

## ***NCLT, KOCHI BENCH***

### **Daily Orders – Draft**

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

Date: 20<sup>th</sup> April 2021

**1 MA/184/KOB/2020 IN IA/129/KOB/2020 IN TIBA/07/KOB/2019**

Learned Liquidator Shri Jasin Jose appeared through VC. Orders pronounced. **MA/184/KOB/2020 IN IA/129/KOB/2020 IN TIBA/07/KOB/2019 is disposed of vide separate order.**

**2 IA(IBC)/64/KOB/2021 IN IBA/52/KOB/2019**

Learned counsel for the Applicant Ms. Jagriti Sanghi, as well as learned counsel for the RP Shri Vinod PV appeared through VC. Orders pronounced. **IA(IBC)/64/KOB/2021 IN IBA/52/KOB/2019 is disposed of vide separate order.**

**3 IA/148/KOB/2020 IN IA/36/KOB/2020 IN TCP/14/KOB/2020**

Learned counsel for the applicant Shri Mohan Pulickkal as well as learned counsel for the Respondents Shri Sharad Joseph Kodianthara appeared through VC. **IA/148/KOB/2020 IN IA/36/KOB/2020 IN TCP/14/KOB/2020 is disposed of vide separate order.**

**4 CP(IB)/05/KOB/2021**

Learned counsel for the Operational Creditor Shri Akhil Suresh appeared through VC. He submitted that the Operational Creditor was appointed as the Contractor for the construction of various villa projects and other civil construction works by the Corporate Debtor vide agreement dated 12.02.2014. The Operational Creditor has entered into 8 agreements with the Corporate Debtor for the construction of various villas, flats and other civil works from 12.02.2014 to 24.07.2014 for which he has raised various invoices against the work done to the Corporate debtor. The Operational Creditor received the payments for the construction works from the Corporate Debtor in parts from June 2014 to May 2016. Despite the Operational Creditor's efficient and diligent performance, the Corporate Debtor had abruptly stopped paying operational creditor's remaining payments. Subsequently on 25.11.2018 the Corporate debtor had worked out the final outstanding payable to the Operational Creditor duly signed and sealed by the Managing Director of the Corporate Debtor.

The total amount for the work done by the Operational Creditor is Rs.3,18,96,061/- (Three Crore Eighteen Lakhs Ninety Six Thousand Sixty One Only) out of which Rs.1,98,987,90/- (One Crore Ninety, Eight Lakhs Ninety Eight Thousand Seven Hundred and Ninety Only) has been received by the operational creditor over a period of time. The Operational Creditor is hence entitled to receive a balance amount of Rs. 1,19,97,271/- (One Crore Nineteen Lakhs Ninety Seven Thousand Two Hundred Seventy One Only) along with interest@ 12% P.A totalling to an amount of Rs.14,39,672/- (Fourteen Lakhs Thirty Nine Thousand Six Hundred Seventy Two only). Thereafter, the Applicant had issued several oral reminders seeking payment of balance dues, but to no avail.

On 22.12.2019, the Demand Notice as in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 demanding payment of Rs.1,34,36,943/- (Rupees One Crore Thirty Four Lakhs Thirty Six Thousand Nine Hundred Forty Three only) was sent to the Corporate Debtor at its registered office through speed post.

According to the Operational Creditor, no dispute nor repayment of the due amount has been brought to the notice of the Operational Creditor, which clearly shows that the Corporate Debtor is not able to pay its debts.

Hence this IB petition has been filed.

I have heard the learned counsel for the petitioner and also perused the records attached with the Petition. The Operational Creditor is directed to issue fresh notice along with the paper book of the petition to the Corporate Debtor through Speed Post or Registered Post with A/D and submit proof of service (Postal Track Report or Acknowledgement Card) with an affidavit before the next date fixed. Registry is also directed to issue notice to the CD through email. List on **17.05.2021**.

## 5 **IA/73/KOB/2021**

Learned counsel for the applicant Shri Pranoy Harilal appeared through VC.

