

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

### **Daily Orders – Draft**

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

Date: 5<sup>th</sup> Feb 2021

**1 IA(IBC)/25/KOB/2021 IN CP(IB)/54/KOB/2019**

Learned counsel for the Applicant/Resolution Professional Shri Vinod PV appeared through VC. Orders pronounced. **IA(IBC)/25/KOB/2021 IN CP(IB)/54/KOB/2019 is allowed vide separate sheets.**

**2 IA(IBC)/26/KOB/2021 IN IBA/24/KOB/2020**

Learned counsel for the Applicant/Resolution Professional Shri Vinu Thomas appeared through VC. Orders pronounced. **IA(IBC)/26/KOB/2021 IN CP(IB)/54/KOB/2019 is disposed of vide separate sheets.**

**3 CA/4/KOB/2021**

Learned counsel for the Applicant Ms Lakshmi Sreedhar appeared through VC. Orders pronounced. **CA/4/KOB/2021 is disposed of vide separate sheets.**

**4 TCAA/4&5/KOB/19**

Learned counsel for the Applicant Shri Pranoy Harilalal appeared through VC. Orders pronounced. **TCAA/4&5/KOB/19 is dismissed vide separate sheets.**

**5 CP/03/KOB/2021**

Learned counsel for the Appellant Ms Merrin Thaliath appeared through VC. Report of the ROC is on record. **Reserved for orders. List for pronouncement of orders on 19.02.2021.** Before that date, the Appellant is directed to file the Financial Statements and IT returns of the Appellant Company.

**6 CP/05/KOB/2021**

Learned counsel for the Petitioner Shri Terry V. James appeared through VC. Shri Vijay V. Paul, Advocate appeared for R1 and R3 by filing the Vakalat.

This is a Company Petition filed by the petitioner M/s. ISDC PROJECTS (India) Pvt Ltd against Nirmal Inforpark (India) Ltd and others under Section 59, 241 and 242 of the Companies Act, 2013.

The Petitioner is a Private Company and a shareholder in the 1st Respondent Public Company. The Petitioner holds 25,80,431 shares (14.33% shares) in the R1. The Petitioner is thus a minority shareholder of the 1st Respondent and has the statutory requisite shareholding percentage as required under section 244 of the Companies Act, 2013 to file a Petition under the provisions of Section 241 of the Act.

The Petitioner submitted that the 1st Respondent is a non-Government Public Company limited by shares registered under the Companies Act, 1956 and having its registered office at the address mentioned in the cause title. The Company is engaged in the business of IT Infrastructure Providers. The petitioner alleged that as per Annexure-A3 and A4 Articles and Memorandum, the 1st Respondent Company was

converted to a Private Limited Company pursuant to the AGM held on 31.8.2018. The authorised share capital of the Company is 1,80,00,000 equity shares of Rs. 10 each and the Paid-up share capital is 1,50,23,629 equity shares of Rs.10 each. The 2nd Respondent is the Chairman and the 3d Respondent is the Managing Director of the 1st Respondent Company. The 4th to 11th Respondents are the other Directors of the 1st Respondent.

In 2018, the Petitioner purchased 6,03,960 shares of the 1st Respondent from existing shareholders namely, Mr. Kalathil Pappachan (113080 shares) Mr. Joseph C John (263230 shares), and Smt. Annie C John (227650 shares). The 3rd Respondent informed that the share certificates to be issued in the name of the Petitioner, is required by the 3rd Respondent for including such transfer of shares, for filing the Returns such as annual return and the 3<sup>rd</sup> Respondent further informed that he will take necessary steps to convert the said shares into demat form. Even though the transfer of those shares had been acknowledged in the annual return filed by the 1st Respondent, the original share certificates with respect to those total number of 6,03,960 shares had not been returned to the Petitioner even after repeated requests to the 3rd Respondent.

