

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

### **Daily Orders – Draft**

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

**Date: 25<sup>th</sup> Feb 2021**

#### **1 IA/100/KOB/2020 IN TCP/22/KOB/2019**

Learned counsel for the Applicant Smt. Marian GM Tharakan and learned counsel for R3 & R7 Shri Sangeeth Joseph appeared through VC. None has appeared for other respondents. Orders pronounced. **IA/100/KOB/2020 IN TCP/22/KOB/2019 stands dismissed vide separate sheets.**

#### **2 IA/96/KOB/2020 IN CP/04/KOB/2020**

Learned counsel for the applicants Shri Bijoy P. Pulipra appeared through VC. Learned counsel for R1-R3 Dr. Ravichandran and learned counsel for R4 & R5 Shri Sankar P. Panicker also appeared through VC. Since CP/04/KOB/2020 has been dismissed vide separate order, this **IA/96/KOB/2020 IN CP/04/KOB/2020 is also dismissed.**

#### **3 CP/04/KOB/2020**

Learned counsel for the Petitioners Shri Bijoy P. Pulipra appeared through VC. Learned counsel for R1-R3 Dr. Ravichandran and learned counsel for R4 & R5 Shri Sankar P. Panicker also appeared through VC. Orders pronounced. **CP/04/KOB/2020 stands dismissed vide separate sheets.**

#### **4 IA/198/KOB/2020 IN CP/21/KOB/2020**

Since the order is not ready, **pronouncement of order is adjourned to 08.03.2021.**

#### **5 REPORT/16/KOB/2021 IN IA/26/KOB/2021 IN IBA/24/KOB/2020**

Learned RP Shri Mohanan TS appeared through VC. This is a status report filed by the RP attaching the Minutes of the Second Meeting of the Committee of Creditors held on 09.02.2021. I have thoroughly perused the report. **The report is admitted and taken on record.** Registry is directed to place the report in the appropriate file.

6 IA/01/2021 IN MA/05/KOB/2020 IN TIBA/1/KOB/2019

Learned Liquidator Shri Shawn Jeff Christopher appeared through VC. This is an IA filed by the liquidator with the prayer to direct the directors of the CD to file an affidavit before this Tribunal regarding the outstanding debts receivable in the name of the CD.

Vide order dated 04.02.2021 in this IA, the liquidator was directed to issue fresh notice with copy of this IA with all documents to the impleaded Respondent Nos 2 and 3, viz: Shri Reji Sivankutty and Shri Tinu Jose, and submit proof of service (A/d card or Postal Track Record) with an affidavit. In the very same order, the above impleaded R2 and R3 were also directed to file their counter in this IA within two weeks. Accordingly, the liquidator complied with the order and submitted the proof of service. But the R2 and R3 have neither taken steps to defend their case nor filed any counter.

The Learned Liquidator in this IA submitted that on commencement of the liquidation process, public announcement was made on 21.02.2020 and letters were sent to the Outstanding Debtors requesting remittance of the amount due to the Corporate Debtor. No response has been received by the liquidator till date. The Liquidator has significant hardship in identifying the number of outstanding debtors of the Corporate Debtor as there are inadequate disclosures in the audited financial statements of the Corporate Debtor.

The Liquidator submitted that on verification of the turnover of the corporate debtor, 'outstanding debtors' for the financial years 2015-2016 was Rs.8,21,760.95/-, 2016-2017 was Rs. 13,34,274.43/, 2017-2018 was Rs.18,81,508.42/. At the time of take over and as per the Information Memorandum, the suspended directors provided details of the total outstanding debtors along with breakup as Rs. 98,04,951.55/ (Sabkaa Payments Limited (Rs. 89,97,785/), Mobisoft Technology India Private Limited (3,40,320.38), Erixon Business Solutions Private Limited (2,18,923.88), GPR India Private Limited (1,01,306), Alive Teleservices Private Limited (67,661.88/-), Fusion India Project Management Private Limited (56,954.41/-), Airpegasus Private Limited (22,000/-)). However, no details or break-up to the balance of Rs. 18,81,508.42/-(i.e., balance dues from the 'outstanding debtors' according to the audited financial statement 31.03.2018 [financial year 2017-2018]) minus Rs. 8,07,166.55/-(i.e., balance dues from outstanding debtors (excluding invoice raised against Sabkaa Payments Limited for the financial year 2018-2019), as such invoice raised for the financial year 2018 2019, ought to have been reflected in the financial statement of 31.03.2019. Receivable as compared to the turnover was found significantly mismatching. Hence realisable 'outstanding debts' in favour of the Corporate Debtor are found divergent in comparison with the turnover and receivables to the Corporate Debtor.

