

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

### **Daily Orders – Draft**

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

**Date: 24<sup>th</sup> March 2021**

**1 CP/115/KOB/2019**

None has appeared for the parties. Vide order dated 25.02.2021 this case was Reserved for Orders on 01.04.2021. But on verification of the records, it is seen that the Petitioner has not yet produced the financial statements for the last five years, which are essential documents in this case. ROC has also not yet filed his statement in this matter. The petitioner is therefore directed to file the financial statements for the last five years. ROC may also file his statement/report within 5 days. **List on 01.04.2021 (to be spoken to).**

Registry is directed to issue copy of this order to the Petitioner as well as to the ROC through email/by hand.

**2 CP/19/KOB/2021 with Caveat/7/KOB/2021**

Learned counsel for the Petitioner Shri Philip Mathew appeared through VC. Smt. Manjulla Devi, appeared through VC stating that she represents R1 to R7. But she has not filed the Vakkalath. She may file the vakkalath before the next date fixed. Shri Mohammed Hashim, who appeared for the Caveator/R2 stated that he follow with the arguments made by Smt. Manjulla Devi, Advocate

The Petition is filed by the Petitioner in his capacity as a Designated Partner/Partner under Section 63 and 64(f) of the Limited Liability Partnership Act, 2008 to wind up the 1st Respondent-LLP Firm on just and equitable grounds. The Respondent-Firm was incorporated as a Limited Liability Partnership Firm on 06/09/2016.

The petitioner submitted that after the incorporation of the 1 Respondent-Firm, the then Partners entered into an agreement on 09/09/2016 which is known as Original LLP Agreement. Subsequently, on 18/01/2018, the Petitioner was admitted as a Designated Partner under a bilateral Agreement known as Supplementary Agreement/Partner Admission Agreement and advanced an unsecured loan of Rs.38,53,000/- to the 1st Respondent-Firm. One of the existing Designated Partners, by name, Heeralal .V. Balaraman retired from the 1st Respondent-Firm on 14/11/2018 by a Retirement Deed and the 2nd Respondent and the Petitioner became the only partners of the 1st Respondent-Firm and they also acted as Designated Partners by virtue of the existing Agreements. On 11/01/2019, a Supplementary Partner Admission Agreement was entered into with the

Respondents No. 3 to 6 who are the family members of the 2nd Respondent and the Petitioner with three partners from one family belonging to the 2<sup>nd</sup> Respondent including himself and three partners from the family of the Petitioner including himself.

The petitioner further submitted that the capital contribution to the 1st Respondent Firm was kept at the ratio of 51:49 between the 2nd Respondent's side and the Petitioner's side. The 1st Respondent-Firm functioned initially as a joint venture between two families. But later, the 2nd Respondent started another LLP with his father in law, Praseeth Kumar, in the very same building where the 1st Respondent-Firm functioned and started siphoning off the funds and income of the 1<sup>st</sup> Respondent-Firm and diverting his attention for the growth of the newly created LLP under the name of ATELIERZ3D INDIA LLP. This was objected to by the Petitioner and the relationship between the partners, 3 partners, namely, Respondents No.2 to 4 on one side and the Petitioner and the Respondent No.5 and 6 on the other side came under severe strain leading to total loss of trust and mutual confidence between the partners which is essential for the smooth running of the 1<sup>st</sup> Respondent-Firm. Finally, the 2nd Respondent engineered upon an evil design to oust the Petitioner from the status of Designated Partner in violation of the Partnership Admission Agreement entered into between the 1st Respondent-Firm and the Petitioner. The result of ouster of the Petitioner led to the total exclusion of three partners on the side of the Petitioner including himself from the business of the 1st Respondent-Firm in which the Petitioner made substantial investments of his hard-earned money from the employment that he had in Dubai and left to join the 1st Respondent-Firm as a Designated Partner. The partnership that existed between the two families belonging to the Petitioner and the 2nd Respondent collapsed with the ouster of the Petitioner from the status of Designated Partner on 12/01/2021 and appointed two partners belonging to the side of the 2nd Respondent as Designated Partners by taking the total control of the management of the Respondent-Firm, without giving any representation to the partners on the side of the Petitioner while they have got 49% stake in the 1<sup>st</sup> Respondent-Firm and as per the understanding that existed between the two groups to have one Designated Partner from each side. Since there is a total upset in the existing pattern of running the affairs of the 1st Respondent-Firm by hijacking the management of the 1<sup>st</sup> Respondent Firm by the 2nd Respondent and his members of the family consisting of two partners, the survival of the 1st Respondent-Firm as joint venture between two families on partnership basis has become impossible and the deadlock continues. In these circumstances, the Petitioner seeks for winding up and dissolution of the 1st Respondent-Firm on just and equitable ground.