After the purchase of the said 603960 shares, the 3rd Respondent, invited the Petitioner to purchase substantial percentage of the shares and requested to submit an Expression of Interest which was done vide Annexure-A5, requesting to allot Twenty Lakhs shares. The 3rd Respondent vide Annexure-A6 Letter it is specifically stated that in the Board of Directors meeting held on 18-03-2019 of the 1st Respondent, it was resolved to offer shares of the 1st Respondent worth up to INR Three Crores to the Petitioner. Pursuant to the discussions and negotiations the value of shares to be purchased from the 1st Respondent, was fixed as Rs. 12 per

share. The 3rd Respondent informed the Petitioner that the 1st Respondent would be allotting 19,76,471 shares to the Petitioner and accordingly the Petitioner was directed to effect payment to the 1st Respondent Company. It was also agreed that a nominee of the Petitioner would be appointed as a Director of the 1st Respondent Company. Accordingly, total payment was effected as seen from Annexures-A7, A8 and A11 Statements. As complete payment was made by the Petitioner, on 19-09-2019, the 3rd Respondent handed over Annexure-A 12 original share certificate to the Petitioner proving the issue of 19,76,471 shares. However, the date of the said Share Certificate was shown as 19-03-2019.

Hence, the original share certificate issued to the Petitioner was taken back by the 1<sup>st</sup> Respondent promising to correct the date and convert the shares to demat form. The 3<sup>rd</sup> Respondent sent Annexure -A16 e-mail dated 12.3.2020, acknowledging the receipt of Rs.2,37,17,652/-and the details of which was paid towards the purchase of the allocated 1976471 shares. The Petitioner was under the impression that there would not be any issue regarding the allotted shares for which the original share certificate also was handed over to the Petitioner which was taken back from by the 1st Respondent Share certificates are produced as Annexures-A 19 to Annexure-A23 respectively. Mr. Tom Joseph send Annexure-A24 e-mail dated 21-05-2020 to the 2nd Respondent Chairman and specifically pointed out that the shares bought by the Petitioner from the Existing Shareholders of the 1t Respondent (603960 shares)

have been notified by the 1st Respondent in the office of the Registrar of Companies in the Annual Return filed on 31-03-2019. It was further pointed out that the new shares issued by the 1st Respondent which were fully paid and subscribed by the Petitioner (1976471 shares) were yet to be filed at the ROC by the 1st Respondent.

Instead of handing over the original share certificates belonging to the Petitioner, the 3rd Respondent caused Annexure-26 legal notice dated 16.6.2020 to the Petitioner in which the 1<sup>st</sup> Respondent for the first time changed their stand regarding the shares allotted by them to the Petitioner. In Annexure-A26 Notice the 1st Respondent claims that Annexure-A 12 share certificate was only a draft share certificate and not the original, stating the reason that on 19-08-2019, no payment was received from the Petitioner, towards the allotment of shares as per the Share Certificate covered by Annexure-A12, which is a totally false statement, which is not expected from a Public Company.

Annexure-27 Reply Notice dated 29-06-2020 was sent to Annexure-26 Notice pointing out the true facts. Even though it was specifically demanded to return the 6 original share certificates, there was no positive response from the 1st Respondent. The Petitioner therefore filed Annexure-28 Complaint dated 10.7.2020 before the ROC. The 1st Respondent has now issued Annexure-29 Notice of AGM to be conducted on 30.12.2020 at 5.30 pm. It is revealed from the audited financial statements as on 31.3.2020 of the 1st Respondent Company which is provided to shareholders, that the subscription to the capital made by the Petitioner during the financial year 2019-2020 amounting to Rs.237,17,652/- do not reflect in the paid up capital of the 1st Respondent Company. The amount of paid-up capital shown in the Balance Sheet of the 1st Respondent as on 31.3.2019 and 31.3.2020 are the same. The amount of Rs.2,37,17,652/- paid by the Petitioner specifically towards value of

the shares allotted to them do not figure anywhere in the financial statements either as addition to paid up capital or as outstanding share application money. It is thus evident that the financial statements provided to the shareholders of the Company by its Directors does not disclose the true and fair position of the financial affairs of the 1st Respondent Company.

The statutory auditor of the 1st Respondent Company in Annexure-B of his Audit Report certifies that the 1st Respondent has not raised any money by way of initial public offer or further public offer during the year and that the 1st Respondent Company has not made any preferential allotment or private placement of shares during the year. Hence the shares issued to the Petitioner against full payment was hidden from the attention of the statutory auditor also.

As on 31.3.2019 the number of unsubscribed shares available in the authorised capital of the 1st Respondent Company, that could be allotted by the 1st Respondent was 29,76,471. Against these available shares, the 1st Respondent Company has offered 19,76,471 shares to the Petitioner on preferential basis and collected Rs. 2,37,17,652/-towards its full value during the year 2019-20. Simultaneously the 1st Respondent has offered 12,08,333 shares to its existing shareholders and collected Rs,145,00,000/-towards its full value. Therefore, the total number of shares offered under these two modes during 2019-20 works out to 31,84,804, which is much more than the available share for allotment. Hence the fraud played by the Directors and the oppression and mismanagement in the 1st Respondent Company is evident.

