

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 22nd April 2021

1 CP/20/KOB/2021

Learned counsel for the petitioner Shri Ameerul Millath appeared through VC. Advocate Sukumar Nainan Oommen also appeared through VC stating that he represents R1, R2 and R5. He also stated that Advocate Sherry Samuel Oommen will represent R3 & R4. But no vakkalath has been filed for R1 to R5.

This is a Company Petition filed by Smt. Rekha Singhal under Section 59, 213, 241 and 242 of the Companies Act, 2013.

The Petitioner submitted that she is a shareholder of the 1st Respondent Company as admitted by the Respondent -1 company in their Company communication dated 01 August 2020 intimating that she is holding 52,500 equity shares of Rs.10/- each fully paid which comprises 17.50% of the total Paid up capital of the First Respondent company viz Rs.30,00,000/ comprising of 3,00,000 equity shares of Rs.10/- each. The same is substantiated as per the list of shareholders attached to the Annual Return of the company for the year 2018-2019 filed with the Registrar of Companies, (ROC) Kerala.

It is stated that the Petitioner is the wife of the presently estranged third Respondent and had advanced a sum of Rs.2,00,000/- vide Demand draft bearing No.281650 dated 31.10.2002 drawn on Bank of Baroda payable to Respondent No.1 Company and further Rs.5,00,000/- vide cheque bearing No.195541 dated 18.12.2004 drawn on ABN Amro Bank, payable to the Respondent No. Company under compelling circumstance. Thereby a total of Rs.7,00,000/ was forced to be paid to the Respondent No.1 company because of the pressure applied by the above respondents. It can be seen from the audited Balance Sheet and Profit and Loss Account of the Respondent No.1 company for the period ended 31st March 2006 that an amount of Rs.5,25,000/- is shown as unsecured loan from Directors and Relatives. However, as the Petitioner was married to the third Respondent, the Petitioner was not in a position to question the acts of the Respondents. When the relationship soured beyond repair, the Petitioner had instructed her Advocate Jyothi, Bangalore to issue a notice dated 18.07.2020 to the Board of Directors of the company informing that as per the records with the Registrar of Companies, Kerala, the Petitioner had been shown as shareholder of the company holding 52,500 equity shares although the Petitioner had paid Rs.7,00,000/- as referred to above which was shown as unsecured loan to the company in its Balance Sheet. The notice referred to Rs.7,00,000/- paid to the company but only shares worth Rs.5,25,000/-

comprising 52,500 equity shares of Rs.10/- each have been allotted. No clarification was given as to Rs.7,00,000/- was accounted. The Petitioner was orally made to understand that the share certificates for the 52,500/- was issued to her when later on it was ascertained that no share certificates were issued. It was in the light of the misleading statement made orally by the Respondent No.2 and 3 that the Petitioner had requested for duplicate share certificate through her Advocate and also for the account with respect the amount of Rs.7,00,000/- paid by her to the company. Obviously, the Respondents had without an application being made by the Petitioner had issued equity shares for the amount extended as unsecured loan to the company and as reflected in the above Balance sheet of the company. The Respondent Company replied that shares worth Rs.5,25,000/- were issued to the Petitioner as only such amount was shown in the credit of the Petitioner as per the books of account of the company. The reply of the Company was silent as to how the sum of Rs.1,75,000/- out of the total amount of Rs.7,00,000/- was dealt with. The Petitioner never received any notice convening any Annual General Meetings or Extra Ordinary General Meetings till date. The petitioner also never received any dividend from the company in respect of the shares held in the company.

The reply of the company referred to above and returns filed by the company with the Registrar of Companies, Kerala showed that the Petitioner holds shares worth 5,25,000/- numbering 52500 equity shares of Rs.10/- each. However, in a Criminal Petition filed before the Hon'ble High Court of Karnataka, the Respondents have taken a contradictory stand that all the shares held by the Petitioner were transferred to two of the Respondents as per the transfer deed executed by the Petitioner.

