

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

### **Daily Orders – Draft**

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

**Date: 4<sup>th</sup> June 2021**

#### **1 IA(IBC)/75/KOB/2021 IN TIBA/19/KOB/2019**

Learned RP Shri Jasin Jose appeared through VC. Orders pronounced. IA(IBC)/75/KOB/2021 IN TIBA/19/KOB/2019 is disposed of vide separate Order.

#### **2 CP/25/KOB/2021**

Learned counsel for the Petitioner Shri Sajan Thampan appeared through the VC. Advocate Akhil Suresh appeared through VC for R1 to R3. Registry is directed to verify the authenticity of the Vakkalath filed by Shri Akhil Suresh for R1 to R3 on the following points:

- (a) As per the CP, the petitioner has mentioned that Shri Rajesh C.S., Director representing the R1 Company. But the vakkalath filed on behalf of the R1 company is signed by Shri Pratheesh V. Vengasseri, claiming to be the Director.
- (b) R2 and R3 are the Directors of R1 Company having Australian Nationality. The formalities to file Vakkalath by such foreign nationals are to be checked.

This is a CP filed by the petitioner alleging that the affairs of the R1 Company are conducted in a manner prejudicial and oppressive to the Petitioner and Prejudicial to the interests of the R1 Company.

The Petitioner submitted that the R1 is a private limited company registered on 15.11.2017, under Companies Act 2013. The authorized capital of the 1st respondent is Rs.10,00,000/- (Rupees Ten Lakhs only) and paid-up capital is Rs.1,00,000/-(Rupees One lakh only) made up of 10,000 (Ten thousand) equity shares of face value of RS.10/ (Rupees Ten only) each. The 2nd and 3rd respondents are the Foreign Directors of the 1st respondent Company. They both hold 37.50% each of the total shares of the 1st respondent. The Petitioner is the CEO of R1 Company. He holds 25% of the shares of the R1 Company. The 4th respondent is the Indian Director of the R1 Company.

According to the Petitioner, R1 Company was incorporated with the objective of providing office space solutions including co-working solutions, space rental, virtual offices, shares workspace and other business support infrastructures and as permitted by law in force then. The Petitioner has long standing expertise in multiple

fields of Professional/ Management/ Business services. M/s Dynamic Bradview Roofing Pty Ltd., an Australian company approached the Petitioner for his services for setting forth their offshoring and outsourcing business as it was difficult for the Australian company to understand the Indian statutory requisites. Appraising the services rendered by the Petitioner for M/s Dynamic Bradview Roofing Pty Ltd., its management approached the Petitioner for his direct services which caused the Petitioner to discontinue his employment with M/s JRSCA Consulting and Advisory Private Limited. Thereafter, despite the Petitioner having provided his services through his proprietary concern, the 2nd respondent offered the Petitioner to incorporate a company through which he would facilitate his services to M/s Dynamic Bradview Pvt Ltd. and M/s DB Roofing India Private Limited which would be its permanent client until when the R2 & R3 would remain as its Directors and whereby the Petitioner would be entitled to 25% of the shareholding and he would be the largest shareholder. In addition, it was agreed that the Petitioner would never be required to bring in cash as it would be done by R2 & R3. And it was the 2<sup>nd</sup> and 3<sup>rd</sup> respondent's sole responsibility of marketing and business development to bring in offshoring clients from Australia.

The petitioner alleged that R2, who is the Chairperson of the Board of Directors has now opted for increase in share capital by way of issuance of right shares. In addition, the Board has opted for conversion of notes to equity shares on 29.03.2021. Despite the Petitioner having enquired on the true financial position to be substantiated by supporting relevant documents, the R2 has tip-toed around such query and has proceeded with the same.

The petitioner further alleged that R2 demanded the step down of the petitioner from the post o CEO and thereafter chose retrenchment of managerial persons.

It is also alleged that R2 & R3 opted to conduct the AGM by dispensing the statutory notice period and hence cannot be treated as a valid AGM.

The petitioner has also pointed out that despite the 4<sup>th</sup> respondent having posed queries on the financial position and other key concerns, the R2 opted to remain silent on such concerns and bypassed the issues and went on to hold a board meeting excluding the key concerns.

According to the petitioner, the intention of the 2nd and 3rd respondent is only to siphon out funds on the pretext of working capital requirements by issuance of right shares.

Hence the petitioners filed this CP seeking 5 main reliefs along an interim reliefs.

I have heard the learned counsel for the petitioner as well as Shri Akhil Suresh, who appeared for R1 to R3 and perused the records attached with the Petition. **Company Petition is admitted.**

However, 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 provide copy of Petition (booklet) to the learned counsel for R1 to R3 within a week, if not already done. The petitioner is also directed to issue fresh notice to R4 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 R4 through email. R1 to R4 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.