Along with the main reliefs the Petitioner has sought an interim relief viz: "to make an interim order immediately appointing a Special Officer/Commissioner to inspect the go-down and prepare an inventory of the existing stocks and by directing the 2<sup>nd</sup> respondent not to dispose of the stocks kept by the R1 Firm or to make any withdrawals from the Bank Accounts maintained by the R1 LLP until further orders".

Smt. Manjula Devi, who represented R2 to R7 vehemently opposed in granting the interim relief sought for in the CP. She submitted that the R1 Firm is the baby of R2

and the petitioner had not shown any interest in attending the office regularly. She sought two weeks' time to file a detailed counter in this CP.

I have heard the learned counsel for the petitioner as well as learned counsel for R2 to R7 and also perused the records attached with the Petition. I have also heard the learned counsel for the Caveator.

Considering the materials on record, I think it would not be justified to pass any order on interim relief without perusing the counter of the respondents.

The petitioner is directed to issue fresh notice to the respondents **except R2 to R7** through email and Registered Post with A/D / Speed post with A/D 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 the respondents **except R2 to R7** through email. Respondents are directed to file their counter within two weeks positively with a copy served to the petitioner in advance. The petitioner may file the rejoinder, if any, before the next date fixed.

Since the learned counsel for the Caveator has been heard, **Caveat/7/KOB/2021 stands disposed of.**

**List on 20.04.2021.**

### **3 IA(IBC)/68/KOB/2021 IN IBA/21/KOB/2019**

Learned counsel for the applicant Shri Sunil Shankar appeared through VC. Learned counsel for R1 Shri Akhil Suresh as well as learned counsel for R2 Shri Shivsankar R. Panicker also appeared through VC.

This IA is filed by the Financial Creditor M/s. South Indian Bank Ltd, who holds 89.12% voting right in the CoC, under Section 33(3) of IBC, 2016 for ordering liquidation of the CD/R1. The applicant alleged that the Resolution Applicant/R2 has failed to infuse funds as provided in the Resolution Plan. Hence, the FC filed this petition for liquidation of the CD.

Shri Akhil Suresh submitted that he has not yet received the copy of the IA.

The Applicant is directed to serve copy of IA to the learned counsel for the respondents, and the respondents are directed to file their counter within 10 days. The Applicant may file rejoinder, if any, before the next date fixed.

**List on 08.04.2021 for final hearing.**

4 IA(IBC)/19/KOB/2021 IN IA/191/KOB/2020 IN IBA/21/KOB/2019

Learned RP/Applicant Shri Jasin Jose as well as learned counsel for the respondents Shri Akhil Suresh appeared through VC. Heard both sides. **Reserved for orders. List for pronouncement of orders on 8.04.2021.**

5 IA/37/KOB/2021 IN IBA/21/KOB/2019

Learned counsel for the Applicant/Resolution Applicant Shri Shivsankar R. Panicker appeared through VC. Learned RP/R1 Shri Jasin Jose, learned counsel for R2/FC Shri Sunil Shankar and learned counsel for R3/CD Shri Akhil Suresh also appeared through VC. **List on 08.04.2021 for hearing**, before that date both the parties may file their written submissions.

