

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 17th Feb 2021

1 IA/166/KOB/2020 IN MA/01(KOB)/2020 IN IBA/145/2019(CB)

Learned counsel for the Applicant Shri Sherry Oommen as well as learned counsel for the respondent Ms Manvi Damle appeared through VC. Since **MA/01(KOB)/2020 IN IBA/145/2019(CB)** has been disposed of vide order dated 17.2.2021 this **IA/166/KOB/2020 IN MA/01(KOB)/2020 IN IBA/145/2019(CB)** has become infructuous and hence stands dismissed.

2 MA/01(KOB)/2020 IN IBA/145/2019(CB)

Learned counsel for the Applicant Ms Manvi Damle as well as learned counsel for the respondent Shri Sherry Oommen Oommen appeared through VC. In view of the settlement arrived between the parties in this case, this **MA/01(KOB)/2020 IN IBA/145/2019(CB)** is disposed of vide separate sheets.

3 CP/7/KOB/2021

Learned counsel for the Petitioner Shri Santhosh Mathew appeared through VC. This is a Company Petition filed under Section 59, 241 and 242 of the Companies Act 2013 alleging oppression and mismanagement against the respondents. The R1 Company was incorporated on 03.11.1995. According to the petitioner, she held 14.28% of the paid up share capital of the company at the time incorporation. The 2nd and 3rd Respondent illegally transferred the petitioner's and Shri Anthony Hubert Joseph's shares to the 5th and 6th Respondents.

The R1 company has now declared 872.65 cents of land as fixed assets in the books of account, at a value of Rs 28,78,502/- which is strikingly Lower than the fair market value of the land. The land is located in Ernakulam District. The steps effected at prices considerably below fair value, and including the subsequent change in the shareholding pattern is violative of several Indian laws, and an attempt at evading taxes, and illegal transfer of assets, of which the Petitioner also has a rightful interest in on account of her shareholding in the 1st Respondent Company. The Petitioner claims that she has a right in the land proportionate to her original shareholding in the 1st Respondent Company. All the transactions of the 1st Respondent company

have been carried out by the 2nd and 3rd Respondent without conducting any board meetings or passing any resolution. The 2nd Respondent, being the managing director wilfully abstained from conducting any EGM or AGM, with the sole Intention of furthering his intention and illegally handing the control of the R1 company to the 5th and 6th Respondents.

In the petition, the applicant has sought 5 interim reliefs. I have thoroughly perused the whole case records. I have also perused the documents appended with the petition.

It appears to me that the interim prayer sought by the petitioner *“to appoint an independent valuer to value the land owned by R1 Company at the cost of R2, R3, R5 & R6 to ascertain the fair market value”* cannot be considered without perusing the counter affidavit. However, R2, R5, and R6 are directed to produce the copy of documents (including the share transfer instruments, notice, resolution of the board, consideration paid) in connection with the purported transfer of shares before the next date fixed.

The petitioner is 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 record) 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 25.03.2021.**

4 MA(IBC)/1/KOB/2021 IN TIBA/11/KOB/2019

Learned counsel for the Applicant Shri Millu Dandapani as well as learned RP Shri Bijoy P. Pulipra appeared through VC. This MA is filed by the suspended Managing Director of the CD seeking certain directions to the Resolution Professional under Section 60(5) of the IBC, 2016. The RP has filed the counter. Shri Millu Dandapani submitted that he has received the counter only today and hence prayed to adjourn the matter to next week for hearing. The RP vehemently opposed the request for adjournment.

It appears from records that after hearing the arguments advanced by Shri Millu Dandapani and also the RP Shri Bijoy P. Pulipra, on 28.01.2021, the IA(IBC)/13/2021 in TIBA/11/KOB/2019 filed by the RP for approval of the Resolution Plan, this Tribunal has reserved the said IA for Orders on 22.02.2021. Whereas, this MA is filed only on 15.02.2021. In view of the fact that the IA filed by the RP for approval of the Resolution Plan is reserved for orders on 22.02.2021, any application connected to this matter is to be heard before 22.02.2021. Hence, the request of the learned counsel for the applicant to adjourn the hearing to next week cannot be considered now. Therefore, list this **MA(IBC)/1/KOB/2021 IN TIBA/11/KOB/ 2019 on 19.02.2021 for hearing. Registry is directed to issue copy of this order to the learned counsel for both the parties through email.**

5 IA(IBC)/40/KOB/2021 IN IBA/38/KOB/2019

Learned counsel for the Applicant/RP Shri K.B.Arun Kumar appeared through VC. This application is filed by the RP under Section 12(2) of IBC, 2016 for Exclusion of time taken for legal proceedings from the period of Corporate Insolvency Resolution Process.