I have heard the learned counsel for the petitioner as well as the learned counsel for R1 and R3 and also perused the records attached with the Petition. The learned counsel for the petitioner in his argument has sought certain interim reliefs. It appears that the AGM has already been held on 30.12.2020 and hence the interim relief sought to restrain the Respondents from convening the said AGM has become infructuous. As regards the 2<sup>nd</sup> interim relief sought, considering the materials on record, the respondents are directed to maintain **status quo as of today with regard to converting the Public Limited Company to a Private Limited Company until further orders.**

The petitioner is directed to issue fresh notice to the respondents except R1 & R3 through email and Registered Post with A/D and submit proof of service (A/D Card or Postal Track Record) with an affidavit before the next date fixed. Registry is also directed to issue notice to the respondents through email. All respondents are directed to file their counter within three weeks with copy served to the petitioner. Rejoinder, If any, be filed well before the next date fixed. **List on 25.03.2021 for hearing.**

Learned IRP Shri Mohanan T.S. appeared through VC. The IRP in his report stated that the CoC in its first meeting held on 30.12.2020 resolved with 100% voting share to appoint the IRP as Resolution Professional. The Report of the RP is accepted and taken on record and admitted. Registry is directed to place the report in the appropriate file.

**8 IP/01/KOB/2021 IN TIBA/03/KOB/2019**

Learned counsel for the Intervening Petitioner Shri Ashok B. Shenoy as well as learned counsel for the RP Shri Vinod PV appeared through VC. This IP is filed by 20 Nos of applicants, who are the retired employees of the CD, with the prayer to implead them as party respondents in IA(IBC)/21/KOB/2021 in TIBA/3/KOB/2019 on the file of this Tribunal.

I have heard both sides and perused the records. Since IA(IBC)/21/KOB/2021 in TIBA/3/KOB/2019 has already been disposed of by this Tribunal on 29<sup>th</sup> January 2021, **this IP has become infructuous and hence dismissed.**

**9 IA/34/KOB/2021 IN TIBA/03/KOB/2019**

Learned counsel for the Intervening Petitioner Shri Ashok B. Shenoy as well as learned counsel for the RP Shri Vinod PV appeared through VC. This IA is filed by 8 Nos of applicants, who are the retired employees of the CD, with the prayer to direct the RP to admit the applicants' claim for interest on their admitted claims of gratuity and salary dues for the period from the dates of their respective dates of retirement upto date of its payment; and to include the claims for interest thereof as comprehended in Annexures A to H in the Information Memorandum as also in the Resolution Plan.

Heard both sides. The RP is directed to file his counter within two weeks. **List on 04.03.2021 for hearing.**

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

Learned RP Shri Jasin Jose appeared through VC. Shri Akhil Suresh, Advocate, who appeared for the respondents. **The persons whose name shown in the IA is impleaded as Respondents 1 to 5.** Learned counsel appearing for them, sought time to file the counter to this IA. He may file counter affidavit within 2 weeks along with the Vakkalath. The RP may file his rejoinder, if any, before the next date fixed. List on **02.03.2021.**

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

Learned RP Shri Jasin Jose appeared through VC. It appears that vide order dated 28.01.2021 the applicant/RP was directed to cure the defects in this IA. But, instead of curing the defects in this IA, the Applicant/RP has filed another IA, ie. **IA(IBC)/19/KOB/2021 IN IA/191/KOB/2020 IN IBA/21/KOB/2019**. Since the opposite parties, ie. impleaded respondents 1 to 5 have already been taken steps to defend their case in IA(IBC)/19/KOB/2019 through Shri Akhil Suresh, Advocate, **this IA/191/KOB/2020 has become infructuous and hence dismissed.**

**12 IA/63/KOB/2020 IN IBA/240/2019/CB**

Learned counsel for the Interveners Shri S. Easwaran as well as learned senior counsel for the Union Bank of India Shri Varun Sreenivasan appeared through VC. None has appeared for the liquidator. Heard both sides for some time. **List for hearing on 08.03.2021 at 2.30 pm.**