6 IBA/46/KOB/2019

Learned counsel for the Financial Creditor Shri Sharad Kodianthara as well as learned counsel for the Corporate Debtor Shri Vijay V. Paul appeared through VC.

According to the NCLAT Order dated 16.03.2021 this Tribunal shall provide 'adequate opportunity' of hearing to the respective parties and to pass a reasoned speaking order on merits in a fair, just and dispassionate manner (dealing with all the contentions raised) and to dispose of the pending main Section 7 Application filed under the Insolvency & Bankruptcy Code, 2016 in IB No. IBA/46/KOB/2019 on the file of this Tribunal, of course uninfluenced and untrammelled with any of the observations made by the NCLAT.

It appears from records that the CD has not yet filed the counter. Learned counsel for the CD submitted an email seeking 3 weeks' time to file the counter. 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.** CD is therefore directed to **file the counter within a week positively** and the FC may file the rejoinder, if any, before the next date fixed.

**List on 05.04.2021 for hearing.** Registry is directed to issue copy of this order to the learned counsel of both parties through mail.

7 IBA/37/KOB/2020

Learned counsel for the Financial Creditor Shri Thomas P. Kuruvilla submitted an email seeking an adjournment stating that the arguing counsel Adv Diwakar Maheshwari has unavoidable personal inconvenience today. Learned counsel for the Corporate Debtor Shri Jithin Saji Issac expressed willingness to appear through VC.

The FC is directed to file his rejoinder, if any, before the next date fixed. List on **19.04.2021** for final hearing.

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

**8 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 R1 Shri Sharad Kodianthara appeared through VC. Heard both sides. **Reserved for orders. List for pronouncement of orders on 20.04.2021.** Before that date the learned counsel for the Respondent may file his further submissions, if any, in this IA.

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

Learned counsel for the Petitioners Shri Mohan Pulickkal as well as learned counsel for R2 to R4 Shri Sharad Kodianthara appeared through VC.

**Adjourned to 20.04.2021.**

**10 MA/209/KOB/2020 IN TCP/8/KOB/2019**

Learned counsel for the applicant Shri Kousik N. Sharma as well as learned Senior counsel for R2 to R4 Shri Ramakrishnan appeared through VC.

Shri Ramakrishnan submitted that the appeal filed vide CA(AT)/237/2020 in this matter is posted at NCLAT on 05.04.2021. **Hence, list on 28.04.2021 at 2.30 for hearing.**

**11 TIA/103/KOB/2020 IN TCP/08/KOB/2019**

Learned counsel for the applicant Shri Kousik N. Sharma as well as learned Senior counsel for R2 to R4 Shri Ramakrishnan appeared through VC.

Shri Ramakrishnan submitted that the appeal filed vide CA(AT)/237/2020 in this matter is posted at NCLAT on 05.04.2021. **Hence, list on 28.04.2021 at 2.30 for hearing.**

**12 TCP/8/KOB/2019**

Learned counsel for the applicant Shri Kousik N. Sharma as well as learned Senior counsel for R2 to R4 Shri Ramakrishnan appeared through VC.

Shri Ramakrishnan submitted that the appeal filed vide CA(AT)/237/2020 in this matter is posted at NCLAT on 05.04.2021. **Hence, list on 28.04.2021 at 2.30 for hearing.**

**13 TCP/11/KOB/2019**

Learned senior counsel for the Petitioner Shri Ramakrishnan appeared through VC. Learned counsel for R2, R3 and R5 Shri Kousik N. Sharma also appeared through VC.

Shri Ramakrishnan submitted that the appeal filed vide CA(AT)/237/2020 in this matter is posted at NCLAT on 05.04.2021. **Hence, list on 28.04.2021 at 2.30 for hearing.**

**14 CP/98/KOB/2019**

Learned counsel for the petitioner Shri Sukumar Nainan Oommen appeared through VC. Learned counsel for R1 & R2 Shri P. Sanjay and learned counsel for R4 Shri Zibi Jose also appeared through VC. None appeared for R3.

Vide order dated 23.02.2021 it was decided to take up the matters under Section 241-242 first. Registry reported that 241-242 matters are already posted on 31.03.2021.