According to the petitioner this is absolutely false statement and any document fabricated for the purpose is forged. Further no consideration has been paid for such transfer and hence such purported transfer is ab initio void. The act of the Respondents is ample proof that by hook or crook, the Respondents herein are bent upon making out a case that the Petitioner has no investment in the Respondent No.1 Company either as equity shares or as unsecured loan. The present position taken by the Respondents is directly opposite to the position explained in their letter dated 01 August 2020 wherein they admit that the Petitioner is holding 52,500 equity shares of Rs.10/- each in the Company. It is also in variance with the disclosure made in the Annual Return made up to 30.09.2019 filed with the Registrar of Companies, Kerala wherein the Petitioner is shown in the shareholders annexed that she is holding 52,500 equity shares in the company. All of a sudden, they have taken a position which is absolutely false, knowing it to be false and contrary to the position as revealed from the records of the Company to the effect that the Petitioner had sold her shares and transferred it to others. Though the fabricated transfer form shows has been executed on 29th November 2012 and consideration in one form has been shown as Rs.1,75,500/- and in the other as Rs.3,49,500/-, the fact is that no such transfer has been made nor any such consideration received. In any case if such a transfer had indeed taken place in the year 2012 as contended, the company would not have shown the Petitioner in its list of shareholders till the year 2019 in various documents filed with the Registrar of Companies. Further, by producing copies of the share certificates before the Hon'ble High Court of Karnataka, it is proved that the Respondents have never forwarded the share certificates to the Petitioner. The Respondents have contended before the Hon'ble High Court of

Karnataka in the above proceedings that the share certificate No.014 for 52400 shares has been split into share certificate No.18 for 34950 shares and 019 for 17550 shares when in fact the Petitioner has never asked for splitting the shares or transferring the shares. The Petitioner was holding shares in Folio No 09 as per all the records filed with the Registrar of Companies, Kerala and it is not known as to how it has become 014. This is absolutely a case of a serious act of fraud committed by the Respondents for which they are criminally liable. It amply proves that the Respondents 2-5 are persons who have a criminal mind, with least respect to the law of the land and even do not bother to fabricate documents even if they contradict their own documents filed with the Registrar of Companies, Kerala. From the above acts of the Respondents herein, it has been proved beyond doubt that they have committed acts of fraud against the Petitioner, as defined under Section 447 of the Companies Act, 2021, which includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

Therefore, according to the petitioner, a prima facie case has been made out that the company's affairs are being conducted in a manner prejudicial or oppressive to the Petitioner who is a member of the company and prejudicial to public interest and in a manner prejudicial to the interests of the company and that a case of fraud and false statement has been made out against the directors of the company which along with other acts makes out a case to justify the making of a winding of the company on the ground that it is just and equitable that the company should be wound up, but however, winding up the company would unfairly prejudice the interest of the Petitioner and hence the Petition under Sections 59, 231 and 241-242 read with Section 244 of the Companies Act, 2013 seeking appropriate relief.

Hence the petitioners filed this CP seeking 7 main reliefs along with 12 interim reliefs. During the argument, the learned counsel for the petitioner insisted to allow at least the interim relief (b) of the petition viz; to declare that the Petitioner is holding 52500 equity shares of Rs.10/- each in the R1 Company and that any action taken to divest the Petitioners shares so held on whatever basis is ab initio null and void.

Shri Sukumar Nainan Oommen vehemently opposed the interim relief sought by the petitioner. He submitted that allowing the interim relief (b) sought in the petition will amount to disposing of the case as the said dispute is the main essence of the case and other prayers are its derivatives. He also submitted that the petition as a whole is not at all maintainable.

I have heard the learned counsel for both sides and also perused the records attached with the Petition. **Company Petition is admitted.** After taking into consideration of the materials on record, I think it would be justified to pass order on the interim reliefs sought by the petitioner only after perusal of the counter.

The petitioner is directed to issue fresh notice to the respondents 6 & 7 through Registered Post with A/D or Speed Post and submit proof of service (A/d card or

Postal Track Report) with an affidavit before the next date fixed. Registry is also directed to issue notice to R6 & R7 through email. Respondents are directed to file their counter along with the Vakkalath within two weeks serving copy of the counter to the applicant, who may file rejoinder, if any, within a week thereafter.

