

NCLT, KOCHI BENCH**Daily Orders – Draft**

Date: 5th June 2021

In the Bench of: **Shri Ashok Kumar Borah, Member (Judicial) &
Shri Satya Ranjan Prasad, Member (Technical)**

1 **CA/12/KOB/2021**

Learned counsel for the Appellant Shri Abid Millath appeared through VC.

Orders pronounced by Member (Judicial) on behalf of the Bench under Rule 151 of NCLT Rules, 2016.

CA/12/KOB/2021 stands disposed of vide separate order.

In the Bench of: **Shri Ashok Kumar Borah, Member (Judicial) &
Shri Rajesh Sharma, Member (Technical)**

2 **CP(IB)/8/KOB/2021**

Learned counsel for the petitioner Shri A. Sunil Shankar appeared through VC.

This is a petition filed under section 7 of IBC, 2016 by the FC M/s. Federal Bank Ltd against the CD M/s. Foodco Delicaies India Pvt Ltd for recovery of a debt amount of Rs.11,08,25,240.20. Adv Shri C.K.Karunakaran appeared for the CD. He submitted that he will file the Vakkalath and Counter within a short time. The CD is directed to file the Counter within four weeks, serving copy to the petitioner, who may file rejoinder, if any, before the next date fixed.

List on **10.08.2021 for hearing.**

3 **CP(CAA)/2/KOB/2021 IN CA(CAA)/7/KOB/2020**

Learned counsel for the Petitioners Shri Pawan Jhabakh appeared through VC.

Vide order dated 08.02.2021 in CA(CAA)/07/KOB/2020 this Tribunal had dispensed with the holding, convening and conducting of the meeting of the Equity Shareholders and Creditors of the Petitioner Companies in view of the consent affidavits filed by the respective parties in favour of the Scheme of Amalgamation.

This is the 2nd motion filed by the Transferor Company and Transfer Company for sanction of the scheme of amalgamation of the Petitioner Companies. The Petitioners have submitted that in compliance with the Order of this Tribunal they have served notices in March 2021 to the statutory authorities, viz: RD, Income Tax Office, ROC and Official Liquidator.

Heard and perused the records.

The Petitioners are directed to submit the latest balance sheet and assets and liabilities of the petitioner Companies and also the proof of service of the statutory authorities (A/d card or Postal Track Report) with an affidavit before the next date of hearing.

List on 12.07.2021.

4 IA(IBC)/96/KOB/2021 IN IBA/24/KOB/2020

Learned RP Shri Mohanan T.S. appeared through VC.

This is an application filed by the RP for extension of the period of CIR Process for 90 days as per Section 12(2) of the IBC.

Heard the RP and perused the records.

IA(IBC)/96/KOB/2021 IN IBA/24/KOB/2020 stands disposed of vide separate sheets.

5 REPORT/49/KOB/2021 IN IBA/41/KOB/2020

Learned IRP Shri Jasin Jose appeared through VC.

This is a progress report submitted by the IRP intimating the stay order passed by the Hon'ble High Court of Kerala in this IBA.

Vide Order dated 19.05.2021 in WP (C) 11003 of 2021 the Hon'ble High Court of Kerala has stayed the further proceedings for a period of two months.

List the matter on 27.07.2021 for reporting the progress in the WP©..

6 REPORT/50/KOB/2021 IN IA(IBC)/18/KOB/2021 IN TIBA/14/KOB/2019

None appeared for the Liquidator. List on **12.07.2021.**

7 REPORT/51/KOB/2021 IN IA(IBC)/18/KOB/2021 IN TIBA/14/KOB/2019

None appeared for the Liquidator. List on **12.07.2021**.

8 REPORT/52/KOB/2021 IN IA(IBC)/18/KOB/2021 IN TIBA/14/KOB/2019

None appeared for the Liquidator. List on **12.07.2021**

9 IA(IBC)/51/KOB/2021 IN MA/05/KOB/2020 IN TIBA/1/KOB/2019

Learned Liquidator/Applicant Shri Shawn Jeff Christopher as well as learned counsel for R1 & R2 Shri Simod Sivan appeared through VC.

Shri Simod Sivan submitted that counter has already been prepared by him, but the same could not be filed before the Registry due to some technical problem in the Registry. He is directed to file the counter within 3 days serving copy to the learned liquidator, who may file rejoinder, if any, within 3 days thereafter.

List on **16.07.2021 for final hearing**.

Both the parties may bear in mind that there shall be no further adjournment in this matter.

10 IBA/37/KOB/2020

Learned counsel for the Financial Creditor Shri Diwakar Maheswari appeared through VC. Learned senior counsel for the CD Shri Joseph Kodianthara appeared along with Shri Vijay V Paul through VC.

Pleadings are complete.

Shri Joseph Kodianthara, Senior Advocate sought a short adjournment stating that he has been engaged in this case recently only and hence requires time to study the case records. The adjournment request of the learned senior counsel for the CD is allowed.

Both the parties may bear in mind that there shall be no further adjournment in this matter.

List on 15.07.2021 for final hearing. Before that date both the parties are directed to submit their argument brief (limiting to 5-6 pages)

11 IA(IBC)/88/KOB/2021 IN IBA/46/KOB/2019

Learned counsel for the Applicant/CD Shri Santhosh Mathew as well as learned senior counsel for the Financial Creditor Shri Joseph Kodianthara appeared through VC.

Registry reported that the whole case records in this case have been transmitted to the Hon'ble Member (T) two days back, but due to some technical problem, the same is not readily available to the Hon'ble Member (T) at this point of time. Registry is directed to check and ensure the availability of case records to the Hon'ble Member (T) without fail in future.