The RP submitted that the 180 days time limit prescribed under Section 12(1) of the Code has ended on 28.04.2020. This Tribunal vide order dated 09.09.2020 in MA/111/KOB/2020 has exempted the lock down period upto 31.08.2020 from the CIR Process and after 31.08.2020, the special provision relating to the time line issued vide notification dated 29.03.2020 will apply till the lock down lifting notification is issued by the Central Government. The timeline of 180 days fixed under Section 12(1) of the Code was thus expired on 11.10.2020. Based on the application filed by the RP stating difficulties to obtain creditors' claims, documentation, conduct meeting, plan for the hearing in NCLAT, due to Covid 19 Quarantine, This Tribunal vide order dated 16.10.2020 in IA/164/KOB/2019 has extended the duration of CIRP Process by a further period of 90 days from 11.10.2020. Thus the 270 days for completion of CIR Process have already been expired on 11.01.2021.

I have heard the learned counsel for the RP and also perused the whole case records. In this connection, it is relevant to note the proviso of Section 12(2) of IBC, 2016, which reads as follows:

“Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the Corporate Debtor.”

As such the present **IA(IBC)/40/KOB/2021 IN IBA/38/KOB/2019** filed by the RP cannot be taken into consideration for exclusion of time taken for legal proceedings from the period of Corporate Insolvency Resolution Process.

In view of the aforesaid provision, RP is directed to complete the CIR Process within 330 days from the insolvency commencement date, excluding the exemptions already granted.

With the above direction, IA(IBC)/40/KOB/2021 IN IBA/38/KOB/2019 is disposed of.

6 REPORT NO. 28/KOB/2020 IN TIBA/34/KOB/2019

Learned RP Shri Sadique Buhari submitted an email seeking an adjournment stating that the Report No.28/2020 submitted by him has been stayed by the Hon'ble High Court of Kerala in WP(C) No.5009/2020. Learned counsel for the CD Shri Kalyan

Jabhak appeared through VC and sought time to file objection to the report. He may do so within a week. In view of the stay order of the Hon'ble High Court of Kerala in this matter, adjourned to 10.03.2021. Registry is directed to issue copy of this order to the counsel of both the parties.

7 MA/15/KOB/2020 IN TIBA/34/KOB/2019

Learned RP Shri Sadique Buhari submitted an email seeking an adjournment stating that the Report No.28/2020 submitted by him has been stayed by the Hon'ble High Court of Kerala in WP(C) No.5009/2020. Learned counsel for the CD Shri Kalyan Jabhak appeared through VC. In view of the stay order of the Hon'ble High Court of Kerala in this matter, adjourned to 10.03.2021. Registry is directed to issue copy of this order to the counsel of both the parties

8 MA/143/KOB/2020 IN TIBA/34/KOB/2019

Learned RP Shri Sadique Buhari submitted an email seeking an adjournment stating that the Report No.28/2020 submitted by him has been stayed by the Hon'ble High Court of Kerala in WP(C) No.5009/2020. Learned counsel for the CD Shri Kalyan Jabhak appeared through VC. In view of the stay order of the Hon'ble High Court of Kerala in this matter, adjourned to 10.03.2021. Registry is directed to issue copy of this order to the counsel of both the parties

9 MA/144/KOB/2020 IN TIBA/34/KOB/2019

Learned RP Shri Sadique Buhari submitted an email seeking an adjournment stating that the Report No.28/2020 submitted by him has been stayed by the Hon'ble High Court of Kerala in WP(C) No.5009/2020. Learned counsel for the CD Shri Kalyan Jabhak appeared through VC. In view of the stay order of the Hon'ble High Court of Kerala in this matter, adjourned to 10.03.2021. Registry is directed to issue copy of this order to the counsel of both the parties

10 CONTEMPT PETITION/1/KOB/2021 IN IBA/13/KOB/2020

Learned counsel for the Financial Creditor Smt. Jayanthi K. Shah as well as learned counsel for the Corporate Debtor Shri PV George appeared through VC. Shri PV George submitted that CD has filed an appeal before the NCLAT in this matter and hence sought an adjournment. On the other hand, the learned counsel for the FC submitted that the appeal filed by the CD itself is shown as defective as per NCLAT notifications. **Anyhow, adjourned to 03.03.2021.**