**Therefore list this case on 27.04.2021.**

**15 CONTEMPT PETITION/08/KOB/2020 IN CP/99/KOB/2019**

Learned counsel for the Contempt Petitioner Shri Sukumar Nainan Oommen as well as learned counsel for the Respondent Shri P. Sanjay appeared through VC.

Vide order dated 23.02.2021 it was decided to take up the matters under Section 241-242 first. Registry reported that 241-242 matters are posted on 31.03.2021.

**Therefore list this case on 27.04.2021.**

**16 CP/99/KOB/2019**

Learned counsel for the Petitioner Shri Sukumar Nainan Oommen appeared through VC. Learned counsel for R1 & R2 Shri P. Sanjay and learned PCS for R3 Shri Zibi Jose also appeared through VC. None appeared for R4.

Vide order dated 23.02.2021 it was decided to take up the matters under Section 241-242 first. Registry reported that 241-242 matters are posted on 31.03.2021.

**Therefore list this case on 27.04.2021.**

**17 CP/100/KOB/2019**

Learned counsel for the Petitioner Shri Sukumar Nainan Oommen appeared through VC. Learned counsel for R1 & R2 Shri P. Sanjay and learned PCS for R4 Shri Zibi Jose also appeared through VC. None appeared for R3

Vide order dated 23.02.2021 it was decided to take up the matters under Section 241-242 first. Registry reported that 241-242 matters are posted on 31.03.2021.

**Therefore list this case on 27.04.2021.**

**18 CP/101/KOB/2019**

Learned counsel for the Petitioner Shri Sukumar Nainan Oommen appeared through VC. Learned counsel for R1 & R2 Shri P. Sanjay and learned PCS for R4 Shri Zibi Jose also appeared through VC.

Vide order dated 23.02.2021 it was decided to take up the matters under Section 241-242 first. Registry reported that 241-242 matters are posted on 31.03.2021.

**Therefore list this case on 27.04.2021.**

**19 CP/102/KOB/2019**

Learned counsel for the Petitioner Shri Sukumar Nainan Oommen appeared through VC. Learned counsel for R1 & R2 Shri P. Sanjay and learned PCS for R3 Shri Zibi Jose also appeared through VC. None appeared for R4

Vide order dated 23.02.2021 it was decided to take up the matters under Section 241-242 first. Registry reported that 241-242 matters are posted on 31.03.2021.

**Therefore list this case on 27.04.2021.**

20 CP/103/KOB/2019

Learned counsel for the Petitioner Shri Sukumar Nainan Oommen appeared through VC. Learned counsel for R1 & R2 Shri P. Sanjay and learned PCS for R3 Shri Zibi Jose also appeared through VC.

Vide order dated 23.02.2021 it was decided to take up the matters under Section 241-242 first. Registry reported that 241-242 matters are posted on 31.03.2021.

**Therefore list this case on 27.04.2021.**

21 CP/53/KOB/2020

Learned PCS for the Petitioner submitted an email seeking an adjournment stating that since the petitioner is an NRI certain documents are to be attested to file the rejoinder. Learned PCS for R1 to R3 Shri Vivek Kumar expressed willingness to appear through VC. **List on 21.04.2021.** Before that date the rejoinder, if any, may be filed.

22 CA/55/KOB/2020

Learned counsel for the Applicant Shri Bijoy P. Pulipra as well as learned counsel for R2 Shri Ponnan Alex expressed willingness to appear through VC. But due to paucity of time, **adjourned to 21.04.2021 (Part Heard).**

23 CP/31/KOB/2020

Learned Senior Counsel for the Petitioner Shri Udaya Holla as well as the learned Senior counsel for R2 to R6 Shri Joseph Kodianthara appeared through VC. When the matter was taken up for hearing today, learned Senior Counsel for both sides stated that there is a proposal to settle the matter out of court. Hence, they sought one month's time to report settlement, if any. List on **30.4.2021 at 2.30 pm** for hearing.