This IA is filed under Rule 11 of NCLT Rules 2016 with the following prayers:

- (i) to direct the Registry of NCLT Kochi Bench to list the MA/72/IB/2018 for hearing and disposal;
- (ii) to call for the records and files pertaining to MA/72/IB/2018 to ascertain the status of the application and list the same before this Tribunal for disposal;
- (iii) Alternatively, in the absence of records and files pertaining to MA/72/IB/2018, to direct the Registry to re-construct the case file and records necessary for listing and disposal of the aforesaid application.

I have heard the learned counsel for the Applicant and perused the available records. **IA/73/KOB/2021 is disposed of vide separate sheets.**

#### 6 CA/42/KOB/2021 IN CP/08/KOB/2021

Learned counsel for the applicant Shri PP Zibi Jose as well as learned counsel for R1 to R5, R7 & R8 Shri Pranoy Harilal appeared through VC. None has appeared for R10.

This CA is filed by the petitioner/applicant with the prayer to accept Annexure A1 to A6 documents attached with the CA as part of the Company Petition.

Learned counsel for R1 to R5, R7 & R8 has not raised any objection to accept these documents. But he pointed out that there is no specific statement in the annexures produced by the applicants that the applicants have understood the contents of the Company Petition.

The Bench observed that the contention of Shri Pranoy Harilal can be considered at the time of final hearing.

The Annexures A1 to A6 documents attached with this CA is taken on record. The Applicant/Petitioner is directed to submit the revised index to the CP/08/KOB/2021 incorporating these new documents with a memo.

**CA/42/KOB/2021 IN CP/08/KOB/2021 stands disposed of accordingly.**

#### 7 IA(IBC)/27/KOB/2021 IN IBA/133/KOB/2019/CB

Learned counsel for the Liquidator Shri Vinod PV as well as learned counsel for R1 to R3 Shri Shankar P. Panicker appeared through VC.

Registry reported that the counter filed by the Respondents is defective due to non filing of the counter through Efiling. Shri Shankar P. Panicker submitted that the defect has already been cured. Shri Vinod PV sought time to file the rejoinder. He may file the rejoinder positively within two weeks. **List on 25.05.2021** for hearing.

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

#### 8 IA(IBC)/49/KOB/2021 IN IBA/42/KOB/2020

Learned counsel for the applicant Shri Sivasankar G as well as learned counsel for the FC Shri Vinod PV appeared through VC. Counter has already been filed by the FC. However, the registry reported that the counter is defective as the authorisation to file the counter is not filed. Learned counsel for the respondent Sri Vinod pointed out that the authorisation has been already filed before this Tribunal along with the Rejoinder filed by him IBA/42/KOB/2020. The Tribunal verified the same and found that the submission of counsel is correct. Hence the Registry is directed to take the counter on record. **List on 30.04.2021 for final hearing.**

9 IBA/42/KOB/2020

Learned counsel for the FC Shri Vinod PV as well as learned counsel for the Corporate Debtor Shri Sivasankar G appeared through VC.

**List on 30.04.2021 for final hearing.** Before that date both the parties are directed to submit their written submissions in brief (limiting 5/6 pages).

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

10 IBA/43/KOB/2020

Learned counsel for the FC Shri Vinod PV as well as learned counsel for the Corporate Debtor Shri Mohan Pulickkal appeared through VC.

**List on 30.04.2021 for final hearing.** Before that date both the parties are directed to submit their written submissions in brief (limiting 5/6 pages).

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

11 IBA/44/KOB/2020

Learned counsel for the FC Shri Vinod PV as well as learned counsel for the Corporate Debtor Shri Mohan Pulickkal appeared through VC.

**List on 30.04.2021 for final hearing.** Before that date both the parties are directed to submit their written submissions in brief (limiting 5/6 pages).

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

12 IBA/45/KOB/2020

Learned counsel for the FC Shri Vinod PV as well as learned counsel for the Corporate Debtor Shri Mohan Pulickkal appeared through VC.

**List on 30.04.2021 for final hearing.** Before that date both the parties are directed to submit their written submissions in brief (limiting 5/6 pages).

