

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

### **Daily Orders – Draft**

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

**Date: 21st Jan 2021**

#### **1 MA/162/KOB/2020 IN IBA/52/KOB/2019**

Learned counsel for the Applicant Shri Shivshankar R.Panicker (through proxy) as well as learned counsel for the RP Shri Vinod PV appeared through VC. Orders pronounced. **MA/162/KOB/2020 IN IBA/52/KOB/2019 is dismissed vide separate order.**

#### **2 IBA/32/KOB/2020**

Learned counsel for the Operational Creditor Shri Vinod PV as well as learned counsel for CD Shri Pranoy Harilal appeared through VC. The learned counsel for the OC filed the withdrawal memo under Rule 8 of the IBC (Application to Adjudicating Authority) Rules 2016. Heard both sides. **In view of the withdrawal memo filed by the OC, IBA/32/KOB/2020 is disposed of as withdrawn vide separate order.**

#### **3 IA/227/KOB/2020 IN TIBA/19/KOB/2019**

Learned RP Shri Jasin Jose appeared through VC. It appears from records that the applicant/RP in this IA has prayed for the same relief sought by him in IA/225/KOB/2020 which was allowed by this Tribunal. Shri Jasin Jose has also submitted that this IA is filed due to an inadvertent mistake. Therefore, this **IA/227/KOB/2020 IN TIBA/19/KOB/2019 has become infructuous and hence dismissed.**

#### **4 IA(IBC)/20/KOB/2021 IN IBA/04/KOB/2020**

Learned IRP Shri K. Easwara Pillai appeared through VC.

This is an IA filed by the Interim Resolution Professional Shri K.Easwara Pillai, under Section 60(5) of IBC, 2016 in IBA/04/KOB/2010.

This Tribunal vide order dated 20.11.2020 ordered the Corporate Insolvency Resolution Process under Section 7 of the IBC, 2016 in IBA/04/KOB/2020 filed by the Financial Creditor M/s. Union Bank of India against the Corporate Debtor M/s. Mathstraman Manufactures & Traders (P) Ltd and appointed the applicant herein as the Interim Resolution Professional (IRP).

The IRP in his IA submitted that as per Minutes of first meeting of Committee of Creditors, the Committee of Creditors has resolved with 100% voting to appoint the Interim Resolution Professional as Resolution Professional. The written consent in Form 2 as specified under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been filed by the IRP to continue as RP.

Accordingly, the IRP prayed before this Tribunal to pass orders for appointing him as Resolution Professional in this case.

After perusal of the case records including the Minutes of the 1<sup>st</sup> meeting of the Committee of Creditors, this Tribunal hereby appoints Shri K.Easwara Pillai, Interim Resolution Professional (IBBI/IPA-001/IP-P-004482017-2018/10791 as Resolution Professional in IBA/04/KOB/2020. He is directed to meticulously adhere to the Rules and Regulations issued by IBBI to conduct Corporate Insolvency Resolution Process from time to time.

**IA(IBC)/20/KOB/2021 IN IBA/04/KOB/2020 Is allowed accordingly.**

#### **5 IA(IBC)/22/KOB/2021 IN IBA/23/KOB/201**

Learned RP Shri Vinod PV appeared through VC. This IA is filed by the RP under Section 60(5) read with Section 12 of IBC 2016 and Regulation 40(c) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Heard the RP and perused the records. **IA(IBC)/22/KOB/2021 IN IBA/23/KOB/201 is disposed of vide separate sheets.**

#### **6 IA/79/KOB/2020 IN CP/127/KOB/2019**

Learned counsel for the Applicants Shri Bijoy P. Pulipra appeared through VC. Learned counsel for R1 to R3 Ms Aanchal Nichani, learned counsel for R4 Shri Gokul RI and learned counsel for R5 Shri Zibi Jose also appeared through VC. Arguments of Shri Bijoy P. Pulipra **heard in part** in the main CP. This IA will also be heard along with the main CP. List on 12.02.2021 at 2.30 pm for further hearing as **PART HEARD.**

