

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 15th Feb 2021

1 CONTEMPT PETITION (KOB)/01/2020 IN IA/74/KOB/2019 IN TCP/34/KOB/2019

Learned counsel for the Contempt Petitioner Ms Nivedita as well as learned counsel for R1 to R3 Shri Sharad Kodianthara and learned PCS for R4, R8 to R11 Shri PP Zibi Jose appeared through VC. Orders pronounced. **CONTEMPT PETITION (KOB)/01/2020 IN IA/74/KOB/2019 IN TCP/34/KOB/2019 is dismissed vide separate sheets.**

2 IBA/30/KOB/2020

Learned counsel for the Operational Creditor Shri Akhil Suresh as well as learned counsel for the Additional CD/R2 Ms Jagriti Sanghi appeared through VC.

The Additional Corporate Debtor was impleaded in this case on 26.11.2020. Thereafter the Addl CD was directed to file the counter vide order dated 08.01.2021. Meanwhile the Addl CD filed an appeal before the NCLAT against the order of this Tribunal dated 26.11.2020. The learned counsel for Addl CD submitted that the said appeal numbered as CA No.83/2021 is posted at NCLAT on 09.03.2021. However, it appears that no stay has been granted by Hon'ble NCLAT.

Besides, the IA filed before this Tribunal by the Addl CD to keep in abeyance of this IBA till the appeal is disposed of by NCLAT has been dismissed as withdrawn vide order dated 09.02.2021. Vide order dated 04.02.2021 the Addl CD was directed to file his counter within 7 days positively with a copy s to the OC in advance. But the Addl CD has not yet filed his counter. The learned counsel for the Addl CD today submitted an email seeking an adjournment stating that he is engaged in a part-heard arbitration matter RDEL Vs NSRY presided over by Justice Dipak Misra (Former Chief Justice of India and the matter is being heard from 13.02.2021 and is scheduled till 16.02.2021.

Anyway, the NCLAT has not granted any stay in this case. Since this is an IBC matter, the Addl CD may bear in mind that this case cannot be prolonged and **hence there shall be no further adjournment in this case.**

The Addl CD is given the last opportunity to file his counter within one week, failing which law fill take its own course. The OC may file his rejoinder before the next date fixed. **List on 24.02.2021.** Registry is directed to issue copy of this order to both the counsel through email.

3 IBA/37/KOB/2020

Learned counsel for the Operational Creditor Shri Diwakar Mahewari as well as learned counsel for the Corporate Debtor Shri Jithin Saji Isaac appeared through VC. Vide order dated 18.01.2021 the CD was directed to file the counter within one week. But the learned counsel for the CD submitted that he filed the counter today only and filed an IA with the prayer to condone the delay in filing the counter. The learned counsel for the CD submitted that there were some typographical errors in the IA. In para 4, instead of BMW India Financial Services Pvt.Ltd. the applicant's name is wrongly typed as Federal Bank Ltd. Similarly, in the same para 4 line 3, instead of Koyenco Autos Pvt Ltd it is wrongly typed as Platino Classic Motor India Pvt Ltd.

I have perused the IA. Registry is directed to correct the above errors pointed out by the learned counsel for the Respondent. I am of the view that the reason for late filing the counter is sufficient to condone the delay though there is no Medical Certificate produced. **IA(IBC)/47/KOB/2021** filed by the CD to condone the delay in filing the counter **is allowed**. The counter is taken on record. The OC sought two weeks' time to file the rejoinder. He may do so. **List on 09.03.2021** for hearing.

4 IBA/38/KOB/2020

Learned counsel for the OC Shri Johnson Gomez as well as learned counsel for the Corporate Debtor Shri Nebil Nizar appeared through VC. Pleadings are complete. **List on 25.02.2021 for final hearing**. Before that date both the parties may file their Argument Brief (limited within 5 pages).

5 IA/100/KOB/2020 IN TCP/22/KOB/2019

This case is pending for hearing for a long time. In the last hearing on 06.01.2021 the learned counsel for the applicant Shri Shivshankar R.Panicker has submitted that he has relinquished the vakalath of the applicant/Kerala Chamber of Commerce. In his place Smt. Marian GM Tharakan filed the Vakkalath. Accordingly, today the case is posted for final hearing. But none has appeared for the applicant. There is no response from the respondents also. **The parties may bear in mind that there shall be no further adjournment in this case**. Registry is directed to issue copy of this order to the learned counsel for both the parties through email. **List on 22.02.2021 for final hearing**.

6 IA/15/KOB/2020 IN TCP/01(KOB)/2020 (CP/20/1985/HC)

Learned counsel for the Applicant Smt Sindhu Lekshmi as well as learned counsel for R1-R3 Shri Joseph Antony and learned counsel for R4 and R5 Shri Dinesh R. Shenoy appeared through VC. This IA will be taken up alongwith the main TCP on 31.03.2021. **List on 31.3.2021**.

7 TCP/01(KOB)/2020 (CP/20/1985/HC)

Learned counsel for the Petitioners Shri Joseph Antony as well as learned counsel for R1 & R3 Shri Dinesh R. Shenoy and learned counsel for R3 Smt Sindhu Lekshmi appeared through VC. Learned counsel for the petitioner stated that he has filed two IAs, which are pending for consideration. Accordingly, those IAs have taken up for hearing today itself:

CA/28/KOB/2021

This is an application filed by the applicants/petitioners to condone the delay in filing the petition to implead the legal heirs of the deceased 4th respondent and set aside the abatement.

