

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 8th April 2021

1 IA(IBC)/19/KOB/2021 IN 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. Orders pronounced. **IA(IBC)/19/KOB/2021 IN IA/191/KOB/2020 IN IBA/21/KOB/2019 stands dismissed.**

2 CA/38/KOB/2021 IN CP/51/KOB/2020

Learned counsel for the applicant Shri A.N.Rajan Babu as well as learned counsel for R1 Shri Madhu Radhakrishnan and learned GP for R2 and R3 Shri Muhammed Fazil appeared through VC.

This CA is filed by the applicants, who are respondents 1 to 5 in the CP, with the prayer to advance the hearing of CP/42/KOB/2020, CP/50/KOB/2020 and CP/51/KOB/2020 along with all IAs therein. Heard both sides. **CA/38/KOB/2021 IN CP/51/KOB/2020 stands dismissed vide separate sheets.**

3 CA/39/KOB/2021 IN IA/213/KOB/2020 IN CP/51/KOB/2020

Learned counsel for the applicant Shri A.N.Rajan Babu as well as learned counsel for R1 Shri Madhu Radhakrishnan and learned GP for R2 and R3 Shri Muhammed Fazil appeared through VC.

This CA is filed by the applicants, who are respondents 1 to 5 in the CP, with the prayer to permit the counsel of the applicants herein to withdraw the undertaking given by him in IA/213/KOB/2020 and to vacate the interim order extending the undertaking until further order. Heard both sides. **CA/39/KOB/2021 IN CP/51/KOB/2020 stands disposed of vide separate sheets.**

4 REPORT/23/KOB/2021 IN IBA/35/KOB/2020

None has appeared for the IRP. **The report of the IRP is taken on record.** Registry is directed to place the report in the appropriate file.

5 IA(IBC)/68/KOB/2021 IN IBA/21/KOB/2019

This is an application filed by the FC with the prayer to order the liquidation of the CD.

Learned counsel for the R2 Shri Shivsankar R. Panicker sought an adjournment through email stating that he wants to file the counter. Learned counsel for the Applicant/FC Shri Sunil Shankar, learned RP Shri Jasin Jose and learned counsel for the CD (R1) Shri Akhil Suresh also appeared through VC.

The request of R2 is allowed. He may file the counter within ten days positively, failing which law will take its own course.

Shri Akhil Suresh, who appeared for the CD submitted that he has filed an IA with the prayer to direct the RP to consider a resolution plan to be submitted by the Applicants in terms of the provisions of the IBC, 2016. But the same has not been listed. Registry is directed to list the said IA, if it is in order along with this IA on 29.04.2021.

List on 29.04.2021 for final hearing.

6 IA/37/KOB/2021 IN IBA/21/KOB/2019

Learned counsel for the Applicant/Resolution Applicant Shri Shivsankar R. Panicker sought an adjournment stating that he wants to file the counter in the IA(IBC)/68/KOB/2021, which is related to this IA. Learned counsel for R2/FC Shri Sunil Shankar, learned counsel for the CD/R3 Shri Akhil Suresh and learned RP Shri Jasin Jose also appeared through VC.

The adjournment sought by the applicant is allowed. List on 29.04.2021 for final hearing.

7 IBA/48/KOB/2019

Learned counsel for the Operational Creditor Shri Akhil Suresh as well as learned counsel for the Corporate Debtor Shri Terry V. James appeared through VC.

The OC has filed a memo showing the payments already made by the CD. As per the memo the OC has already paid an amount of Rs.7,25,000/- and balance amount to be paid is Rs.3,98,994/- Shri Terry V. James submitted that CD has paid Rs.1,50,000/- to the OC yesterday. Both the parties submitted that they will be able to settle the matter on or before 21.04.2021. Their submissions are recorded.

Since this is an IBC case, the matter cannot be prolonged further. **Hence Reserved for orders. List for pronouncement of Orders on 27.04.2021. Settlement memo, if any, may be filed on or before 21.04.2021.**

8 MA/187/KOB/2020 IN IBA/34/KOB/2020

Learned counsel for the applicant Shri Akhil Suresh appeared through VC. Learned counsel for the CD Shri Sharad Kodianthara sought an adjournment through email stating that there is a stay of all further proceedings in this IBA by the Hon'ble High Court of Kerala. Copy of the stay order submitted by Shri Akhil Suresh is on record.

Adjourned to 25.05.2021.