List on 14.07.2021 for final hearing.

12 IBA/46/KOB/2019

Learned senior counsel for the Financial Creditor Shri Joseph Kodianthara as well as learned counsel for the CD Shri Santhosh Mathew appeared through VC.

Registry reported that the whole case records in this case have been transmitted to the Hon'ble Member (T) two days back. But it is noted that due to some technical problem, the same is not readily available to the Hon'ble Member (T) at this point of time. Registry is directed to check and ensure the availability of case records to the Hon'ble Member (T) without fail in future.

List on 14.07.2021 for final hearing.

13 TCP/21/KOB/2019

Learned counsel for the petitioners Shri A.C.Venugopal as well as Learned counsel for the Administrator (R1) Shri Manuel Vivera appeared through VC. None appeared for SFIO, ROC and for other respondents.

Vide order dated 11.03.2020 in TCP/21/KOB/2019 this Tribunal has directed the Serious Fraud Investigation Office (SFIO), Chennai to investigate into the affairs of the Bhagyodayam Company (R1) and to submit a report in this regard within two months before this Tribunal.

The report submitted by ROC on 18.06.2021 in this case is on record. ROC in his report submitted that the Ministry has decided to file an appeal before NCLAT, Chennai challenging the order dated 11.03.2020 passed by this Hon'ble Tribunal. ROC further in his report sought a prayer that the Order of this Tribunal dated 11.03.2020 may be kept in abeyance for a period of 6 months considering the corona pandemic, enabling the Central Government to file appeal in the matter.

The Report filed by the Auditors M/s. Babu A. Kallivayalil is also on record.

It appears from records that the learned counsel for the SFIO Shri Girish Kumar submitted in the hearing on 10.08.2020 that the Government of India is under the

process of constituting the team to investigate into the affairs of the Bhagyodhayam Company (R1) and at least two months period may require to complete the investigation against the R1 Company. But no response from SFIO in the last four hearings and there is no appearance on their behalf. Since the order of this Tribunal dated 11.03.2020 has not yet been stayed by the Appellate Tribunal, the order is still in force.

Meanwhile the Auditors M/s.Babu A.Kallivayalil has submitted a letter stating that:

"In connection with audit of accounts of the Company for the financial years 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20, we have sought several details and clarifications from the Company vide our letter dated April 26, 2021. The copy of the letter addressed to the Administrator, has been shared with the Hon'ble Bench and all parties concerned.

We have received the reply dated June 18, 2021 along with the signed financial statements by the Administrator of the Company for the three financial years 2017-18 to 2019-20 only, on June 21, 2021.]

On Preliminary verification of the financial statements and perusal of the reply from the Administrator, we observe that most of the issues and concerns raised by us on the financial statements have not been addressed. No reason, justification or clarification have been given for the non-modification of the financial statements on the matters leading to non-compliance of Accounting Standards mandatorily required under Section 129(1) of the Companies Act, 2013 and Generally Accepted Accounting Principles. It may kindly be noted that the reply from the Administrator dated June 18, 2021 did not respond to many of the issues raised by us in our letter dated April 26, 2021.

However, we are examining the situation and will update the Hon'ble Bench before July 31, 2021.

Considering the complexities of the issues involved, we pray to the Hon'ble Bench to allow time upto July 31, 2021 to give our final submissions on the assignment."

Even though the Auditor was directed to provide copy of his report to the learned counsel for the applicant and respondents, it is stated that he has not done so. Hence those who require the copy of the report may file application before this Tribunal for obtaining certified copy of the report, as per the procedure in vogue.

The related parties are also directed to file their comments on the Auditors Report before the next date of hearing positively.

Registry is directed to inform the matter to the Regional Director, Ministry of Corporate Affairs, Chennai for information and necessary action. Registry is also directed to issue copy of this order to the learned counsel of all the parties including learned counsel for SFIO Shri Girish Kumar, M/s. Babu A. Kallivayalil & Company, Auditor and ROC through email.

ROC and the Auditor M/s Babu A.Kallivayalil are directed to appear in person through Video Conference during the next date of hearing.

List on 03.08.2021 for hearing.

14 CA/62/KOB/2021 IN CONTEMPT PETITION/02/KOB/2021 IN CP/02/KOB/2020

Learned Senior counsel for the applicant Shri Ramji Sreenivasan as well as learned senior counsel for the respondents/Contempt Petitioners Shri Arvind Pandian appeared through VC.

Due to network problem the case could not be taken up today.

Adjourned to 23.07.2021 for final hearing.

15 CONTEMPT PETITION/02/KOB/2021 IN CP/02/KOB/2020

Learned senior counsel for the Contempt Petitioners Shri Aravind Pandian as well as learned senior counsel for the respondents Shri Ramji Sreenivasan appeared through VC.

Due to network problem the case could not be taken up today.

Adjourned to 23.07.2021 for final hearing.

16 CA/30/KOB/2021 IN CP/33/KOB/2020

Both the parties appeared through VC. But due to network problem, **adjourned to 03.08.2021 for hearing.**

17 CP/33/KOB/2020

Both the parties appeared through VC. But due to network problem, **adjourned to 03.08.2021 for hearing.**

18 CA/63/KOB/2021 IN CP/05/KOB/2021

Both the parties appeared through VC. But due to network problem, **adjourned to 04.08.2021.**

19 CP/05/KOB/2021

Both the parties appeared through VC. But due to network problem, **adjourned to 04.08.2021 for hearing.**

20 CP/20/KOB/2021

Both the parties appeared through VC. But due to network problem, **adjourned to 04.08.2021 for hearing.**