11 **IBA/13/KOB/2020**

Learned counsel for the Financial Creditor Smt. Jayanthi K. Shah as well as learned counsel for the Corporate Debtor Shri PV George appeared through VC. Shri PV George submitted that CD has filed an appeal before the NCLAT in this matter and hence sought an adjournment. On the other hand, the learned counsel for the FC submitted that the appeal filed by the CD itself is shown as defective as per NCLAT notifications. **Anyhow, adjourned to 03.03.2021.** 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.**

12 **IBA/42/KOB/2020**

Learned counsel for the FC Shri Vinod PV submitted an email seeking an adjournment to file the rejoinder. Allowed. Advocate G.Sivasankar, learned counsel for CD submitted an email stating willingness to appear through VC. List on 05.03.2021.

13 **IBA/43/KOB/2020**

Learned counsel for the FC Shri Vinod PV submitted an email seeking an adjournment to file the rejoinder. Allowed. Advocate Mohan Pulickkal, learned counsel for CD, submitted an email stating willingness to appear through VC. List on 05.03.2021.

14 **IBA/44/KOB/2020**

Learned counsel for the FC Shri Vinod PV submitted an email seeking an adjournment to file the rejoinder. Allowed. Advocate Mohan Pulickkal, learned counsel for CD, submitted an email stating willingness to appear through VC. List on 05.03.2021.

15 **IBA/45/KOB/2020**

Learned counsel for the FC Shri Vinod PV submitted an email seeking an adjournment to file the rejoinder. Allowed. Advocate Mohan Pulickkal, learned counsel for CD, submitted an email stating willingness to appear through VC. List on 05.03.2021.

16 IA/146/KOB/2020 IN TCP/47/KOB/2019

Learned counsel for the Applicant Shri Philip Mathew as well as learned counsel for R1 to R3 Shri Sharad Kodianthara and learned Administrator Shri Sankar P. Panicker appeared through VC. Shri Sharad sought a short adjournment to enable his senior counsel to argue the matter. Allowed. It appears that counter has not yet been filed in this IA. R1 to R3 are directed to file the counter within one week positively. Since TCP/47/KOB/2019 is a very old pending case, 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 01.03.2021 for hearing.

17 TCP/47/KOB/2019

Learned counsel for the Petitioner Shri Philip Mathew as well as learned counsel for R1 to R3 Shri Sharad Kodianthara and learned Administrator Shri Sankar P. Panicker appeared through VC. Shri Sharad sought a short adjournment to enable his senior counsel to argue the matter. Allowed. Since TCP/47/KOB/2019 is a very old pending case, the parties may bear in mind that this case cannot be prolonged and **hence there shall be no further adjournment in this case. Registry is directed to issue copy of this order to the counsel of both the parties through email.**

List on 01.03.2021 for hearing.

18 CP/121/KOB/2019

Learned counsel for the Petitioner Ms Riya Jacob appeared through VC. Advocate Shaji Chirayath appeared through VC stating that he represents R3.

It appears from records that vide order dated 06.01.2021 Shri Joseph Alappat and Mrs Toby Alappat were impleaded as additional respondents in this CP. Though the petitioner was directed to submit proof of service of notice to the said additional respondents, the petitioner has not yet submitted the A/d Card or Postal Track Record. The petitioner is directed to submit the same with an affidavit before the next date fixed.

Meanwhile, it is noted from MCA Portal that the present directors of the R1 Company are (1) Shri Joseph Alappat and Mrs Treesa Toby Alappat. The petitioner is directed to clarify through an affidavit the exact name of the Directors/Additional Respondents before the next date fixed. Advocate Shaji Chirayath may file vakkalath for his client before the next date fixed. List on **23.02.2021**.

19 **IA(IBC)/12/KOB/2021 IN TMA/42/KOB/19 (MA/ 450/IB/18(C.B.)) IN CP/689/IB/2017/(C.B.)**

Learned counsel for the Applicants Shri S.R.Raghunathan appeared through VC. Learned RP Shri Ravindra Beleyur appeared through VC along with his learned counsel Shri T.Ravichandran. Heard both sides. **Reserved for orders. List for pronouncement of orders on 01.03.2021.**

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

Learned RP/Applicant Shri Ravindra Beleyur appeared through VC along with his learned counsel Shri T.Ravichandran. Learned counsel for the R2 to R4 Shri S.R.Raghunathan appeared through VC. Heard both sides. **Reserved for orders. List for pronouncement of orders on 01.03.2021.**