/240/(IB)/2019/CHENNAI BENCH

Learned counsel for the Applicant Shri Alexander George submitted an email seeking time for filing the rejoinder. Learned counsel for the Liquidator Shri A.G.Sathyanarayana expressed willingness to appear through VC.

It appears from records that the petitioner has sought many adjournments for filing the rejoinder. He is directed to file the rejoinder within two weeks positively. Since this is an IBC matter, the parties may bear in mind that this case cannot be prolonged and **hence there shall be no further adjournment in this case. List on 23.04.2021.**

Registry is directed to issue copy of this order to the learned counsel of both the parties through email. **Upto 16**

11 MA/191/KOB/2020 IN MA/45/KOB/2019 IN IBA/240/(IB)/2019/CHENNAI BENCH

12 MA/192/KOB/2020 IN MA/45/KOB/2019 IN IBA/240/(IB)/2019/CHENNAI BENCH

13 MA/193/KOB/2020 IN MA/45/KOB/2019 IN IBA/240/(IB)/2019/CHENNAI BENCH

14 MA/194/KOB/2020 IN MA/45/KOB/2019 IN IBA/240/(IB)/2019/CHENNAI BENCH

15 MA/195/KOB/2020 IN MA/45/KOB/2019 IN IBA/240/(IB)/2019/CHENNAI BENCH

16 MA/196/KOB/2020 IN MA/45/KOB/2019 IN IBA/240/(IB)/2019/CHENNAI BENCH

17 **IBA/27/KOB/2020**

Mr.Rony Jose appeared for the applicant. This IBA was Reserved for Orders on 19.01.2021, But due to the stay order issued by the Hon'ble High Court of Kerala on 22.12.2020 in WP (C) No.28581/2020 (W) related to this case, order could not be pronounced. The OC is directed to file an affidavit before this Bench within two weeks with regard to the status of the stay order of the Hon'ble High Court of Kerala in this case. **Adjourned to 22.04.2021.**

18 **IBA/30/KOB/2020**

Learned counsel for the Operational Creditor Shri Akhil Suresh as well as learned counsel for R2 Shri Shivsankar R. Panicker appeared through VC. R2 has filed an objection statement. But registry reported that the same is defective. Shri Shivsankar R. Panicker submitted that he will cure the defects within a week. He may do so. However, OC is directed to file his objection, if any, against the objection statement of R2 within two weeks. List on 01.04.2021.

19 **IBA/40/KOB/2020**

Learned counsel for the Operational Creditor Shri Jack Thalakkottur as well as learned counsel for the Corporate Debtor Shri R. Krishnakumar appeared through VC. The OC has filed an application for withdrawal of the IBA. Heard both sides. In view of the withdrawal application filed by the OC, **IBA/40/KOB/2020 stands disposed of as withdrawn vide separate order.**

20 **CP/49/KOB/2020**

Learned PCS for the Petitioners Shri Vivek Kumar appeared through VC. Shri Terry V. James, who filed the vakkalath for respondents, submitted that even though a notice was received from the PCS for the petitioner, he has not been provided with the copy of the Company Petition till date. The petitioners are directed to serve copies of the Company Petition to the learned counsel for the respondents. The respondents are directed to file their counter within two weeks. **List on 22.04.2021.**

21 **IA/26/KOB/2019 IN CP/74/KOB/2019**

Learned counsel for the Applicant Shri Philip Mathew submitted an email seeking an adjournment. Shri Anil D. Nair expressed willingness to appear through VC. Adjourned to **22.04.2021 at 2.30 pm** for hearing.

22 IA/47/KOB/2020 IN CP/74/KOB/2019

Learned counsel for the Applicant Shri Philip Mathew submitted an email seeking an adjournment. Shri Anil D. Nair expressed willingness to appear through VC. Adjourned to **22.04.2021 at 2.30 pm** for hearing.

23 CP/74/KOB/2019

Learned counsel for the Applicant Shri Philip Mathew submitted an email seeking an adjournment. Shri Anil D. Nair expressed willingness to appear through VC. Adjourned to **22.04.2021 at 2.30 pm** for hearing.

Supplementary – CP/11/KOB/2021

Learned counsel for the Petitioners Shri Niranjan Sudhir appeared through VC. This is a petition filed by Shri Padmakumar Mampilly Rajan and another against the respondents M/s. Athulya Info Media Private Limited and 4 others under Section 242 of the Companies Act 2013 read with Rule 81 of NCLT Rules, 2016.

The Petitioners hold 22.48% paid up share capital in the R1 Company. They submitted that they are non-resident investors who had been brought in by the representations and submissions of the 2nd Respondent regarding the R1 Company being an investment opportunity and promising amazing and enticing returns.

The 2nd Respondent is an individual who was known to the petitioners through their professional contacts. According to the petitioners, the 3rd and 4th respondents are shareholders/directors who have sought the removal of the petitioners as directors of the Company and are working hand in glove with the 2nd respondent to cover up the mismanagement and oppression which was inflicted on the Petitioners.

The Petitioners have submitted that they were promised a total of 51% of the shares of the Company. However, despite the petitioners having brought in a total of Rs. 3 crore and more, the controlling stake of the company has not been allotted to the petitioners. The petitioners alleges that they being non-residents, the respondents have exploited the fact to conveniently leave the petitioners out of the loop of the true happenings in the company. With the affairs of the Company progressing, the petitioners returned to India at the time that the Covid-19 pandemic was initially starting. It was then discovered that the Company had not in fact filed any returns

from the year 2018-19 onwards and that there was no record of an increase in the authorised share capital of the Company. Despite the assurance that the shares were issued in the name of the Petitioners, no proof was ever given in hand to the petitioners either, causing them to demand physical copies of the share certificates equivalent to 51% of the total authorised share capital of the company as made out in the MoU.

According to the petitioners, many acts of mismanagement and non-compliance on the part of the respondents are serious, continuous and are completely against the interests of the R1 Company and the Petitioners.

Hence the petitioners filed this CP seeking 6 main reliefs along with 7 interim reliefs.

I have heard the learned counsel for the petitioners and also perused the records attached with the Petition. **Company Petition is admitted.** It is stated that the Extra Ordinary General Meeting is scheduled to be held on 13.03.2021. The learned counsel for the petitioners during argument has insisted to pass orders on interim reliefs sought in item (a), (d) and (e) of the CP. On perusal of records, it is seen that there is no satisfactory reason to restrain the 2nd respondent to conduct the statutory EOGM on 13.03.2021. Therefore, the **respondents are allowed to conduct the EOGM on 13.03.2021** as scheduled. However, the **respondents are directed to keep the resolutions passed and decisions taken in the aforesaid EOGM in a sealed cover, which can be opened and implemented only with the permission on this Tribunal.** Besides, considering the materials on record, the respondents are directed to **maintain status quo as of today with regard to the 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 (A/d card or Postal Track Report) 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 27.04.2021 for hearing.**