The petitioners submitted that the 4th Respondent passed away on 13.12.2016 i.e when the Company Appeals were pending. Though a petition to implead legal heirs of the deceased 4th respondent was prepared the same could not be filed as the file was transferred to NCLT bench at Chennai as per order dated 14.06.2017. Even though the case was transferred to NCLT, Chennai the same was not posted and the parties did not receive any notice also. Thus, the applicants could not take steps to implead the legal heirs of the deceased 4th respondent. On 3d of August 2019 the NCLT, Kochi bench was established with the jurisdiction over the State of Kerala and the Union Territory of Lakshadweep. A notice dated 13.01.2020 was received by applicant intimating that the case was posted on 20.01.2020. On 20.01.2020 this Bench directed all parties to file a list of important dates and events and the case was adjourned to 12.02.2020. It was only then noticed that the legal heirs of the deceased 4th respondent were not impleaded.

Thus on 12.02.2020 the Counsel for the petitioner sought time to file the petition and the matter was posted to 12.03.2020. The petition to impleadment was filed on 12.03.2020. On 13.03.2020 the Registry of NCLT intimated the counsel for the petitioner that the petition was marked as defect for want of stamp paper and other reasons. By that time the extraordinary situation of COVID-19 pandemic prevailed. Thus, steps to file a fresh petition could not be taken. Even after reopening the precarious situation prevailed making it practically impossible to file petition. Thus, there occurred some delay in filing the petition to implead the legal heirs and to set aside abatement.

Hence the applicants filed this IA with the prayer to condone the delay of 1386 days in filing the petition to implead the legal heirs of deceased 4th respondent and set aside the abatement.

I have heard the learned counsel for both the parties and perused the records. I am of the view that the reasons mentioned in the application is sufficient to condone the delay in filing the petition for impleadment. Hence **CA/28/KOB/2021** is allowed.

CA/27/KOB/2021

This is an IA filed by the Petitioners for impleading the legal heirs of Deceased 4th Respondent V.R.Haridas. **Today vide order in IA/28/KOB/2021 this Tribunal condoned the delay in filing the application for impleadment.**

The Company Petition was filed challenging the alleged resolution to have been got passed by the 3rd respondent at a meeting held on or before 29.05.2015 agreeing to issue shares worth Rs.5,14,800/- to R3 or his nominees and also for a direction to restrain the board from transferring possession of the restaurant portion to any stranger on lease or otherwise. The Petitioners submitted that the 4th Respondent V.R.Haridas passed away on 13.12.2016, ie when the Company Appeals were pending. The deceased 4th Respondent is survived by his wife and 3 Children. Even though a petition to implead the legal heirs of the deceased 4th respondent was prepared, the same could not be filed as the file was transferred to NCLT Chennai Bench as per order dated 14.06.2017.

Hence the petitioners filed this IA with the prayer for impleading the following legal heirs of deceased 4th respondent V.R.Haridas in the Company Petition and connected applications:

1. Smt. Sankuntala, aged 72 years, W/o late V.R.Haridas,
Sinchitha, Maruthurvattom PO, Sherthalai 688 545 as R4(1)
2. Smt.Salini, aged 46 years, D/o late V.R.Haridas,
Sinchitha, Maruthurvattom PO, Sherthalai 688 545 as R4(2)
3. Smt. Susmitha, aged 44 years, D/o late V.R.Haridas,
Sinchitha, Maruthurvattom PO, Sherthalai 688 545 as R4(3)
4. Shri. Shyam Krishnan, aged 42 years, s/o late V.R.Haridas,
Sinchitha, Maruthurvattom PO, Sherthalai 688 545 as R4(4)

I have heard the learned counsel for both the parties. The prayer for impleadment of the legal heirs of deceased R4 V.R.Haridas as R4(1) to R4 (4) is allowed. Registry is directed to take steps to include R4(1) to R4(4) in the cause title. The petitioners are directed to file an amended cause title to the TCP. They are also directed to issue notice to R4(1) to R4(4) with Registered Post with A/D and submit **proof of service** (A/D Card or Postal Track Record) with an affidavit before the next date fixed. Registry is also directed to issue notice to R4(1) to R4(4) through email in addition to normal procedure. List on **31.03.2021**.

8 IA(IBC)/17/KOB/2021 IN IBA/26/KOB/2020

Learned counsel for the applicant Shri Reji George as also learned counsel for the respondent Sri PV Elias appeared through VC. Both sides argued the matter. **Reserved for orders. List for pronouncement of orders on 9.3.2021.**

9 IBA/26/KOB/2020

Learned counsel for the applicant Shri Reji George as also learned counsel for the respondent Sri PV Elias appeared through VC. Both sides argued the matter. **Reserved for orders.** List for **pronouncement of orders on 9.3.2021.** The learned counsel for the applicant is permitted to file a corrected affidavit within a week.

10 TCP/81/KOB/2019

Learned counsel for the petitioner intimated his willingness to appear through VC. However, learned counsel for the respondent sent a mail seeking a short adjournment, as the senior counsel has to appear before the High Court of Madras today in a listed case. Hence adjourned **to 16.3.2021 at 2.30 pm as Part Heard.**

11 TCA/29/KOB/19

Learned counsel for the respondents 2&3 intimated his willingness to appear through VC. However, learned counsel for the petitioner sent a mail seeking a short adjournment, as the senior counsel has to appear before the High Court of Madras today in a listed case. Hence adjourned **to 16.3.2021 at 2.30 pm as Part Heard.**