#### **7 IA/92/KOB/2020 IN CP/127/KOB/2019**

Learned counsel for the Applicants Shri Bijoy P. Pulipra appeared through VC. Learned counsel for R1 to R3 Ms Aanchal Nichani, learned counsel for R4 Shri Gokul RI and learned counsel for R5 Shri Zibi Jose also appeared through VC. Arguments of Shri Bijoy P. Pulipra **heard in part** in the main CP. This IA will also be heard along with the main CP. List on 12.02.2021 at 2.30 pm for further hearing as **part heard.**

## 8 CP/127/KOB/2019

Learned counsel for the Petitioners Shri Bijoy P. Pulipra appeared through VC. Learned counsel for R1 to R3 Ms Aanchal Nichani, learned counsel for R4 Shri Gokul RI and learned counsel for R5 Shri Zibi Jose also appeared through VC. Arguments of Shri Bijoy P. Pulipra **heard in part**. List on 12.02.2021 at 2.30 pm for further hearing **as part heard**. Before that date the learned counsel of the related parties may file their Argument brief written statement (within five to six pages).

## 9 IA/221/KOB/2020 IN CP/28/KOB/2020

Learned counsel for the Applicant Ms Richla Mary as well as learned counsel for the Respondents Shri Philip Mathew appeared through VC. This IA is filed with the prayer to enlarge time till today for filing the written statement by R6 in the CP. It is stated that the reply statement has been filed. The prayer is allowed. **IA/221/KOB/2020 IN CP/28/KOB/2020 stands disposed of.**

## 10 IA/222/KOB/2020 IN CP/28/KOB/2020

Learned counsel for the Applicant Ms Richla Mary as well as learned counsel for the Respondents Shri Philip Mathew appeared through VC. This IA is filed with the prayer to enlarge time till today for filing the written statement by R1 to 4 in the CP. The prayer is allowed. It is stated that the reply statement has been filed **IA/222/KOB/2020 IN CP/28/KOB/2020 stands disposed of.**

## 11 CP/28/KOB/2020

Learned counsel for the Petitioner Shri Philip Mathew as well as learned counsel for the Respondents 1 to 4 & 6 Ms Richla Mary appeared through VC. It is noted that R1 to R4 and R6 have filed their counter today. The Petitioner may file the rejoinder, if any, within two weeks. List **on 24.02.2021** for hearing. Both the **parties may bear in mind that there shall be no adjournment in this case.**

## 12 CP/34/KOB/2020

Learned counsel for the Petitioner Shri S.Krishnamoorthy as well as learned PCS for R1 to R4 Shri Yogindunath appeared through VC. Counter has been filed by the Respondents. Learned counsel for the petitioner submitted that the petitioner has already invested Rs.64 lakhs in the R1 Company. The petitioner has alleged that the R1 Company and R2 to R4 have neither acquired the machinery nor accounted the loan given to the company. The petitioner has till date been issued shares worth Rs.1,00,000/- only and accordingly now holds 20% of the full paid up equity shares of the Company and is a director along with R2 to R4 . He further stated that since he was permanently residing at Kolkata, the majority shareholders who are all based at Kerala, were acting in concert with each other have been continuously abusing their position in the Company and mismanaging the affairs of the Company keeping

the petitioner in the dark. In the counter the Respondents have not clearly explained the aforesaid allegations. Hence the learned counsel for the petitioner insisted to pass orders on interim prayer sought in the CP to direct an independent audit into the affairs and accounts of the Company so as to ascertain and report on the true financial position of the Company and extent of funds diverted or siphoned off by the Respondents 2 to 4.

Learned PCS for the respondents submitted that since the Company dealt with Food items, during Covid period, their business performance has become negative.

After perusal of the whole case records including hearing of both sides, I am of the view that the petitioner has made out a prima facie case against the Respondents to grant the interim relief prayed for, and hence intervention of this Tribunal is required at this point of time to meet the ends of justice. **Accordingly, the interim prayer sought for by the petitioner to conduct an independent audit into the affairs and accounts of the R1 Company is allowed.**

During the hearing, both the parties were directed to suggest the name of an Auditor to enable this Tribunal to entrust the task of conducting the auditing of the R1 Company. Accordingly, the counsel for the petitioner suggested the name of Shri Jobin George, Chartered Accountant. But no name has been suggested by the learned counsel for the respondents.

