

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 21st April 2021

1 IBA/31/KOB/2020

Learned counsel for the Operational Creditor Shri Praful Surendran appeared through VC. None has appeared for the Corporate Debtor. Orders pronounced. **IBA/31/KOB/2020 stands dismissed vide separate order.**

2 CP(IB)/06/KOB/2021

Learned counsel for the Financial Creditor Shri Vinod PV appeared through VC.

This petition is filed by Dhanalaxmi Bank Limited, the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor, Patel Cars Private Limited.

It is submitted that the Financial Creditor has initially granted credit facilities of Rs.2 Crore to the Corporate Debtor, which was later enhanced to 5 Crore by way of sanction letter dated 30.12.2014. The sanction was renewed on 09.08.2017 and 24.01.2019. The Credit facility was granted as a trade advance for business development. The Corporate Debtor has executed various loan documents in favour of the Financial Creditor on 30.12.2014 in terms of the sanction letter including Overdraft /Cash Credit Agreement. As a security towards the loan facilities, the Corporate Debtor has executed General Hypothecation Agreement creating a second charge on the current assets and fixed asset of the Corporate Debtor including all moveable properties. A charge was also registered for an amount of Rs.5 Crore with Registrar of Companies.

It is also submitted that the Corporate Debtor has issued Demand Promissory Note for Rs.5.00 Core in favour of the Financial Creditor on 30.12.2014. The loan was further secured by the personal guarantee of Mr. Mitesh K Patel, Mrs. Krishna Ben K Patel, Mr. K.P Patel (Deceased), Mr Vinod Babulal Patel and Mr. Bharat K Patel and they have duly executed deed of guarantee in favour the Petitioner guaranteeing to the re-payment of the loan granted to the Corporate Debtor in the event of default. The Corporate Debtor has acknowledged the liability by way of letter dated 01.12.2017 and also executed a consent cum undertaking on 24.01.2019 confirming the grant of credit facilities and execution of the loan documents.

According to the FC, the Corporate Debtor has committed default in repayment of credit facilities in violation of the sanction terms and loan documents and the accounts of the Corporate Debtor was classified as Non-Performing Asset on 22.03.2020. The Financial Creditor has issued demand notice on 03.06.2020 to the Corporate Debtor and guarantors with direction to repay the dues within seven days. The Corporate Debtor replied by letter dated 08.06.2020 and sought extension of time for repayment facilities. The Financial Creditor has replied to the said letter by letter dated 08.07.2020 stating that further extension cannot be granted as the Loan Accounts are NPA since 22.03.2020. However, the Corporate Debtor and Guarantors failed to repay the outstanding, hence the Applicant has filed Original Application No. 537/2020 before DRT, Ernakulam for recovery of the amount defaulted.

It is submitted that the default committed by the applicant is Rs.43106762.74, which is more than the minimum threshold limit of One Crore for initiating corporate insolvency resolution process.

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 Financial 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. The Corporate Debtor is directed to file his counter within two weeks of receipt of notice. List on **19.05.2021**.

3 IA(IBC)/75/KOB/2021 IN TIBA/19/KOB/2019

Learned RP Shri Jasin Jose appeared through VC. This IA is filed by the RP seeking the following reliefs:

- (a) As a special case, allow RP to conduct one more COC to place the revised resolution plan as per the request submitted by the Resolution Applicant M/s. Celestial Garden Owners Association. **Else**
- (b) Pass an order to Liquidate the company under Section 33(2) of the IBC for the liquidation of the Company

It appears from records that the period of 330 days for CIR Process in this case has been expired on 11.03.2021. It is also noted that the COC in its 10th meeting held on 09.03.2021 has resolved with 96.09% voting to liquidate the Company as a going concern.

During the hearing today, the learned RP submitted that he is withdrawing the prayer (a) and a memo in this regard will be filed within a day or two. He may do so.

I have heard the learned RP and also perused the records. **Reserved for orders. List for pronouncement of orders on 26.04.2021.**

4 CA/44/KOB/2021 IN CP/02/KOB/2020

This is an application filed under Rule 11 of the NCLT Rules, by the petitioners in the main CP/02/KOB/2020 praying for a direction to the Respondents 2-8 to maintain status quo in all respects while managing the affairs of the company, and revoke all approvals, resolution etc. with respect to raising any additional debt.