According to the Liquidator, Sabkaa Payments Limited "Sabkaa" owes the Corporate Debtor Rs. 90,00,011.04/-. Sabkaa Payments Limited "Sabkaa" was registered as a Public Limited Company registered with Registrar of Companies, Delhi on 10.02.2016 vide CIN U72900DL2016PLC290846, having registered office of the company at LEVEL 15, EROS CORPORATE TOWERS, NEHRU PLACE, NEW DELHI New Delhi DL 110019. The directors of the company are, REJI SIVANKUTTY, TINU JOSE, ANIL ROY, REVATHYRADHAKRISHNAN. The Corporate Debtor, 'Achariya', holds 65.99 % (32,998 equity shares of Rs. 50 each) shareholding in Sabkaa Payments Limited. As per the audited financials of Sabkaa Payments Limited for FY 2016-17, it had obtained loan of Rs.1,09,550/- from Achariya Techno Solutions (India) Private Limited. The flow of funds cannot be traced in absence of books of accounts of the Corporate Debtor 'Achariya'. During the year 2018-19, it was noticed that Achariya had rendered SMS-Server maintenance services to Sabkaa Payments on account amounting to Rs. 90,00,011.04 The payment for which is due and receivable for this service rendered amounts to Rs. 90,00,011.04. This amount is realisable to the Corporate Debtor. As per S. 2(87) of the Companies Act, 2013, Sabkaa Payments Limited "Sabkaa" is the subsidiary of the Corporate Debtor since control and composition of Sabkaa Payments Limited "Sabkaa" is held and exercised by suspended directors of the Corporate Debtor and the Corporate Debtor holds control by more than one-half of the total voting power. As such, according to the Liquidator, the Corporate Debtor "Achariya" and Sabkaa Payments Limited "Sabkaa" should be a related party.

Other parties owe the Corporate Debtor are:

M/s Mobisoft Technology India Pvt Ltd	:	Rs. 3,40,320.38
M/s Erixon Business Solutions	:	2,18,923/-
M/s GPR India Private Limited	:	Rs. 1,01,306/-
Alive Tele Service Pvt. Ltd.	:	Rs. 67.661/-
Fusion India Project Management P Ltd	:	RS.56,954/-

This IA is therefore filed by the Liquidator in order to have clarity and certainty in respect to the 'outstanding debtors' from the suspended directors.

I have heard the learned liquidator. After perusal of the whole case records, I am of the view that the reliefs sought by the liquidator are to be allowed in the interests of justice.

The Impleaded Respondent No.2 Shri Reji Sivankutty and Respondent No.3 Shri Tinu Jose are therefore directed to file an affidavit before this Tribunal showing the outstanding debts receivable in the name of the Corporate Debtor with year wise break-up from financial years 2014-15, 2015-16, 2016-2017 and 2017-2018 along with the supporting documents and to explain in their affidavit the services rendered to Sabkaa Payments Limited in the name of the Corporate Debtor with year wise break up from Financial years 2016-2017, 2017-2018 and 2018-2019 within 7 days.

With the above direction **IA/01/2021 IN MA/05/KOB/2020 IN TIBA/1/KOB/2019 is disposed of.**

Registry is directed to issue copy of this Order to the respondents through email in addition to normal procedure.

