

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

### **Daily Orders – Draft**

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

**Date: 28<sup>th</sup> Jan 2021**

**1 MA/205/KOB/2020 IN MA/140/KOB/2020 IN TIBA/11/KOB/2019**

Learned RP/Applicant Shri Bijoy Prabhakaran Pulipra as well as learned GP for the Respondent Shri Muhammed Fazil MP appeared through VC. Orders pronounced. **MA/205/KOB/2020 IN MA/140/KOB/2020 IN TIBA/11/KOB/2019 is dismissed vide separate order.**

**2 IA/190/KOB/2020 IN CP/12/KOB/2020**

Learned counsel for the Applicant Shri Jagan Abraham M George appeared through VC. Orders pronounced. **IA/190/KOB/2020 IN CP/12/KOB/2020 is disposed of vide separate order.**

**3 IA/210/KOB/2020 IN CP/12/KOB/2020**

Learned counsel for the Applicant Shri Terry V James as well as learned counsel for the Respondents 1 & 2 Shri Jagan Abraham M. George appeared through VC. Orders pronounced. **IA/210/KOB/2020 IN CP/12/KOB/2020 is dismissed vide separate order.**

**4 IA/02/KOB/2021 IN IBA/13/KOB/2020**

Learned counsel for the applicants Smt Jayanthi K. Shah as well as learned counsel for the respondent Shri P.V.George appeared through VC. Orders pronounced. **IA/02/KOB/2021 IN IBA/13/KOB/2020 is allowed vide separate order. List the IBA/13/KOB/2020 on 17.02.2021.**

**5 CONTEMPT PETITION/1/KOB/2021 IN IBA/13/KOB/2020**

Learned counsel for the Contempt Petitioner Shri Aravind Pandian as well as learned counsel for the respondent Shri PV George appeared through VC. This contempt petition is filed by the Petitioner/Applicant under Section 60(5) of IBC along with Section 425 of Companies Act, 2013 seeking to allow the application and fine the Corporate Debtor along with its Director Shri Kanjirappilly Narayanan Namboodiripad, 3<sup>rd</sup> respondent herein, in connivance with other Directors

Respondent 2 to 7 herein, be found to be contempt of the order of this Tribunal dated 24.09.2020 and consequently, may be mulcted with punishment of 6 months imprisonment and pass such other order as this Tribunal may deem fit and thus render justice. Learned counsel for the Contempt Petitioner cited the judgement of the Hon'ble Supreme Court and stated that in IBA matters also, contempt proceedings can be initiated by this Tribunal. Learned counsel for the respondents submitted that he wants to file counter to the Contempt Petition. He may do so. **List on 17.02.2021 for hearing along with IBA/13/KOB/2020.**

#### 6 CA/5/KOB/2021

Learned counsel for the Appellant Shri Akhil Suresh appeared through VC. Report of ROC is on record. It appears from record that the Appellant has not produced the IT return along with the Appeal. Learned counsel for the Appellant submitted that the appellant company was stopped its operations before issuance of strike off notice from the ROC. However, the appellant now wants to restore the name of the company in the register of ROC to avail the benefit of the Company Fresh Start Scheme, 2020. Heard and perused the records. **Orders reserved. List for pronouncement of orders on 9.02.2021 before that date the Appellant is directed to file the documents related to the IT return.**

#### 7 REPORT NO.2A/KOB/2021 IN MA/05/KOB/2020 IN TIBA/1/KOB/2019

Learned Liquidator Shri Shawn Jeff Christopher appeared through VC. **The report of the Liquidator is accepted and taken on record.** Registry is directed to place the report in the appropriate file.