**List on 02.07.2021.**

### **3 CP/26/KOB/2021**

Learned counsel for the Petitioner Shri Sajan Thampan appeared through the VC. Advocate Akhil Suresh appeared through VC for R1 to R3. Registry is directed to verify the authenticity of the Vakalath filed by Shri Akhil Suresh for R1 to R3 on the following points:

- (a) As per the CP, the petitioner has mentioned that Shri Rajesh C.S., Director is representing the R1 Company. But the vakalath filed on behalf of the R1 company is signed by Shri Pratheesh V. Vengasseri, claiming to be the Director.
- (b) R2 and R3 are the Directors of R1 Company having Australian Nationality. The formalities to file Vakalath by such foreign nationals are to be checked.

This is a CP filed by the petitioner alleging that the affairs of the R1 Company are conducted in a manner prejudicial and oppressive to the Petitioner and Prejudicial to the interests of the R1 Company.

The Petitioner submitted that the R1 is a private limited company registered on 31.07.2017, under Companies Act 2013. The authorized capital of the 1st respondent is Rs.10,00,000/- (Rupees Ten Lakhs only) and paid-up capital is Rs.1,00,000/- (Rupees One lakh only) made up of 10,000 (Ten thousand) equity shares of face value of RS.10/ (Rupees Ten only) each. The 2nd and 3rd respondents are the Foreign Directors of the 1st respondent. They both hold 37.50% each of the total shares of the 1st respondent. The Petitioner is the CEO of R1 Company. He holds 25% of the shares of the R1 Company. The 4th respondent is the Indian Director of the R1 Company.

According to the Petitioner, R1 Company was incorporated with the objective of carrying on the business to provide services in the field of business and management consultancy for offshoring and outsourcing and as permitted by law in force then. The Petitioner has long standing expertise in multiple fields of Professional/ Management/ Business services. M/s Dynamic Bradview Roofing Pvt Ltd., an Australian company approached the Petitioner for his services for setting

forth their offshoring and outsourcing business as it was difficult for the Australian company to understand the Indian statutory requisites. Appraising the services rendered by the Petitioner for M/s Dynamic Bradview Roofing Pty Ltd., its management approached the Petitioner for his direct services which caused the Petitioner to discontinue his employment with M/s JRSCA Consulting and Advisory Private Limited. Thereafter, despite the Petitioner having provided his services through his proprietary concern, the 2nd respondent offered the Petitioner to incorporate a company through which he would facilitate his services to M/s Dynamic Bradview Pvt Ltd. and M/s DB Roofing India Private Limited which would be its permanent client until when the R2 & R3 would remain as its Directors and whereby the Petitioner would be entitled to 25% of the shareholding and he would be the largest shareholder. In addition, it was agreed that the Petitioner would never be required to bring in cash as it would be done by R2 & R3. And it was the 2<sup>nd</sup> and 3<sup>rd</sup> respondent's sole responsibility of marketing and business development to bring in offshoring clients from Australia.

The petitioner alleged that R2 and R3 in the board meeting dated 29.03.2021 have passed resolutions requiring the increase in share capital by way of issuance of right shares, etc. Despite the Petitioner having enquired on the true financial position to be substantiated by supporting relevant documents, the R2 has tip-toed around such query and has proceeded with the same.

The petitioner further alleged that R2 demanded the step down of the petitioner from the post o CEO and thereafter chose retrenchment of managerial persons.

The petitioner has also pointed out that despite the 4<sup>th</sup> respondent having posed queries on the financial position and other key concerns, the R2 opted to remain silent on such concerns and bypassed the issues and went on to hold a board meeting excluding the key concerns.

According to the petitioner, the intention of the 2nd and 3rd respondent is only to siphon out funds on the pretext of working capital requirements by issuance of right shares.

Hence the petitioner filed this CP seeking 5 main reliefs along with an interim relief.

I have heard the learned counsel for the petitioner as well as Advocate Shri Akhil Suresh, who appeared for R1 to R3 and perused the records attached with the Petition. **Company Petition is admitted.**

However, 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 provide copy of Petition (booklet) to the learned counsel for R1 to R3 within a week, if not already done. The petitioner is also directed to issue fresh notice to R4 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 R4 through email. R1 to R4 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.

**List on 02.07.2021.**

**4 IA/23(KOB)/2020 IN TCP/49/KOB/19**

Learned counsel for R8 Shri Jose Jacob submitted an email stating willingness to appear through VC. No response from the Applicant / R2. Hence Adjourned to 6.7.2021.