**7 MA/190/KOB/2020 IN MA/45/KOB/2019 IN IBA/240/(IB)/2019/CHENNAI BENCH**

Learned counsel for the applicant Shri Alexander George and learned counsel for the Liquidator Shri A.G.Sathyanarayana expressed willingness to appear through VC. But due to network problem, link could not be given to them. Counter has been filed by the Liquidator. The Applicant sought time to file a rejoinder to the reply, within two weeks. Adjourned to **12.03.2021 for hearing. Upto 13.**

**8 MA/191/KOB/2020 IN MA/45/KOB/2019 IN IBA/240/(IB)/2019/CHENNAI BENCH**

**9 MA/192/KOB/2020 IN MA/45/KOB/2019 IN IBA/240/(IB)/2019/CHENNAI BENCH**

**10 MA/193/KOB/2020 IN MA/45/KOB/2019 IN IBA/240/(IB)/2019/CHENNAI BENCH**

**11 MA/194/KOB/2020 IN MA/45/KOB/2019 IN IBA/240/(IB)/2019/CHENNAI BENCH**

**12 MA/195/KOB/2020 IN MA/45/KOB/2019 IN IBA/240/(IB)/2019/CHENNAI BENCH**

**13 MA/196/KOB/2020 IN MA/45/KOB/2019 IN IBA/240/(IB)/2019/CHENNAI BENCH**

**14 IBA/38/KOB/2020**

Learned counsel for the Operational Creditor Shri Johnson Gomez as well as learned counsel for the Corporate Debtor Shri Nebil Nizar appeared through VC. Heard both sides. The learned counsel for CD may serve the Argument Brief submitted by him before this Tribunal to the learned counsel for OC within a week.

OC may submit his Argument brief (limiting to 5-6 pages) within two weeks. **Reserved for orders. List for pronouncement of orders on 18.03.2021.**

15 CP/115/KOB/2019

Learned counsel for the Petitioners Shri E.Narayanan appeared through VC. Heard and perused the records. **Reserved for orders. List for pronouncement of orders on 01.04.2021.**

16 CP/09/KOB/2020

Learned counsel for the Petitioners Shri Philip Mathew appeared through VC. During the last posting on 11.1.2021 the learned counsel for the Respondents Shri V.V.Surendran has sought an adjournment stating that the present Management of the R1 Company has been changed and hence he requires instructions in this case from the new Management. But today none has appeared for the respondents. Adjourned to **05.04.2021**.

17 CP/37/KOB/2020

Learned counsel for the Petitioner Shri K. Biju appeared through VC. None appeared for respondents even though link was provided. It appears from records that respondents have filed their counter. But registry reported that the same is defective due to non-notarisation of the affidavit. Shri Biju sought an adjournment to file the rejoinder. He may do so within a week. Respondents shall cure the defects within a week. List on **07.04.2021**. Registry is directed to issue copy of this order to the learned counsel of both the parties through email.

18 CP/43/KOB/2020

Learned counsel for the Petitioner Shri Shinu J. Pillai appeared through VC. Advocate Anzil Salim filed vakalath for R4 and appeared through VC and sought time to file counter.

It appears that notice was duly issued to R1 to R3. But the notice to R1 and R2 have been returned with the postal remarks "Unclaimed". Notice was duly served on R3, but no response from him. **Accordingly, R1 to R3 are hereby set ex-parte.**

R4 is directed to file his counter within two weeks. The Petitioner may file his rejoinder, if any, before the next date fixed. List on **08.04.2021**. Registry is directed to issue copy of this order to all the concerned through email.

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

Learned Liquidator Shri Jasin Jose intimated willingness to appear through VC. However, Learned counsel for Respondent Shri S.Easwan sought an adjournment for the reason that he is unwell today. Adjourned **to 10.3.2021**

20     **MA/207/KOB/2020 IN IA/129/KOB/2020 IN TIBA/07/KOB/2019**

Learned counsel for the applicant Shri S.Easwaran sought an adjournment stating that he is unwell today. Learned Liquidator Shri Jasin Jose intimated his willingness to appear through VC. No response from R2. **Adjourned to 10.3.2021.**

21     **TCP/81/KOB/2019**

Learned counsel for the Petitioners Shri Philip Mathew as well as learned counsel for the respondents Shri T.K.Bhaskar appeared through VC. Arguments of learned counsel for Respondents heard in part. List for further arguments on **2.3.2021 at 12.30 pm as Part Heard.**

22     **TCA/29/KOB/19**

Learned counsel for the Applicant Shri T.K. Bhaskar as well as learned counsel for R2 & R3 Shri Philip Mathew appeared through VC. Learned counsel for the applicant argued for some time. List for further arguments on **2.3.2021 at 12.30 pm as Part Heard.**