List on 02.06.2021 for hearing.

2 CA/10/KOB/2021

Learned counsel for the Applicant Shri Vinod PV appeared through VC.

This is an Appeal filed by the Appellant for restoring the name of the Appellant Company in the Register of ROC. The documents submitted by the Appellant in his Appeal include the following:

- (i) Master Data
- (ii) Memorandum of Association and Articles of Association
- (iii) Latest Income Tax Return acknowledgement for the year 2020-21
- (iv) Annual return for the year ended 31.03.2016

Admitted. Registry is directed to issue notice to ROC through special messenger for his report. **List on 17.05.2021.**

3 IA(IBC)/76/KOB/2021 IN IBA/01/KOB/2020

Learned counsel for the RP Shri Vinod PV appeared through VC.

This is an application filed by the RP under section 12(2) of IBC 2016 with the prayer for extending the time period of CIR Process of the CD for a further period of 90 days. Heard the RP and perused the records. **IA(IBC)/76/KOB/2021 IN IBA/01/KOB/2020 is disposed of vide separate sheets.**

4 IA(IBC)/77/KOB/2021 IN IBA/17/KOB/2020

Learned RP Shri K.T. Mathew appeared through VC.

This is an IA filed by the RP under Section 33(2) of IBC 2016 for liquidation of the Corporate Debtor.

I have heard the RP and also perused the whole records. It appears from the minutes of the sixth meeting of COC held on 25.03.2021 that the COC has resolved to liquidate the Corporate Debtor. But the COC has not suggested any name as the Liquidator, even though the RP stated that he has been approved by COC for appointment as liquidator.

Therefore, the Applicant is directed to convene a meeting of COC and submit a fresh resolution of the COC clearly stating the name of the Liquidator and file the same

with an affidavit before the next date fixed. If no name is suggested by the COC, this Tribunal will appoint a liquidator from the approved list of IBBI.

List on 19.05.2021.

5 REPORT/24/KOB/2021 IN IA/153/KOB/2020 IN CP/08/KOB/2020

Vide order dated 26.02.2021 in IA/153/KOB/2020 in CP/08/KOB/2020 Shri Ajithkumar was appointed to conduct the independent cost audit of the stock and records of the R5 Company M/S Lamsy Enterprises Pvt Ltd as on 15.01.2019.

This is the Report submitted by Shri Ajithkumar. In his report he stated that the on physical verification, it is confirmed that the Physical stock does not match with stock report given by the software. The discrepancies noted in the physical verification have also been pointed by the independent cost auditor. According to him, finding the mismatches in stock records and physical verification some detailed information like the copy of Tran-1 filed for GST, GST returns were required to them. But no reply has been received to him until now. Without these informations, it is impossible for him to compute the stock valuation as on 15.01.2019.

The report/statement submitted by Shri Ajithkumar is **taken on record**. Registry is directed to place the report in the appropriate file.

6 REPORT/25/KOB/2021 IN IA/153/KOB/2020 IN CP/08/KOB/2020

Vide order dated 26.02.2021 in IA/153/KOB/2020 in CP/08/KOB/2020 Shri P.N.Krishnan Mani & Company, Chartered Accountants were appointed to conduct the independent cost audit of the books of accounts and financial statements of the R5 Company M/S Lamsy Enterprises Pvt Ltd.

This is the report submitted by the above Chartered Accountants. The report submitted by P.N.Krishnan Mani & Company is **taken on record**. Registry is directed to place the report in the appropriate file.

7 REPORT/26/KOB/2021 IN IBA/25/KOB/2020.

This is the report submitted by the IRP regarding constitution of COC in the matter of CIR process against the CD M/s. Platino Classic Motors India Pvt Ltd. **The report is taken on record**. Registry is directed to place the report in the appropriate file.