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

None has appeared for the applicants even though link was provided. None appeared for the Liquidator also. Registry reported that Respondent has filed the hard copy of the counter, but the same has not been filed through Efiling and hence shown as defective. Respondent is directed to rectify the defect by Efiling the counter within a week, failing which law will take its own course. Registry is directed to issue copy of this order to the learned counsel for the parties through Email. **List on 25.02.2021 for hearing.**

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

None has appeared for the applicants even though link was provided. None appeared for the Liquidator also. Registry reported that Respondent has filed the hard copy of the counter, but the same has not been filed through Efiling and hence shown as defective. Respondent is directed to rectify the defect by Efiling the counter within a week, failing which law will take its own course. Registry is directed to issue copy of this order to the learned counsel for the parties through Email. **List on 25.02.2021 for hearing.**

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

None has appeared for the applicants even though link was provided. None appeared for the Liquidator also. Registry reported that Respondent has filed the hard copy of the counter, but the same has not been filed through Efiling and hence shown as defective. Respondent is directed to rectify the defect by Efiling the

counter within a week, failing which law will take its own course. Registry is directed to issue copy of this order to the learned counsel for the parties through Email. **List on 25.02.2021 for hearing.**

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

None has appeared for the applicants even though link was provided. None appeared for the Liquidator also. Registry reported that Respondent has filed the hard copy of the counter, but the same has not been filed through Efiling and hence shown as defective. Respondent is directed to rectify the defect by Efiling the counter within a week, failing which law will take its own course. Registry is directed to issue copy of this order to the learned counsel for the parties through Email. **List on 25.02.2021 for hearing.**

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

None has appeared for the applicants even though link was provided. None appeared for the Liquidator also. Registry reported that Respondent has filed the hard copy of the counter, but the same has not been filed through Efiling and hence shown as defective. Respondent is directed to rectify the defect by Efiling the counter within a week, failing which law will take its own course. Registry is directed to issue copy of this order to the learned counsel for the parties through Email. **List on 25.02.2021 for hearing.**

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

None has appeared for the applicants even though link was provided. None appeared for the Liquidator also. Registry reported that Respondent has filed the hard copy of the counter, but the same has not been filed through Efiling and hence shown as defective. Respondent is directed to rectify the defect by Efiling the counter within a week, failing which law will take its own course. Registry is directed to issue copy of this order to the learned counsel for the parties through Email. **List on 25.02.2021 for hearing.**

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

None has appeared for the applicants even though link was provided. None appeared for the Liquidator also. Registry reported that Respondent has filed the hard copy of the counter, but the same has not been filed through Efiling and hence shown as defective. Respondent is directed to rectify the defect by Efiling the counter within a week, failing which law will take its own course. Registry is directed

to issue copy of this order to the learned counsel for the parties through Email. **List on 25.02.2021 for hearing.**

**20 IBA/11/KOB/2020**

Learned counsel for the FC Shri Mohan Jacob sought link to appear. However, the MD of the CD Shri Arunkumar sent a mail stating that the proposal submitted by him has been approved by the FC vide their letter dated 02.02.2021. So, the matter stands settled between the parties. However, since one of the guarantors of this loan, Shri Basheer Ahmed VK is admitted to hospital due to Covid, could not sign the official settlement document. He therefore requested to accept the draft settlement proposal and grant 3 weeks' time to submit the official settlement proposal signed by all the parties. He has also marked a copy of the mail to the learned counsel of FC.

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. List of 01.03.2021.**

**21 CONTEMPT PETITION/03/KOB/2020 IN IA/33/KOB/2020 IN CP/72/KOB/2019**

Learned counsel for the petitioner Shri Shard Kodianthara submitted an email seeking an adjournment stating that the matter is pending before the NCLAT. Shri Anil D. Nair, learned counsel for R1 submitted an email stating willingness to appear through VC. Shri Pranoy Harilal, learned counsel for R2 also submitted an email seeking an adjournment stating that the matter is pending before the NCLAT. **Adjourned to 22.03.2021.**

**22 CONTEMPT PETITION/04/KOB/2020 IN IA/32/KOB/2020 IN CP/71/KOB/2019**

Learned counsel for the petitioner Shri Shard Kodianthara submitted an email seeking an adjournment stating that the matter is pending before the NCLAT. Shri Anil D. Nair, learned counsel for R1 submitted an email stating willingness to appear through VC. Shri Pranoy Harilal, learned counsel for R2 also submitted an email seeking an adjournment stating that the matter is pending before the NCLAT. **Adjourned to 22.03.2021.**