I have heard the learned Senior counsel Shri Aravind Pandian appearing for the applicants as also the learned Senior Counsel Shri Ramji Srinivasan appearing for the respondents.

On going through the records, it is seen that this Tribunal vide order dated 17.1.2020 directed both parties to maintain status quo in all respects as of that date until further orders. The contention of the applicants is that while the main company petition is pending for final hearing on 18.3.2021 the respondents 2 to 8 have completely disregard the order dated 17.1.2020 and violated the status quo order passed by this Tribunal by passing board resolution at the 245th board meeting of the company to raise an additional debt of Rs. 62.67 crores from various financial institutions. Availing such additional debt will jeopardise the entire growth of the company. Even though petitioners 1 & 2 (applicants herein) objected to the raising of additional debt, their concerns were ignored by the majority shareholders and proceeded to pass the resolution violating the order dated 17.1.2020.

The learned senior counsel for the respondents opposed the prayer of the applicants and stated that already there is a status quo order and that the respondents have not violated the orders of this Tribunal. They sought time to file a counter to the CA.

Respondents are directed to file their counter within two weeks serving copy to the applicants, who may file rejoinder, if any, within a week thereafter. **List on 24.5.2021 for hearing.** In the meanwhile, it is made clear that both parties shall scrupulously follow the status quo order dated 17.1.2020 with respect to the management of the company until further orders.

5 CONTEMPT PETITION/02/KOB/2021 IN CP/02/KOB/2020

This is a Contempt Application filed under Section 425 of the Companies Act read with Rule 11 of the NCLT Rules, by the petitioners in CP/02/KOB/2020 praying to initiate contempt proceedings against Respondents 2 to 8 as contemplated under Section 425 of the Companies Act, 2013.

I have heard the learned Senior counsel Shri Aravind Pandian appearing for the petitioners as also the learned Senior Counsel Shri Ramji Srinivasan appearing for the respondents.

On going through the records, it is seen that this Tribunal vide order dated 17.1.2020 directed both parties to maintain status quo in all respects as of that date until further orders. The contention of the petitioners is that while the company petition is pending for final hearing on 18.3.2021 the respondents 2 to 8 have completely disregard the order dated 17.1.2020 and violated the status quo order passed by this Tribunal by passing board resolution at the 245th board meeting of the company to raise an additional debt of Rs. 62.67 crores from various financial institutions. Availing such additional debt will jeopardise the entire growth of the company. Even though petitioners 1 & 2 objected to the raising of additional debt, their concerns were ignored by the majority shareholders and proceeded to pass the resolution violating the order dated 17.1.2020. Thereby they have violated the status quo order passed by this Tribunal on 17.1.2020.

The learned senior counsel Shri Ramji Srinivasan, opposed the prayer of the petitioners for initiating contempt proceedings.

Before considering the prayers of the petitioners, it is necessary to hear the respondents/alleged contemnors. Hence the petitioners are directed to issue notice to the respondents 2 to 8 in their personal capacity, directing them to show cause as to why the contempt proceedings should not be initiated against them for the alleged contempt, by filing a reply affidavit within three weeks. The petitioners are directed to file an affidavit and submit the proof of service (AD card or Postal Track Report) before the next date fixed.

List the Contempt Application for hearing on **24.5.2021**.

6 REPORT/30/KOB/2021 IN IBA/39/KOB/2020

None has appeared for the RP. This is the Status Report filed by the RP in the matter of M/s. Tierra Food India Pvt Ltd (under CIR Process). **The report is taken on record.** Registry is directed to place the report in the appropriate file.

7 REPORT/31/KOB/2021 IN IA(IBC)/26/KOB/2021 IN IBA/24/KOB/2020

Learned RP Shri Mohanan TS appeared through VC.

This is a report of Transaction Audit and status of avoidance transactions submitted by the RP in the matter of M/s. Nambudirisons Agro Foods India Pvt Ltd (under CIR Process). **The report is taken on record.** Registry is directed to place the report in the appropriate file.