**5 TIA/130/KOB/2020 (CA/13/2009(CLB)) IN TCP/49/KOB/19**

No response either from applicant or the respondents. Hence adjourned to 6.7.2021.

**6 TCP/49/KOB/2019**

No response either from applicant or the respondents. Hence adjourned to 6.7.2021.

**7 CP/49/KOB/2020**

Learned PCS for the petitioner Shri Vivek Kumar submitted an email stating willingness to appear through VC. Learned counsel for the Respondents Shri Terry V. James sought an adjournment through email stating that he is under Quarantine.

Adjourned to 6.7.2021.

**8 CP(CAA)/06/KOB/2020**

Learned counsel for the Petitioners Shri Gokul RI appeared through VC. He submitted that as directed by this Tribunal vide order dated 31.03.2021, the petitioners have affected the paper publication on 03.05.2021 in "Financial Express" (English) and "Janayugam" (Malayalam). Heard and perused the records. **Reserved for Orders. List for pronouncement of Orders on 28.06.2021.**

**9 CP/09/KOB/2021**

Learned counsel for the Petitioner Shri Akhil Suresh sought 4 weeks time to file a rejoinder to the counter filed by the respondents. Learned counsel for R1 & R4 Shri Clint Li Johny submitted an email stating willingness to appear through VC.

Adjourned to 1.7.2021.

**10 CA/10/KOB/2021**

Learned counsel for the Applicant Shri Vinod PV appeared through VC. It appears from record that ROC has not yet submitted his report in this case.

Registry is directed to issue a reminder notice to ROC through special messenger for his report. **List on 21.06.2021.**

**11 IA/50/KOB/2019 IN TCP/34/KOB/2019**

Learned counsel for the Applicants Shri Sharad Kodianthara sought an adjournment through email stating that due to Covid 19 lock down in place there is a slight inconvenience in accessing the case files. Learned PCS for R11, R15, R16, R17 and R18 Shri P.P. Zibi Jose sought link through email. No response from other respondents.

Adjourned to 7.7.2021.

**12 IA/66/KOB/2020 IN TCP/34/KOB/2019**

No response from the applicant. Learned counsel for the R1 to R3 Shri Sharad Kodianthara sought an adjournment through email stating that due to Covid 19 lock down in place there is a slight inconvenience in accessing the case files. Learned PCS for R4, R8, R9, R10 and R11 Shri P.P. Zibi Jose sought link through email. No response from other respondents.

Adjourned to 7.7.2021.

**13 IA/67/KOB/2020 IN TCP/34/KOB/2019**

No response from the applicant. Learned counsel for the R1 to R3 Shri Sharad Kodianthara sought an adjournment through email stating that due to Covid 19 lock down in place there is a slight inconvenience in accessing the case files. Learned PCS for R4, R8, R9, R10 and R11 Shri P.P. Zibi Jose sought link through email. No response from other respondents.

Adjourned to 7.7.2021,.

**14 IA/204/KOB/2020 IN TCP/34/KOB/2019**

Learned counsel for the Applicants Shri Sharad Kodianthara sought an adjournment through email stating that due to Covid 19 lock down in place there is a slight inconvenience in accessing the case files. No response from the respondents.

Adjourned to 7.7.2021.

**15 CA/9/KOB/2021 IN TCP/34/KOB/2019**

No response from the applicant. Learned counsel for R1 Shri Vinod PV appeared through VC. Learned counsel for the R2 & R3 Shri Sharad Kodianthara sought an adjournment through email stating that due to Covid 19 lock down in place there is a slight inconvenience in accessing the case files. No response from R4 & R5.

Adjourned to 7/7/2021.

**16 TCP/34/KOB/2019**

No response from the applicant. Learned counsel for R1 Shri Vinod PV appeared through VC. Learned counsel for the R2 & R3 Shri Sharad Kodianthara sought an adjournment through email stating that due to Covid 19 lock down in place there is a slight inconvenience in accessing the case files. Learned PCS for R4, R8, R9 , R10 and R11 Shri P.P. Zibi Jose sought link through email. No response from R6 & R7.

Adjourned to 7/7/2021.

**17 TIA/131/KOB/2020 (CA/228/CHENNAI BENCH) IN  
TCP/53/KOB/2019 (CP/33/2017/CHENNAI BENCH)**

No response from the applicant. Learned counsel for R1 Shri Vinod PV appeared through VC. Learned counsel for the R1 & R2 Shri Sharad Kodianthara sought an adjournment through email stating that due to Covid 19 lock down in place there is a slight inconvenience in accessing the case files. No response from R3.

Adjourned to 7.7.2021.