#### 8 CAVEAT NO.3/KOB/2021 IN TIBA/11/KOB/2019

Learned counsel for the Caveator Shri Sankar P. Panicker as well as learned RP/Respondent Shri Bijoy P. Pulipra appeared through VC. It is stated in the Caveat that the Caveat petitioner is a doctor by profession and was a consultant doctor of Corporate Debtor M/s. PVS Memorial Hospital Pvt Ltd and therefore is an operational creditor of the Corporate Debtor. In view of the fact that the Caviator has been heard while considering the IA(IBC)13/KOB/2021, this **Caviat No.3/KOB/2021 stands closed.**

#### 9 UNNUMBERED IA IN TIBA/11/KOB/2019

Learned counsel for the applicant Shri Dinesh R. Shenoy as well as learned RP Shri Bijoy P. Pulipra appeared through VC. This IA is filed by Shri P.Jayagoind against the RP/Respondent. However, registry reported that the IA is defective. But, the Hon'ble High Court of Kerala vide Order dated 25.1.2021 in WP(C ) No.1962/2021(U) has given direction to this Tribunal to consider Ext.P9, MA (Diary

No.73/2021) (which is the unnumbered IA herein) before passing orders in IA(IBC)/13/2021 in TIBA/11/KOB/2029 and IBA/28/KOB/2019 which stands posted on 28.01.2021. **Hence Registry is directed to number the IA and place it before the Bench.**

Therefore, based on my direction, registry numbered the application as IA No..../KOB/2021 and taken up for hearing in compliance of the directions of the Hon'ble High Court of Kerala.

This IA is filed by the Applicant Shri P.Jayagovind. against the RP/Respondent seeking the following reliefs:

- (i) A declaration that the manipulated records submitted by the Corporate Debtor by retrospectively reducing the salary of the applicant from 12.05 lakhs per month from Rs.1,05,000/- per month by resorting to illegal reverse audit entry in March 2019 is illegal and unsustainable and that the salary of the employee cannot be reduced unilaterally by retrospective reversal of the entries in the account books at the time of audit conducted more than 15 months thereafter, without notice to and without hearing the employee also.
- (ii) An order directing the RP to refix the eligible claim due to the applicant on the basis of his salary of Rs.12.05 lakhs per month for the months of January 2018 – April 2019 also, and to revise the amounts payable to the applicant as privilege leave and gratuity on the basis of his actual salary of Rs.12.05 lakhs per months, considering his service in the Company from 28.08.1996 till April 2019.
- (iii) Allowing the applicant to realize the costs of these proceedings from this respondent and his assets.

The learned RP/Respondent has filed his counter. Heard both sides and thoroughly perused the whole case records including the documents attached with the IA. **Orders reserved. List for pronouncement of orders on 22.02.2021.**

#### 10 IA(IBC)/13/2021 IN TIBA/11/KOB/2019 in Connection with IBA/28/KOB/2019

Learned RP Shri Bijoy P. Pulipra as well as learned counsel for the Corporate Debtor Shri Millu Dandapani as also Shri Shivshanker Panicker, who filed Caviat Petitions in this matter have been heard through VC. This Application is filed by the RP under Section 30 & 31 of the IBC, 2016 read with Regulation 39 of the IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 for approval for the Resolution Plan. Heard the arguments advanced by the RP as well as learned counsel appearing for the Caviators. **Reserved for orders. List for pronouncement of orders on 22.02.2021.**

#### 11 IA/143/KOB/2020 IN TIBA/19/KOB/2019

Learned RP Shri Jasin Jose appeared through VC. Vide our order dated 11.01.2021 the Applicant / RP was directed to suggest any name of IP other than Shri Kizhakkekara Kuriakose Jose to be appointed as authorised representative for the Home Buyers since his name was not appeared in the list of approved Insolvency Professionals issued by the IBBI. But the RP has not submitted any other name approved by IBBI and today again he insisted the name of Shri Kizhakkekara Kuriakose Jose as authorised representative of the Home buyers. As per Regulation 4A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the IRP shall identify the eligible Insolvency Professional as the authorised representative of creditors. Since the name of Shri Kizhakkekara Kuriakose Jose is not included in the list of approved Insolvency Professionals of IBBI for the period from January 2021 to June, 2021, this Tribunal cannot appoint him as the authorised representative of the Home buyers. The RP submitted that he will file the new name within a day or two. He may do so positively within two days, failing which the IA filed by him will be dismissed and law will take its own course. **List on 03.02.2021.**

**12 IA/191/KOB/2020 IN IBA/21/KOB/2019**

Learned RP Shri Jasin Jose as well as learned counsel for the CD Shri Akhil Suresh appeared through VC. Learned RP submitted that he has cured the defects. But registry reported that the defects have not yet been cured. The RP is directed to cure the defects immediately, if not done yet. After curing the defects, the RP may serve the copy of the application to all related parties and file proof of service (track record / acknowledgement card) with an affidavit before the next date fixed. **List on 05.02.2021.**