8 IA(IBC)/32/KOB/2021 IN MA/9/(KOB)/19 IN CP(IB)/689/17(CHENNAI BENCH)

Learned counsel for the applicant Shri Ravi Rajagopalan appeared through VC. Learned GP for R1, R2, R5, R6, R12, R13 and R14 Shri Mohammed Fazil also appeared through VC. None appeared for other respondents.

Shri Ravi Rajagopalan submitted that he will file an IA to correct the written submissions filed on behalf of the CD and stated that the delay in filing the IA may be excused. He may do so positively within two weeks failing which law will take its own course.

Registry is directed to issue copy of this order to the learned counsel of the applicant through email. List on **17.05.2021**.

9 CP(IB)/3/KOB/2021

Learned counsel for the Operational Creditor Smt Sreedevi S as well as learned counsel for the Corporate Debtor Shri Nebil Nizar appeared through VC.

Registry reported that the counter filed by the CD is defective. Shri Nebil Nizar submitted that he will cure the defect within a day or two. He may cure the defect positively within a week. The OC may file the rejoinder, if any, before the next date fixed.

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.**

List on 18.05.2021 for hearing.

10 CA/29(KOB)/2021 IN CP/28/KOB/2020

Learned counsel for the applicant Shri Philip Mathew as well as learned counsel for R1 to R4 and R6 Shri Abraham P. George appeared through VC.

Vide order dated 08.04.2021 both the parties were directed to submit their mutually agreed names of IBBI Registered Valuer before 21.04.2021 to enable this Tribunal to appoint one among them as valuer to value the properties and the equity shares of the Company. The learned counsel for the applicant has filed a memo submitting the names of two valuers. But the respondents have not filed any memo.

During the hearing, the learned counsel for the Respondents submitted that he has no objection in appointing a Valuer from the names submitted by the applicant.

Accordingly, **Shri Sivadasan C.P, IBBI Reg. No.1BBI/RV/02/2019/11881 IBBI Registered Valuer(SFA), CKS&Associates, First Floor, Kodakkad Apartments, Asokapuram, Kozhikode-673 001 Cell:9633147134 Email: sivadascp.cs@gmail.com** is hereby appointed as the Valuer to value the properties and the equity shares of the R1 Company M/s. Wayanad Lagoons Aquatic Resort and Tourism Private Ltd.

Both the parties are directed to co-operate with the Valuer to enable him to complete his task.

The Valuer is directed to submit his Valuation Report within a month.

CA/29(KOB)/2021 IN CP/28/KOB/2020 is disposed of accordingly. Registry is directed to issue copy of this order to the learned counsel for both the parties and also to the Valuer through email.

11 CP/28/KOB/2020

Learned counsel for the applicant Shri Philip Mathew as well as learned counsel for R1 to R4 and R6 Shri Abraham P. George appeared through VC.

Vide order dated 21.04.2021 in **CA/29(KOB)/2021 IN CP/28/KOB/2020** Shri Sivadasan CP has been appointed as Valuer to value the properties and equity shares of the R1 Company.

List CP/28/KOB/2020 on 24.05.2021 for the Report of the Valuer.

12 CP/35/KOB/2020

None has appeared for the petitioner. Advocate Ananthu represented the learned counsel for R3 to R6 Shri CS Manu in the VC.

It appears from records that the respondents have not yet filed the counter. They are directed to file the counter within two weeks.

Even though Shri Pradeep Joy, the learned counsel for the petitioner, during the hearing on 15.03.2021 submitted that the Hon'ble High Court of Kerala has stayed the order of this Tribunal dated 26.11.2020 in IA/178/KOB/2020 in CP/35/KOB/2020, no stay order has been produced before this Tribunal by the petitioner. Advocate Ananthu submitted that he shall file the stay order of the Hon'ble High Court of Kerala within two weeks. He may do so.

List on 24.05.2021.

