

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 26th March 2021

1 CA/35/KOB/2021 IN TCP/55/KOB/19 (C.P.172 OF 2019)

Learned counsel for the Applicant Shri Vijay V. Paul appeared through VC. Learned Senior counsel for R1 Shri Joseph Kodianthara and learned Senior Counsel for R2 to R5 Shri Udaya Holla also appeared through V C.

This CA is filed seeking permission of this Tribunal to appoint Shri Mithun Abraham Joseph as a Director in the R1 Company in place of Shri Reji Abraham. The applicants are R2 to R6 in the main CP. Shri Mithun Abraham Joseph is the son of the 1st Applicant / R3.

Learned senior counsel of R1 submitted that the 1st Applicant/R3 Shri Reji Abraham is critically ill with end stage pancreatic cancer and hence this CA is filed to appoint his son in his place in the R1 Company. Shri Udaya Holla submitted that he is opposing the CA and hence sought an short adjournment to file the counter/objection.

List on 05.04.2021 for hearing. Before that date, R2 to R5 are directed to file the counter/objection positively. **The parties may bear in mind that there shall be no further adjournment in this matter.**

2 CP/02/KOB/2021

Learned counsel for the petitioner Shri P. Sanjay appeared through VC. Advocate Nidhi Jacob, who represents R4, submitted an email seeking an adjournment stating that Shri Sukumar Nainan Oommen representing R2 & R3 is indisposed and has been advised rest and Advocate Sherry Samuel Oommen representing R1 is engaged in another matter. However, Advocate Nithish Shenoy appeared through VC stating that he represents Shri Sukumar Oommen in today's proceedings in this case. Learned counsel for R5 Shri PP Zibi Jose and learned counsel for R6 Shri Niranjan Sudhir also appeared through VC.

This case is posted for hearing today. It appears from records that vide order dated 25.01.2021 this case was posted on 18.02.2021 for hearing. But on 18.02.2021 adjourned to this date for hearing.

Today, the learned counsel for the petitioner Shri P. Sanjay during argument has insisted to pass orders on interim reliefs sought in items (1), (2) and (3) of the CP.

The fact of the case in brief is that:

The petitioner is one of the shareholders of the 1st respondent company who is seriously aggrieved by the widespread mismanagement, diversion of company funds and overall decimation of its financial health owing to the actions of 2nd respondent, its Managing Director. The 1st respondent company is among the several businesses owned and operated by the family of the applicant's husband, collectively called the RBG group. It is submitted that the petitioner's husband, the eldest son of the founding patriarch who took over the reins of the proprietorship business from his father was solely responsible to expand its operations and turn it into the multimillion business house it is today. Being an enterprise promoted by a traditional business family, the general arrangement was that all the businesses and assets including jewellery and bullion belonged to everyone in the family equally.

The petitioner further submitted that the 2nd respondent who was the last among the 3 brothers to enter the family business was unhappy with the ownership arrangement. The 2nd respondent manipulated the inter-personal relations among the family members to engineer a takeover and gain exclusive control over the 1st respondent company and several other key assets. He has been deliberately taking steps to oust the petitioner's husband out of the company board while ensuring that his close associates have board seats. The fact that the shareholding and ownership arrangement was an informal understanding made things easier for the 2nd respondent to wrest control. The dispute has led to series of legal proceedings which is pending before various forums including this Tribunal. The oppressive management policies and financial mismanagement by the 2nd respondent has destroyed shareholder value and left the company in a precarious position. Hence this Petition.

I have thoroughly perused the whole case records including Annexure 7 (Fixed Assets Schedule), Annexure 8 (Financial for the period 2008-2009 to 2019-2020), Annexure 9 (Long term loans and advances for the year 2014-15), Annexure 10 (Long term loans and advances for the year 2019-20) and the Reply Affidavit filed by R1 to R6 and also the Additional Reply Affidavit filed by R1 to R3. It appears from records that some amounts were transferred from R1 to R7 Company viz: Masters Aluminium India Private Limited, Vijayawada without sufficient reason.

Considering the hearing of the parties and materials on record, I think it would be justified to allow the interim prayers (1) and (2) sought in the CP. This Bench, therefore, pass the following interim order in this CP:

- (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.

This Bench is also of the view that allowing the aforesaid interim prayers will not in any way disrupt the day-to-day affairs of the R1 Company. **List on 22.04.2021 for hearing.** Before that date, learned counsel of the respective parties are directed to file their written submissions (limiting 5/6 pages).

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

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

Learned counsel for the applicant Shri Niranjana Sudhir as well as learned PCS for the R1 to R6 Dr K.S. Ravi Chandran appeared through VC. Shri Niranjana Sudhir sought an adjournment for the reason of electricity failure in his office premises. However, learned PCS for respondents insisted the hearing of the matter, as this matter is pending for a long and that a status quo order is in operation. Hence it was decided to hear the matter. Learned PCS started his arguments and concluded. List for further hearing on **21.4.2021 as PART HEARD.**

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

Learned counsel for the petitioner Shri Niranjana Sudhir as well as learned PCS for the R1 to R6 Dr K.S. Ravi Chandran appeared through VC. Shri Niranjana Sudhir sought an adjournment for the reason of electricity failure in his office premises. However, learned PCS for respondents insisted the hearing of the matter, as this matter is pending for a long and that a status quo order is in operation. Hence it was decided to hear the matter. Learned PCS started his arguments and concluded. List for further hearing on **21.4.2021 as PART HEARD.**

5 IA/150/KOB/2020 IN TCP/22/KOB/2019

Learned counsel for the applicant Shri C.S.Ajith Prakash appeared through VC. Learned counsel for R1, R7, R10 and R11 Smt. Marian GM Tharakan, and learned counsel for R8, R9, R12, R14, R15, R17 & R18 Ms Deepthi P also appeared through VC. List on 19.5.2021 at 2.30 pm for hearing.

6 TCP/22/KOB/2019

Learned counsel for the applicant Shri C.S.Ajith Prakash appeared through VC. Learned counsel for R1, R7, R10 and R11 Smt. Marian GM Tharakan, and learned

counsel for R8, R9, R12, R14, R15, R17 & R18 Ms Deepthi P also appeared through VC. No response from the remaining parties.

Learned counsel for the petitioner Shri Ajith Prakash argued the matter for sometime. **List on 19.5.2021 at 2.30 pm for further arguments as part heard.**

Learned Chairman appointed by this Tribunal shall submit the status report with regard to the convening of the AGM of the R1 Company within two weeks.

Registry is directed to issue copy of this order to the learned counsel of the respective parties including the Chairman appointed by this Tribunal through email.