Accordingly, this Tribunal hereby **appoints Shri Jobin George, FCA, M/s. John Moris & Company, Chartered Accountants, Door No.56/503, IInd Floor, Building No.G 308, Shan Apartment, Near Avenue Centre Hotel, Panampilly Nagar, Kochi 682 036 (Mobile 9995832342)** to audit into the affairs and accounts of the R1 Company M/s. Venad Food Processing and Exports Private Limited, Registered Office: 48/2368/D, Alat House, Swamypadi Road, Elamakkara, Ernakulam, Kerala 682 026. The Auditor is directed to audit into the affairs and accounts of the Company and report on the true financial position of the Company and funds, if any, diverted or siphoned off by Respondents 2 to 4. The Auditor is directed to submit his report to this Tribunal with copy to both the parties on or before 26.02.2021. The fee of the Auditor will be borne by the Petitioner.

Since the Respondents have filed the counter, the petitioner may file his rejoinder before the next date fixed.

Registry is directed to issue copy of this order to the aforesaid Auditor and also to both the parties through email. **List on 03.03.2021.**

13 **MA/206/KOB/2020 IN CA/57/KOB/2020**

Learned counsel for the Applicant Shri Mohan Pulickkal appeared through VC. Heard and perused the records. Orders pronounced. **MA/206/KOB/2020 IN CA/57/KOB/2020 is disposed of vide separate sheets.**

**14 IA/169/KOB/2020 IN CP/114/KOB/2019**

Learned counsel for the Applicants Shri P.Sanjay sought an adjournment through email stating that due to heavy posting before the Hon'ble High Court of Kerala and also certain other part heard matters he is unable to attend the VC today. Learned counsel for R1 & R2 Shri Sukumar Oommen submitted an email stating willingness to appear through VC. Learned PCS for R3 Shri Zibi Jose and R4 Shri Sumit Agarwal also submitted an email stating willingness to appear through Email. **Adjourned to 11.02.2021 at 2.30 pm for final hearing.**

**15 IA/170/KOB/2020 IN CP/119/KOB/2019**

Learned counsel for the Applicants Shri P.Sanjay sought an adjournment through email stating that due to heavy posting before the Hon'ble High Court of Kerala and also certain other part heard matters he is unable to attend the VC today. Learned counsel for R1 & R2 Shri Sukumar Oommen submitted an email stating willingness to appear through VC. Learned PCS for R3 Shri Zibi Jose and R4 Shri Sumit Agarwal also submitted an email stating willingness to appear through Email. **Adjourned to 11.02.2021 at 2.30 pm for final hearing.**

**16 IA/171/KOB/2020 IN CP/125/KOB/2019**

Learned counsel for the Applicants Shri P.Sanjay sought an adjournment through email stating that due to heavy posting before the Hon'ble High Court of Kerala and also certain other part heard matters he is unable to attend the VC today. Learned counsel for R1 & R2 Shri Sukumar Oommen submitted an email stating willingness to appear through VC. Learned PCS for R3 Shri Zibi Jose and R4 Shri Sumit Agarwal also submitted an email stating willingness to appear through Email. **Adjourned to 11.02.2021 at 2.30 pm for final hearing.**

**17 CA/84/KOB/2020**

Learned PCS for the Applicant Shri PP Zibi Jose submitted an email stating willingness to appear through VC. Learned counsel for R4 Shri P.Sanjay sought an adjournment through email stating that due to heavy posting before the Hon'ble High Court of Kerala and also certain other part heard matters he is unable to attend the VC today. Learned counsel for R2, R3, R5 & R7 Shri Sukumar Oommen submitted an email stating willingness to appear through VC. Learned counsel for R1 Shri Sherry Samuel Oommen also expressed his willingness to appear through VC. **No response from R6. Adjourned to 11.02.2021 at 2.30 pm for final hearing.**