

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 18th Feb 2021

1 IA/176/KOB/2020 IN MA/05/KOB/2020 IN TIBA/01/KOB/2019

Learned liquidator Shri Shawn Jeff Christopher as well as learned counsel for the EPFO Shri A. Rajasimhan appeared through VC. Orders pronounced. **IA/176/KOB/2020 IN MA/05/KOB/2020 IN TIBA/01/KOB/2019 is disposed of vide separate order.**

2 CP(IB)/4/KOB/2021

Learned Counsel for the Petitioner Shri Nidhi Sam John appeared through VC. This is an application filed under Section 9 of IBC, 2016 read with IB (AAA) Rules, 2016. Shri Nidhi Sam John submitted that the cause of action has arisen on 04.01.2018. The debt amount was Rs.2,26,284/-. After the issue of demand notice, the CD had credited Rs.25,000/- to the accounts of OC and left with total outstanding amount of Rs.2,01,284/- including interest.

I Have heard the learned counsel of OC and perused the records.

The Operational Creditor is directed to issue fresh notice to the Corporate Debtor 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 CD through email. List on **15.03.2021 for hearing.**

3 REPORT NO. 13/KOB/2021 IN IA/129/KOB/2020 IN TIBA/07/KOB/2019

Learned liquidator Shri Jasin Jose appeared through VC. This is the second progress report submitted by the Liquidator under Regulation 15 of I&B BOI (Liquidation Process) Regulations, 2016. I have thoroughly perused the report. The **Report is admitted and taken on record.** Registry is directed to place the report at the appropriate file.

4 IA(IBC)/48/KOB/2021 IN TIBA/19/KOB/2019

Learned GP for the applicant Shri Muhammad Fazil MP as well as learned RP Shri Jasin Jose appeared through VC.

This is an IA filed by the Deputy Commissioner of SG & ST Department seeking direction to the RP to accept Annexure A9 claim submitted by the applicant in this CIR process. The applicant submitted that the CD M/s. Atlas Gold Township (India) Pvt Ltd is in arrears of a total amount of Rs.44,65,40,402/- as tax and interest upto 19.11.2019.

The learned RP submitted that he had admitted the claim provisionally and that as per the last CoC decision, acceptance of claims made after 90 days of CIRP commencement date should only be with the approval of Hon'ble NCLT. Hence, the applicant filed this application before this Tribunal. The learned GP has also produced two orders of NCLAT, Principal Bench, New Delhi in support of the application, ie. Orders in CA-1082(PB)/2019 and CA-1215(PB)/2018. The RP has also submitted that the matter will be considered by the CoC in its meeting to be held on 22.02.2021.

I have heard both the parties. I have also thoroughly perused the records.

In view of the submission of the learned RP, it is directed that the Resolution Professional shall take appropriate action to consider the claim of applicant in the next CoC. With this direction, **IA(IBC)/48/KOB/2021 IN TIBA/19/KOB/2019 is disposed of**

5 IA(IBC)/50/KOB/2021 IN IBA/52/KOB/2019

Learned counsel for the RP Shri Vinod PV appeared through VC. This is an application filed by the RP under Section 12(2) of the IBC, 2016 for extension of 90 days for completing the CIR Process.

1. The Application for Corporate Insolvency Resolution Process filed by Prayag Polytech Private Ltd (Operational Creditor) against Propyl Packaging Limited (Corporate Debtor) under Section 9 of the IBC, 2016 was admitted by this Tribunal vide order dated 14.02.2020 in IBA/52/KOB/2019 wherein the applicant herein was appointed as Interim Resolution Professional. The Committee of Creditors confirmed the IRP as Resolution Professional on 03.08.2020.
2. The RP submitted that the initial period of 180 days for completing CIRP has expired on 13.08.2020. This Tribunal vide order dated 10.11.2020 in MA/169/KOB/2020 has excluded the lock down period from 23.03.2020 to 31.09.2020 and accordingly the last date to complete the CIR Process is 20.02.2021.
3. The RP submitted that the he has received Expression of Interest from two prospective resolution applicants pursuant to the revised EOI invited on 03.01.2021 and the last date of submission of resolution plan was on 15.02.2021. Since the RP requires time to evaluate and to negotiate with the Resolution Applicant, the CoC in its meeting held on 03.02.2021 with 100% voting right has resolved to seek extension of 90 days from this Tribunal under Section 12(2) of IBC for completing the CIR Process. Hence this IA.

4. I have heard the Resolution Professional through video conferencing and also have gone through the records. The prayer for extension of duration of the CIRP of the Corporate Debtor from 180 days to a further period of 90 days is allowed. The Resolution Professional is directed to complete the Corporate Insolvency Resolution Process on or before 23.05.2021.

IA(IBC)/50/KOB/2021 IN IBA/52/KOB/2019 is disposed of accordingly.