13 CP/36/KOB/2020

Learned counsel for the Petitioner Shri B. Ashok Shenoy appeared through VC. Advocate Ananthu represented the learned counsel for the respondent Shri CS Manu in the VC. But no vakalath filed for the respondents. Shri Ananthu submitted that counter will be filed for the respondent along with the Vakalath within two weeks. He may do so positively within two weeks.

List on 24.05.2021 for hearing.

14 CP/53/KOB/2020

Learned counsel for the Petitioner Shri Sandeep Kumar S submitted an email seeking an adjournment stating that he has been detected Covid Positive. Covid Certificate has also been attached with the email. Learned counsel for R1 to R3 Shri Vivek Kumar expressed willingness to appear through VC.

Adjourned to 31.05.2021.

15 CP/54/KOB/2020

Learned counsel for the petitioner Shri Sabu P Joseph as well as learned counsel for R2 Shri Yogindunath S appeared through VC.

Shri Yogindunath submitted that he has filed an IA to set aside the exparte order against R1 passed by this Tribunal on 18.03.2021. But registry reported that the said IA is defective. Shri Yogindunath may rectify the defects within a week.

It appears from records that during the hearing on 18.03.2021 R2 sought two weeks' time to file the counter, which was allowed. But no counter has yet been filed by R2. Shri Yogindunath submitted that filing of the counter has not been done due to Covid 19 affected to R2. But R2 has not submitted any medical certificate in this regard. Shri Yogindunath submitted that he may be permitted to file the counter within 10 days. The request of the learned counsel for R2 is granted provided the R2 pays the costs of **Rs.5,000/- (Rupees five thousand only)** to the **"PM Cares Fund"** within one week from today and submit proof of payment along with the Counter Affidavit before the next date of hearing.

List on 25.05.2021 for hearing. Registry is directed to issue copy of this order to the learned counsel of the parties through email.

16 CP/10/KOB/2021

Learned counsel for the petitioner Shri Pranoy Harilal appeared through VC. Sr Advocate Shri P.Viswanathan appeared for R1 & R4. Learned PCS for R2 & R3 Shri PP Zibi Jose also appeared through VC.

Shri Zibi Jose submitted that counter has been filed for R2 and R3 on 7.04.2021. R1 has also filed the counter. Learned counsel for Respondents 1 and 4 stated that the counter filed by R1 will be followed by him for R4 also.

Registry reported that the counter filed by R2 & R3 is defective on the ground that authorisation of R2 has not been attached along with the counter. However, the bench observed from page 2 of the counter that the counter affidavit is filed by R3 and also on behalf of R2. Therefore, there shall be no cause to show the counter as

defective. Therefore, the defect noted is waived and the counter filed by R2 and R3 is taken on record.

Shri Pranoy Harilal submitted that he will file rejoinder within two weeks. He may do so positively within two weeks. **List on 27.05.2021.**

17 IA/23(KOB)/2020 IN TCP/49/KOB/19

Learned counsel for the applicant / R2 Ms Jolly John appeared through VC. R1 Shri T.C.Alexander submitted an email seeking an adjournment stating that his advocate got infected with Covid and hence could not proceed forward.

It appears that pleadings are complete in the Main CP. Hence the question of maintainability raised in this IA will be considered along with the hearing of the main CP.

List on 03.06.2021.

18 TIA/130/KOB/2020 (CA/13/2009(CLB)) IN TCP/49/KOB/19

The applicant Shri T.C.Alexander submitted an email seeking an adjournment stating that his advocate got infected with Covid and hence could not proceed forward. Learned counsel for R3 Ms Jolly John appeared through VC. Learned counsel for R4, R6 & R9 Shri Jazil Dev Ferdinanto also appeared through VC.

Adjourned to 03.06.2021 for hearing

19 TCP/49/KOB/2019

The Applicant Shri T.C.Alexander submitted an email seeking an adjournment stating that his advocate got infected with Covid and hence could not proceed forward. Learned counsel for R2 & R3 Ms Jolly John appeared through VC. Learned counsel for R5 Shri Jazil Dev Ferdinanto also appeared through VC.