**23 CONTEMPT PETITION/05/KOB/2020 IN IA/31/KOB/2020 IN CP/69/KOB/2019**

Learned counsel for the petitioner Shri Shard Kodianthara submitted an email seeking an adjournment stating that the matter is pending before the NCLAT. Shri Anil D. Nair, learned counsel for R1 submitted an email stating willingness to appear through VC. Shri Pranoy Harilal, learned counsel for R2 also submitted an email



seeking an adjournment stating that the matter is pending before the NCLAT. **Adjourned to 22.03.2021.**

**24 IA/32/KOB/2019 IN CP/69/KOB/2019**

Shri Anil D. Nair, learned counsel for the petitioner submitted an email stating willingness to appear through VC.

Learned counsel for the respondent Shri Shard Kodianthara submitted an email seeking an adjournment stating that the matter is pending before the NCLAT. **Adjourned to 22.03.2021.**

**25 CP/69/KOB/2019**

Learned counsel for the petitioner Shri Shard Kodianthara submitted an email seeking an adjournment stating that the matter is pending before the NCLAT. Shri Anil D. Nair, learned counsel for R1, R9-13 & R15 submitted an email stating willingness to appear through VC. Shri Philip Mathew, the learned counsel for R3, R4 & R8 also submitted an email stating willingness to appear through VC. Shri Pranoy Harilal, learned counsel for R7 also submitted an email seeking an adjournment stating that the matter is pending before the NCLAT. **Adjourned to 22.03.2021.**

**26 IA/33/KOB/2019 IN CP/71/KOB/2019**

Learned counsel for the petitioner Shri Anil D. Nair submitted an email stating willingness to appear through VC. Learned counsel for the respondent Shri Shard Kodianthara submitted an email seeking an adjournment stating that the matter is pending before the NCLAT. **Adjourned to 22.03.2021.**

**27 CP/71/KOB/2019**

Learned counsel for the petitioner Shri Shard Kodianthara submitted an email seeking an adjournment stating that the matter is pending before the NCLAT. Shri Anil D. Nair, learned counsel for R1, R9-13 & R15 submitted an email stating willingness to appear through VC. Shri Philip Mathew, the learned counsel for R3, R4 & R8 also submitted an email stating willingness to appear through VC. Shri Pranoy Harilal, learned counsel for R7 also submitted an email seeking an

adjournment stating that the matter is pending before the NCLAT. **Adjourned to 22.03.2021.**

**28 IA/34/KOB/2019 IN CP/72/KOB/2019**

Shri Anil D. Nair, learned counsel for the petitioner, submitted an email stating willingness to appear through VC.

Learned counsel for the respondent Shri Shard Kodianthara submitted an email seeking an adjournment stating that the matter is pending before the NCLAT. Shri Pranoy Harilal, learned counsel for R7 also submitted an email seeking an adjournment stating that the matter is pending before the NCLAT. **Adjourned to 22.03.2021.**

**29 CP/72/KOB/2019**

Learned counsel for the petitioner Shri Shard Kodianthara submitted an email seeking an adjournment stating that the matter is pending before the NCLAT. Shri Anil D. Nair, learned counsel for R1, R8-13 & R15 submitted an email stating willingness to appear through VC. Shri Philip Mathew, the learned counsel for R3 & R4 also submitted an email stating willingness to appear through VC. Shri Pranoy Harilal, learned counsel for R7 also submitted an email seeking an adjournment stating that the matter is pending before the NCLAT. **Adjourned to 22.03.2021.**

**30 IA/163/KOB/2020 IN CP/05/KOB/2020**

Learned counsel for the Applicant Shri Gokul Ashok submitted an email stating willingness to appear through VC. However, learned counsel for the respondent Shri C.S.Manu submitted an email seeking adjournment. He has also stated in the email that he has already filed counter in the IA. Adjourned to **10.03.2021 at 2.30 pm for hearing.**

**31 CP/05/KOB/2020**

Learned counsel for the Petitioner Shri Gokul Ashok submitted an email stating willingness to appear through VC. However, learned counsel for the respondent Shri C.S.Manu submitted an email seeking adjournment stating that he is not well. **Adjourned to 10.03.2021 at 2.30 pm for hearing.**