6 REPORT NO.14/KOB/2021 IN MA/05/KOB/2020 IN TIBA/1/KOB/2019

Learned Liquidator Shri Shawn Jeff Christopher appeared through VC. This is the report submitted by the Liquidator in the matter of the liquidation process of Achariya Techno Solutions (India) Private Limited. I have thoroughly perused the report. **The Report is admitted and taken on record.** Registry is directed to place the report at the appropriate file.

7 IA(IBC)/51/KOB/2021 IN MA/05/KOB/2020 IN TIBA/1/KOB/2019

Learned Liquidator Shri Shawn Jeff Christopher appeared through VC. This is an IA filed by the Liquidator in the matter of Liquidation Process of Achariya Techno Solution (India) Private Ltd with the following prayers:

- (a) To implead the Respondents 1 to 5 in the IA giving them reasonable opportunity before the Adjudicating authority;
- (b) To hold that the loan of Rs.42,50,397/- repaid to the director during the FY 2017-18, is in preference to trade payable, statutory dues, financial institutions and salary to staff, during that period;
- (c) To hold that Rs.6,28,000/- paid to Mrs. Revathi Radhakrishnan, (Wife of suspended managing director & Present director in Sabkaa Payments Limited), on 24th July 2018 to be repaid to the Corporate Debtor with interest and cost thereof.
- (d) To direct the suspended directors and Sabkaa Payments Limited to settle the interest and cost of the balance outstanding with respect to the SMS Server Maintenance charges of Rs.90,00,000/-, which is still pending to be received from this subsidiary company, subject to the Application filed with NCLT, Kochi encl regarding the recoverability of Outstanding Debtors of the Corporate Debtor.
- (e) To restore the position as it existed before such transaction as if the transaction had not been entered into and protecting the interests of persons who are victims (financial creditors, operational creditors, employees, statutory authorities) of such transactions.
- (f) To declare such transactions as void and reverse their effect.
- (g) To hold such persons who were knowingly parties to the carrying of business in such manner liable to make such contributions to the assets of the Corporate Debtor as it may deem fit.

- (h) To pass such orders as may be necessary for meeting the ends of Justice and to discharge the duties of Liquidator.

I have heard the liquidator and perused the whole case records. I am of the view that impleadment of Respondents 1 to 5 is necessary to judiciously complete the proceedings in this case. As such, the prayer (a) shown above is allowed. Accordingly, the following Respondents are impleaded in this IA:

1. Reji Sivankutty
Vishakhathil, Olakettiambalam,
Thekkekara, Alappauzha, Kerala, India 690 510
2. Tinu Jose
415(9/291)Valancherry 9.
Kalady. Kalady Panchayath. Kalady, Kerala, India - 63 574
3. Revathy Radhakrishnan
Block No.A T-5, Opp. Puja Estate,
Sojitra Road, Vithal Udyogaagar
Vithal Udyognagar Anand, Gujarat, India-38 121
4. Reena Sivankutty
Vishakhathil Olakettiambalam
Thekkekara, Aappauzha, Kerala, India - 690 510
5. Anil Roy.
House No.17/613(16), Advaitam
New Civil Nagar, Palakkad
Kerala, India - 678001

The Applicant/Liquidator is directed to issue fresh notice to the above impleaded 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 Impleaded Respondents through email. Registry is also directed to make necessary changes in the cause title in this IA. List on **19.03.2021**. Before that date the impleaded respondents are directed to file their counter.

8 IA(IBC)/52/KOB/2021 IN MA/05/KOB/2020 IN TIBA/1/KOB/2019

Learned Liquidator Shri Shawn Jeff Christopher appeared through VC. This is an IA filed by the Liquidator with the prayer for extension of the Liquidation Process.

1. The CD is under liquidation vide order 19.02.2020 of this Tribunal. The period of liquidation process will be expired on 19.02.2021.
2. The Liquidator submitted that he has faced significant hardship with respect to certain inadequate disclosures in the audited financial

statements of the CD and on account of the non co-operation of the suspended directors. Besides IA/24/2021 in MA/05/KOB/2020 in TIBA/1/KOB/2019 with respect to Debtors and IA/176/KOB/2020 in MA/05/KOB/2020 in TIBA/1/KOB/2019 with respect to Provident Fund is pending before this Tribunal for disposal. The distribution under the liquidation is entirely depend upon the above IAs.

3. Hence the liquidator has sought the following reliefs:

- (a) Extension of the Liquidation Process from 19.02.2021 to 19.06.2021; and
- (b) To permit the liquidator to continue the liquidation process for the extended period at an estimated cost of Rs.1,00,000/- and the liquidator's fees in a monthly proportion for the extended period of 4 months.

I have heard the liquidator and perused the records. The Liquidator is directed to complete the liquidation process within 3 months from 19.02.2021, ie. on or before 19.5.2021. With regard to the fee payable to the Liquidator, the same will be in accordance with the IBBI guidelines as notified by them vide Notification No.IBBI/2019-20/GN/REG047 dated 25.7.2019.