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

**13 TCP/81/KOB/2019**

Learned Counsel for the Petitioner Shri Philip Mathew as well as learned counsel for the respondents Shri T.K.Bhaskar appeared through VC.

**This is a part heard case. Adjourned to 25.05.2021 at 2.30 pm for final hearing.**

**14 TCA/29/KOB/19**

Counsel for the Petitioner Shri Gokul Ashok as well as learned counsel for R2 & R3 Shri Philip Mathew appeared through VC.

Shri Gokul Ashok sought an adjournment stating that his senior Shri Santhosh Mathew is unable to appear through VC due to Quarantine. He also stated that his senior wants to submit some citations related to this case for which some time is required.

**This is a part heard case. Adjourned to 25.05.2021 at 2.30 pm for final hearing.**

**15 TCP/14/KOB/2020 (TCP/67/2016(CB))**

Learned counsel for the Petitioners Shri Mohan Pulickkal as well as learned counsel for R2 & R3 Shri Sharad Kodianthara appeared through VC. In view of the order passed today in IA/148/KOB/2020 IN IA/36/KOB/2020 this TCP is adjourned to 28.05.2021.

**16 TCP/21/KOB/2019**

Learned counsel for the petitioners Shri A.C.Venugopal appeared through VC. Learned counsel for the Administrator (R1) Shri Manuel Vivera and learned counsel for R3 to R6 represented by Shri Ashok B.Shenoy, appeared through VC. None has appeared for SFIO and also for R10.

Learned counsel for the Administrator submitted that as per order dated 11.03.2020 in IA/29/KOB/2020 in TCP/21/KOB/2019, the Serious Fraud Investigation office (SFIO), Chennai was directed to investigate into the affairs of M/s Bhagyodayam Company and to submit the report within two months before this Tribunal. But the SFIO has not taken any steps even after an year. Even though ROC, who appeared through VC on 04.01.2021, has submitted that they are in the process of filing an appeal before NCLAT against the order of this Tribunal dated 11.03.2020, no information has yet been received regarding such an appeal. Therefore, the learned counsel for the Administrator submitted that they are proposing to file a Contempt Petition against the SFIO.

It appears from records that the learned counsel for the SFIO Shri Girish Kumar submitted in the hearing on 10.08.2020 that the Government of India is under the process of constituting the team to investigate into the affairs of the Bhagyodhayam Company (R1) and at least two months period may require to complete the investigation against the R1 Company. But no response from SFIO in the last two hearings and there is no appearance on their behalf.

It also appears from records that the Auditors M/s. Babu A. Kallivayalil have not yet submitted their report. They are directed to submit their report within a week positively with copy served to all the parties including the Administrator.

**List on 24.05.2021 for hearing.**

Registry is directed to issue copy of this order to the learned counsel of both the parties including learned counsel for SFIO Shri Girish Kumar and also to M/s. Babu A. Kallivayilil & Company, Auditors through email. A copy of this order may also be issued through email to the Administrator.

**17 CA/44/KOB/2019**

Learned counsel for the petitioners Shri A.C.Venugopal appeared through VC. Learned counsel for the Administrator Shri Manuel Vivera, learned counsel for R2 & R3 Shri Ashok B. Shenoy appeared and stated that he is representing the learned counsel for R4, R6-9, 11, 13-18 Smt. CG Preetha.

**Adjourned to 24.05.2021 for hearing.**

**18 CP/19/KOB/2021 connected with CA/43/KOB/2021**

Learned counsel for the Petitioner Shri Philip Mathew as well as learned counsel for R1 to R4 & R7 Dr K.S. Ravi Chandran appeared through VC.

Dr. Ravi Chandran submitted that he has filed a CA/43/KOB/2021 in this CP questioning the maintainability of the CP, which is not listed today. However, this CA was taken up for consideration today.

The Petitioner is directed to file reply to the said CA within two weeks.

**List the CA/43/KOB/2021 as well as CP/19/KOB/2021 on 21.5.2021.**