**18 TCP/53/KOB/2019 (CP/33/17)**

No response from the petitioner. Learned counsel for the R1 & R3 Shri Sharad Kodianthara sought an adjournment through email stating that due to Covid 19 lock down in place there is a slight inconvenience in accessing the case files. No response from R2.

Adjourned to 7.7.2021.

**19 CP/47/KOB/2020**

No response from the petitioner. Learned PCS for R1 & R2 Shri P.P. Zibi Jose sought link through email.

Adjourned to 7.7.2021.

**20 CP/48/KOB/2020**

No response from the petitioner. Learned PCS for R1 & R2 Shri P.P. Zibi Jose sought link through email.

Adjourned to 7.7.2021.

**21 IA/194/KOB/2020 IN IA/55/KOB/2019 IN TCP/20/KOB/2019**

Learned counsel for the applicant Shri A.M.Sridharan has sought an adjournment through email stating that he is unable to open his office due to lock down in Chennai. He has also mentioned in the email that he is rejecting the counter settlement proposal on the instructions of his client.

Learned counsel for R1 to R3 Shri Sharad Kodianthara submitted an email stating that he has no objection for an adjournment in the light of Covid 19 lockdown.

Adjourned to 8.7.2021 at 2.30 pm.

**22 TCP/20/KOB/2019**

Learned counsel for the Petitioner Shri A.M.Sridharan has sought an adjournment through email stating that he is unable to open his office due to lock down in Chennai. He has also mentioned in the email that he is rejecting the counter settlement proposal on the instructions of his client.



Learned counsel for R1 to R3 Shri Sharad Kodianthara submitted an email stating that he has no objection for an adjournment in the light of Covid 19 lockdown.

Adjourned to 8.7.2021.

**23     IA/26/KOB/2019 IN CP/74/KOB/2019**

Learned counsel for Applicant Shri Philip Mathew sought an adjournment stating that the Appeal filed in this matter is posted at NCLAT on 27.07.2021.

Learned counsel for R1 Shri Anil D. Nair and learned counsel for R3 Shri Ameerul Millath sought link through email. No response from other respondents.

Adjourned to 9.8.2021 at 2.30 pm.

**24     IA/47/KOB/2020 IN CP/74/KOB/2019**

No response from the Applicant. Learned counsel for R1 Shri Anil D. Nair sought link through email. Learned counsel for R2 Shri Philip Mathew sought an adjournment stating that the Appeal filed in this matter is posted at NCLAT on 27.07.2021. No response from other respondents.

Adjourned to 9.8.2021 at 2.30 pm.

**25     CP/74/KOB/2019**

Learned counsel for Petitioner Shri Philip Mathew sought an adjournment stating that the Appeal filed in this matter is posted at NCLAT on 27.07.2021.

Learned counsel for R1 Shri Anil D. Nair and learned counsel for R3 Shri Ameerul Millath sought link through email. No response from other respondents.

Adjourned to 9.8.2021.

**26     CA/55/KOB/2021 IN CP/104/KOB/2019**

Learned counsel for the Petitioner Shri Pranoy Harilal sought an adjournment stating personal emergency of his Senior Counsel. Learned counsel for the respondents sought link through email.

Adjourned to 12.7.2021

**27     CP/104/KOB/2019**

Learned counsel for the petitioners sought link through email. Learned counsel for R1, R2, R20 & R25 Shri Pranoy Harilal sought an adjournment stating personal emergency of his Senior Counsel. Learned counsel for other respondents sought link through email.

List on 12.7.2021 at 2.30 pm.

**28 CA/57/KOB/2021 IN CP/112/KOB/2019**

Learned counsel for the Applicant Shri Pranoy Harilal sought an adjournment stating personal emergency of his Senior Counsel. Learned counsel for the respondents sought link through email.

Adjourned to 12.7.2021 at 2.30 pm

**29 CP/112/KOB/2019**

Learned counsel for the petitioners sought link through email. Learned counsel for R1, R4 & R23 Shri Pranoy Harilal sought an adjournment stating personal emergency of his Senior Counsel. Learned counsel for other respondents sought link through email.

Adjourned to 12.7.2021 at 2.30 pm.

**30 CA/56/KOB/2021 IN CP/113/KOB/2019**

Learned counsel for the Applicant Shri Pranoy Harilal sought an adjournment stating personal emergency of his Senior Counsel. Learned counsel for the respondents sought link through email.

Adjourned to 12.7.2021 at 2.30 pm.

**31 CP/113/KOB/2019**

Learned counsel for the petitioners sought link through email. Learned counsel for R1, R4, R15, R24 & R25 Shri Pranoy Harilal sought an adjournment stating personal emergency of his Senior Counsel. Learned counsel for other respondents sought link through email.

Adjourned to 12.7.2021 at 2.30 pm.