Accordingly, IA(IBC)/52/KOB/2021 IN MA/05/KOB/2020 IN TIBA/1/KOB/2019 IS DISPOSED OF.

9 IA(IBC)/46/KOB/2021 IN IA(IBC)/13/KOB/2021 IN TIBA/11/KOB/2019

Learned counsel for the Applicant Shri Sankar P. Panicker as well as learned RP Shri Bijoy P. Pulipra appeared through VC. Heard both sides. **Reserved for orders. List for pronouncement of orders on 22.02.2021.**

10 IBA/27/KOB/2020

Even though link was provided none has appeared for both the parties. It appears that stay order issued by the Hon'ble High Court of Kerala on 22.12.2020 in WP© No.28581/2020 (W) related to this case still exists. **Therefore, adjourned to 12.03.2021.**

11 CP/07/KOB/2020

Learned counsel for the Petitioner Shri Philip Mathew as well as learned counsel for the R1 Shri Anil D.Nair appeared through VC. Heard both sides. **Reserved for orders. List for pronouncement of orders on 01.03.2021.**

12 CP/17/KOB/2020

Learned counsel for the Petitioners Shri Philip Mathew appeared through VC. Learned counsel for R1 Shri Saji Varghese, learned counsel for R2 Shri Harikumar G. Nair, learned GP for R8 Shri Mohammed Fazil MP and learned counsel for R6 Shri Abhilash Nediyaalil Abraham appeared through VC. None appeared for other parties. The parties submitted that the Writ Petition filed before the Hon'ble High Court of Kerala has been disposed of in favour of the Petitioner. But the Writ Appeal filed against the said order is pending. In view of the fact that the matter is pending before the Hon'ble High Court of Kerala under Writ Appeal, adjourned to **05.04.2021**.

13 CA/23/KOB/2021 IN CP/21/KOB/2020

Both the parties submitted emails stating willingness to appear through VC. But due to paucity of time, adjourned to **01.03.2021**.

14 CP/31/KOB/2020

Both the parties submitted emails stating willingness to appear through VC. But due to paucity of time, adjourned to **16.03.2021 at 2.30 pm for hearing**.

15 UNNUMBERED Company Application

The applicant submitted an email stating willingness to appear through VC. But due to paucity of time, adjourned to **12.03.2021**.

16 CP/1/KOB/2021

The applicant submitted an emails stating willingness to appear through VC. But due to paucity of time, adjourned to **12.03.2021**.

17 CP/02/KOB/2021

Both the parties submitted emails stating willingness to appear through VC. But due to paucity of time, adjourned to **26.03.2021** for hearing.

18 CA/7/KOB/2021 IN CP/08/KOB/2020

Shri VinuThomas,PCS appeared for applicant and Shri Yogindunath,PCS appeared for the respondents. Since in IA/153/KOB/2020 it was decided to appoint an independent auditor, this matter is postponed for **hearing to 9.4.2021 along with main CP..**

19 IA/152/KOB/2020 IN CP/08/KOB/2020

Shri VinuThomas,PCS appeared for applicant and Shri Yogindunath,PCS appeared for the respondents. Since in IA/153/KOB/2020 it was decided to appoint an independent auditor, this matter is postponed for **hearing to 9.4.2021 along with main CP.**

20 IA/153/KOB/2020 IN CP/08/KOB/2020

IA 153/KOB/2020 has been filed by Mr.Ansarudeen Haneefa, who is 2nd respondent in CP/08/KOB/2020 seeking direction for an independent audit of the books of accounts and financial statements of the 5th respondent company as on date of the Shareholders Agreement by a Practicing Chartered Accountant, since the disputes between the applicant (2nd respondent) and respondents 1 and 3 relates to the stock, arrears, non-payment of dues and other statutory dues by conducting a proper financial audit of the accounts of the company as on 15.1.2019. Even though 1st respondent Shri Sri Sulaiman Assanar Kunju filed a counter opposing the prayer of the applicant (2nd respondent), during the course of arguments, Shri Yogindunath S, Practicing Company Secretary appearing for the petitioners in the Company Petition stated that the petitioners have no objection in appointing an independent auditor to audit the accounts of the company, which is beneficial to both sides, in order to find out the true facts in the company.

In view of the above, the learned PCS for the petitioner as well as respondents are directed to suggest a mutually agreed name of Practicing Chartered Accountant for appointment as the independent auditor. Both sides stated that they shall furnish the name within three days. Hence, list **IA/153/KOB/2020 for further directions on 26.02.2021.**

21 CP/08/KOB/2020

Shri Yogindunath,PCS appeared for the petitioners and Shri Vinu Thomas,PCS appeared for respondents 2&3. Since in IA/153/KOB/2020 it was decided to appoint an independent auditor, this matter is postponed for **hearing to 9.4.2021. Released from Part Heard.**