**13 IBA/22/KOB/2020**

Learned counsel for the Operational Creditor Shri Cimil C. Kottalil appeared through VC. Vide our order dated 02.11.2020 the OC was directed to issue paper publication and submit proof of publication on or before 14.12.2020. Since the paper publication was not done, the OC was again directed to make the paper publication on or before 28.01.2021. But even today, the paper publication has not been done. **As a last opportunity, the OC is directed to make the paper publication and submit the proof of publication with an affidavit positively before the next date fixed, failing which the law will take its own course.** Since this is an IBC matter, the OC may bear in mind that this case cannot be prolonged and **hence there shall be no further adjournment in this case.**

**List on 16.2.2021.**

**14 IBA/23/KOB/2020**

Learned counsel for the Operational Creditor Shri Cimil C. Kottalil appeared through VC. Vide our order dated 02.11.2020 the OC was directed to issue paper publication and submit proof of publication on or before 14.12.2020. Since the paper publication was not done, the OC was again directed to make the paper publication on or before 28.01.2021. But even today, the paper publication has not been done. **As a last opportunity, the OC is directed to make the paper publication and submit the proof of publication with an affidavit positively before the next date fixed, failing which the law will take its own course.** Since this is an IBC matter, the OC may bear in mind that this case cannot be prolonged and **hence there shall be no further adjournment in this case.**

**List on 16.2.2021.**

**15     IA/55/KOB/2020 IN TCP/46/KOB/2019**

Learned counsel for the applicant Shri Pradeep Joy as well as learned counsel for R1 to R4 Shri Balakishore appeared through VC. Shri Balakishore submitted that he has already filed the counter through Email. But registry reported that no such email has been received. He may submit the hard copy of the counter within a week. **List on 24.02.2021 at 2.30 pm for final hearing. Registry is directed issue a copy of this order to both the parties through email.**

**16     TCP/46/KOB/2019**

Learned counsel for the applicant Shri Pradeep Joy as well as learned counsel for R1 to R4 Shri Balakishore appeared through VC. **List on 24.02.2021 at 2.30 pm for final hearing. Registry is directed issue a copy of this order to both the parties through email.**

**17     CP/52/KOB/2020**

Learned counsel for the petitioner Shri C. Harikumar submitted an email seeking an adjournment stating his inconvenience to appear before this Tribunal today. Learned PCS for R1 & R2 Shri Zibi Jose submitted an email stating willingness to appear through VC. **List on 26.02.2021.**

**18     CA/110/KOB/2020**

Learned counsel for the Appellant Shri Shameem Ahamed appeared through VC. He submitted that he has filed a new IA in this case, but the same has not been listed today. **Hence adjourned to 01.02.2021. List that IA also on that day, if it is in order.**

19 CA/115/KOB/2020

Learned counsel for the Appellant Shri Shameem Ahamed appeared through VC. He submitted that he has filed a new IA in this case, but the same has not been listed today. **Hence adjourned to 01.02.2021. List that IA also on that day, if it is in order**

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

Learned Senior counsel for the applicant Shri Ramji Sreenivasan as well as learned senior counsel for the Respondents Shri Aravind Pandian appeared through VC. It is stated that the appeal against the order of this Tribunal pending before the Hon'ble NCLAT has not been taken up and disposed of. Hence Shri Ramji Sreenivasan sought an adjournment. Even though Shri Aravind Pandian opposed such an adjournment, since the matter is pending before the NCLAT, an adjournment is granted. **List on 18.3.2021 at 2.30 pm for final hearing.**

21 CP/02(KOB)/2020

Learned Senior counsel for the applicant Shri Ramji Sreenivasan as well as learned senior counsel for the Respondents Shri Aravind Pandian appeared through VC. It is stated that the appeal against the order of this Tribunal pending before the Hon'ble NCLAT has not been taken up and disposed of. Hence Shri Ramji Sreenivasan sought an adjournment. Even though Shri Aravind Pandian opposed such an adjournment, since the matter is pending before the NCLAT, an adjournment is granted. **List on 18.3.2021 at 2.30 pm for final hearing.** The written arguments of both parties may be filed well before that date.