Adjourned to 03.06.2021 for hearing

20 IA/217/KOB/2020 IN TCP/26/KOB/2019 (CP/716/19)

None has appeared for the applicant. However, learned counsel for respondents Smt,Manjula Devi appeared for respondents.

This is a part heard case. It appears from records that in the hearing on 26.03.2021 the learned counsel for the petitioner Shri Niranjana Sudhir sought an adjournment for the reason of electricity failure in his office premises. However the learned PCS for

R1 to R6 has argued and concluded on that day. The case is awaiting for the arguments of the petitioner. The petitioner is given the last opportunity to argue the matter on the next date of hearing, in default, orders will be passed according to the available pleadings and hearing of the respondents.

List on 21.05.2021.

21 TCP/26/KOB/2019 (CP/716/19)

None has appeared for the Petitioner. However, learned counsel for respondents Smt Manjula Devi appeared for respondents.

This is a part heard case. It appears from records that in the hearing on 26.03.2021 the learned counsel for the petitioner Shri Niranjan Sudhir sought an adjournment for the reason of electricity failure in his office premises. However the learned PCS for R1 to R6 has argued and concluded on that day. The case is awaiting for the arguments of the petitioner. The petitioner is given the last opportunity to argue the matter on the next date of hearing, in default, orders will be passed according to the available pleadings and hearing of the respondents.

Since this is an 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 21.05.2021 as part heard. Registry is directed to issue copy of this order to the learned counsel of the parties through email.

22 CA/55/KOB/2020

Learned counsel for the applicant Shri Bijoy P. Pulipra as well as learned counsel for R2 Shri Ponnan Alex appeared through VC.

It appears from records that though Vakalat has not been filed for R1, counter has been filed for R1 and R2. Shri Ponnan Alex submitted that he will file the Vakalat for R1 also before the next date fixed.

List for further arguments **on 19.05.2021 as part heard.**

23 IA/79/KOB/2020 IN CP/127/KOB/2019

Learned counsel for the applicants Shri Bijoy P. Pulipra as well as learned counsel for R1 to R3 Shri S.Eshwar and learned PCS for R5 Shri Zibi Jose appeared through VC.

Adjourned to **27.05.2021 at 2.30 pm** for hearing (**part heard**)

24 IA/92/KOB/2020 IN CP/127/KOB/2019

Learned counsel for the applicant Shri S.Eshwar appeared through VC. Learned counsel for R1 & R2 Shri Bijoy P. Pulipra, learned counsel for R3 Shri Gokul R and learned counsel for R4 Shri Zibi Jose appeared through VC.

Adjourned to **27.05.2021 at 2.30 pm for hearing (part heard).**

25 CP/127/KOB/2019

Learned counsel for the petitioners Shri Bijoy P. Pulipra appeared through VC. Learned counsel for R1 to R3 Shri S. Eshwar, learned counsel for R4 Shri Gokul R and learned counsel for R5 Shri Zibi Jose appeared through VC.

Adjourned to **27.05.2021 at 2.30 pm for hearing (part heard).**

26 IA/203/KOB/2020 IN CP/02/KOB/2020

Learned Senior counsel for the applicant Shri Ramji Srinivasan and learned senior counsel for the respondents Shri Aravind Pandian appeared through VC. List on 01.07.2021 at 2.30 pm.

27 CP/02(KOB)/2020

Learned senior counsel for the petitioner Shri Aravind Pandian and learned senior counsel for the respondents Shri Ramji Srinivasan appeared through VC. Shri Ramji Srinivasan stated that the appeal pending before the NCLAT is now stand posted to 14.6.2021 and that this matter may be adjourned to a date in July. Learned senior counsel for the petitioner Shri Aravind Pandian stated that there is a Madras High Court judgment that all the matters relating to South India have to be heard at the NCLAT Bench at Chennai and that the matter may be listed before 14.6.2021 and prayed for listing the Company Petition at the earliest. Since the NCLAT matter is now stand posted to 14.6.2021, this CP is posted to 01.07.2021. In case the NCLAT dispose of the appeal any date before 14.6.2021, parties are at liberty to approach before this Tribunal for an early hearing of the matter. **List on 1.7.2021 at 2.30 pm.**