8 REPORT/27/KOB/2021 IN IBA/25/KOB/2020

Learned IRP Shri Sathiq Buhari appeared through VC.

This is the report submitted by the IRP regarding list of creditors in the matter of CIR process against the CD M/s. Platino Classic Motors India Pvt Ltd. The report is taken on record. Registry is directed to place the report in the appropriate file.

9 REPORT/28/KOB/2021 IN MA/476/2018 IN CP/660/IB/2017

This is a quarterly Report submitted by the Liquidator for the quarter ended December 2020 in the matter of M/s. Nife Fire Systems Private Ltd (under liquidation). **The report is taken on record.** Registry is directed to place the report in the appropriate file.

10 REPORT/29/KOB/2021 IN IA/129/KOB/2020 IN TIBA/07/KOB/2019

Learned Liquidator Shri Jasin Jose appeared through VC. This is a quarterly status report submitted by the Liquidator in the matter of Sargam Builders Pvt.Limited. I have perused the report. The **Report is taken on record.** Registry to place it on appropriate record.

11 IBA/27/KOB/2020

No response from both the parties. It is noted that the Hon'ble High Court of Kerala vide Judgement dated 24.3.2021 in WP© No.28581/2020 has stayed all further proceedings in this IBA for a period of three months from 24.03.2021.

Hence adjourned to 02.07.2021.

12 TCP/116/KOB/19

Learned counsel for the Petitioner Shri A.D.Shajan as well as learned counsel for R1 Smt. Sindhu Santhalingam sought an adjournment for filing the Argument Notes.

Adjourned to 03.06.2021 for hearing.

13 TCP/50/KOB/2019

No response from the petitioner. Learned counsel for R1 & R2 Smt.Sindhu Santhalingam sought an adjournment for filing the Argument Notes.

Adjourned to 03.06.2021 for hearing.

14 CP/47/KOB/2020

Advocate Renjith Rajppan submitted an email seeking an adjournment stating that he proposes to file the Vakkalath for the Petitioner in this case. Learned PCS for R1 & R2 Shri P.P.Zibi Jose expressed willingness to appear through VC.

Adjourned to 4.06.2021.

15 CP/48/KOB/2020

Advocate Renjith Rajppan submitted an email seeking an adjournment stating that he proposes to file the Vakkalath for the Petitioner in this case. Learned PCS for R1 & R2 Shri P.P.Zibi Jose expressed willingness to appear through VC.

Adjourned to 4.06.2021.

16 CP/49/KOB/2020

Learned PCS for the petitioners Shri Vivek Kumar as well as learned counsel for R1-R4 Shri Terry V. James appeared through VC.

Today the case is posted for the counter of the respondents. Shri Terri V. James submitted that he is unable to file the counter since he has not yet been provided the copy of the Company Petition.

It appears from records that vide order dated 10.02.2020 the respondents were directed to maintain the status quo as of that day with regard to the properties and shareholding pattern of the R1 Company until further orders. In the very same order the petitioners were directed to issue fresh notice to the respondents through email and Registered Post with A/d and submit proof of service with an affidavit before the next date fixed.

Vide order dated 12.03.2021 the petitioners were again directed to serve copies of the Company Petition to the learned counsel for the respondents. Shri Terry V. James today submitted that he has not yet been provided with the copy of the Company Petition and hence unable to file the counter in the case. He also submitted that the petitioners are trying to drag the matter after obtaining the status quo order passed by this Tribunal.

In view of the fact that even after repeated orders of this Tribunal the petitioners have failed to serve the copy of the petition to the respondents, **the interim Order passed by this Tribunal on 10.12.2020 in CP/49/KOB/2020 with regard to the direction given to maintain the status quo as on that day regarding the properties and shareholding pattern of the 1st Respondent Company is hereby lifted.**

The petitioners are directed to serve copy of the petition to the learned counsel of the Respondents Shri Terry V. James and submit proof of service (Postal Track Report or A/d Card) with an affidavit within a week. The respondents are directed to file the counter before the next date fixed.

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

List on 04.06.2021.

17 CP/02/KOB/2021

Learned counsel for the petitioner Shri P.Sanjay appeared through VC. Learned counsel for R1 Shri Sherry Samuel Oommen, learned counsel for R2 & R3 Shri Sukumar Nainan Oommen, learned counsel for R5 Shri PP Zibi Jose and learned counsel for R6 Shri Praful appeared through VC. None has appeared for R4.

Shri Sanjay submitted that vide order dated 26.03.2021 this Tribunal has given the following directions:

- (I) Respondents 1 and 2 are directed to produce complete details pertaining to the long-term loans and advances shown in Annexure A9 & A10 together with interest charged / received so far, along with details of action taken if any, for recovery of the said amounts to the R1 Company within 3 weeks.
- (II) R1 and R6 are also directed to produce records to prove consent for transfer of 4102 shares of Radha Ballabh Gupta HUF into the personal name of Radha Ballabh Gupta and of consideration passed, if any, for such transfer within three weeks.

However, the respondents have not complied with the above directions till date.

On the other hand, Shri Sukumar Nainan Oommen submitted that the petition itself is not maintainable.

Shri Zibi Jose submitted that R1 to R3 have filed an additional reply without permission of this Tribunal. He also submitted that the copy of the said additional reply has not yet been served to him. Registry is directed to verify and report whether additional reply can be accepted without leave of the court. However, since this additional reply has already been accepted, the respondents are directed to serve a copy to all the parties.

The Bench observed that the question of maintainability in this CP can be considered at the time of final hearing. The respondents are directed to comply the order dated 26.03.2021, within a week, in default, law will take its own course.

List on 25.05.2021 for hearing.

18 CP/128/KOB/2019

Learned counsel for the Petitioners Shri Arun Babu as well as learned counsel for the respondents 1 to 3 Shri Philip Mathew appeared through VC.

Today the case is posted for final hearing. Vide order dated 19.03.2021 both the parties were asked to file their settlement proposal, if any.

Shri Philip Mathew submitted that R1 to R3 are willing to purchase the entire shares of the petitioners for an amount of Rs.18,00,000/-. Shri Arun Babu submitted that the petitioners are considering the proposal of the respondents and sought a short adjournment to make a decision in the matter.

It appears from records that pleadings are complete in this case. Hence next date is fixed for final hearing. Before that date both the parties are directed to submit the settlement Memo / Argument brief.

The parties may bear in mind that this case cannot be prolonged and **hence there shall be no further adjournment. List on 28.05.2021 for final hearing.**

19 CP/44/KOB/2020

Learned counsel for the Petitioners Smt. Rema Smrithi as well as learned counsel for R1 to R3 Shri Dhiren R. Dave appeared through VC.

It appears from records that even though counter was filed in Feb 2021, rejoinder has not yet been filed. Smt. Rema Smrithi sought one week time to file the rejoinder. She may do so positively within a week.

It is noted that though notice was duly served to R4 & R5 they have neither filed the counter nor appeared through video conferencing. **Therefore R4 & R5 are hereby set ex parte.** R6/ROC has also not taken any step to defend the case. Hence it is presumed that R6/ROC has nothing to counter.

List on 20.5.2021 for final hearing.

20 IA/26/KOB/2019 IN CP/74/KOB/2019

Learned counsel for the applicant Shri Philip Mathew sought an adjournment till the disposal of the appeal filed in this matter before NCLAT. Learned counsel for other parties expressed willingness to appear through VC.

Adjourned to 04.06.2021.

21 IA/47/KOB/2020 IN CP/74/KOB/2019

Learned counsel for R2 Shri Philip Mathew sought an adjournment till the disposal of the appeal filed in this matter before NCLAT. Learned counsel for other parties expressed willingness to appear through VC.

Adjourned to 04.06.2021.

22 CP/74/KOB/2019

Learned counsel for the Petitioner Shri Philip Mathew sought an adjournment till the disposal of the appeal filed in this matter before NCLAT. Learned counsel for other parties expressed willingness to appear through VC.

Adjourned to 04.06.2021.