9 IBA/34/KOB/2020

Learned counsel for the Operational Creditor Shri Akhil Suresh appeared through VC. Learned counsel for the CD Shri Sharad Kodianthara sought an adjournment through email stating that there is a stay of all further proceedings in this IBA by the Hon'ble High Court of Kerala. However, he has not produced the copy of the stay order as agreed to during the last posting date. Copy of the stay order submitted by Shri Akhil Suresh is on record.

Adjourned to 25.05.2021.

10 TCP/56/KOB/2020 (CP/47/2009 of High Court of Kerala)

It appears from records that notice was duly served to the petitioner on 08.03.2021. But none has appeared for the petitioner as well as for the respondents. Therefore **TCP/56/KOB/2020 (CP/47/2009 of High Court of Kerala) is dismissed for default and non-prosecution vide separate sheet.**

11 CA/29(KOB)/2021 IN CP/28/KOB/2020

Learned counsel for the applicant Shri Philip Mathew as well as learned counsel for R1-R4 and R6 Shri Abraham P. George appeared through VC.

This CA is filed by the applicant/petitioner with the prayer to appoint an IBBI registered Valuer to value the properties and the equity shares of the Applicant Company. Learned counsel of both the parties agreed to appoint a valuer as it will help both the parties to conclude their settlement talks.

Both the parties are directed to submit their mutually agreed names of IBBI Registered Valuer before 21.04.2021 to enable this Tribunal to appoint one among them as valuer to value the properties and the equity shares of the Applicant Company.

List on 21.4.2021.

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

12 CP/28/KOB/2020

Learned counsel for the petitioner Shri Philip Mathew as well as learned counsel for R1-R4 and R6 Shri Abraham P. George appeared through VC.

The respondents are directed to file their counter within two weeks positively.

List on 21.04.2021.

13 CP/43/KOB/2020

Learned counsel for the Petitioner Shri Shinu J. Pillai as well as learned counsel for R4 Shri Anzil Salim appeared through VC.

Vide order dated 25.02.2021 R1 to R3 were set ex-parte. Today, Advocate Ameerul Millath appeared through VC stating that he has filed CA/40/KOB/2021 and CA/41/KOB/2021 for setting aside the ex-parte order passed against R1 to R3. But the same is not listed today, Shri Shinu J. Pillai submitted that he wants to file counter against the said CAs. He may do so within two weeks positively. The applicants are directed to serve full set copies of CA/40 and CA/41 to Shri Shinu J. Pillai within a week.

List CA/40/KOB/2021 and CA/41/KOB/2021 along with this CP on 30.04.2021 for hearing.

14 CP/08/KOB/2021

Learned PCS for the Petitioner Shri Zibi Jose appeared through VC. Learned counsel for R10 Shri Yogindunath S and learned counsel for R1 to R8 Shri Pranoy Harilal appeared through VC. Shri Prajoy submitted that Vakkalath of R6 will be filed within a day or two.

It appears from records that notice was duly served to R9. But R9 has neither filed the counter nor appeared through VC today. **Hence R9 is hereby set ex-parte.**

Learned PCS for the Petitioner Shri PP Zibi Jose submitted that even after 48 days of issue of notice to the respondents they have not yet filed any counter in this CP. Hence he insisted to pass interim order with regard to item (1) *to stay the election with respect to reappointment of R2 Mr Jose Paul Chandy and R3 Mrs Rema Jinadevan as Directors of the Company at the AGM held on 23.12.2020 and (2) to stay the appointment of two new additional directors Mr. Kodakkatt Kesavan Madhu (R7) and Mr Jacob Anchery Varghese (R8) who were appointed at the Board Meeting held on 25.01.2021.*

On the other hand, Shri Prajoy Harilal vehemently opposed the prayer of the petitioners stating that this Tribunal has already passed detailed order on 02.03.2021 stating that it would not be justified to pass order on interim reliefs as sought for, without perusing the counter of the respondents. However, the R1 Company was directed to maintain status quo with regard to the paid-up share capital and share holding pattern of the Company as on the last AGM dated 23.12.2020 until further orders.

The Respondents are directed to submit their counter within two weeks positively, failing which law will take its own course. The petitioner may file the rejoinder, if any, within two weeks of receipt of the counter. The parties may bear in mind that **there shall be no further adjournment in this case.**

List on 19.05.2021 for hearing.

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

15 CP/09/KOB/2021

Both the parties expressed willingness to appear through VC. But due to paucity of time adjourned to 17.05.2021.

16 CA(CAA)/01/KOB/2021

Learned PCS for the Applicant Shri Zibi Jose appeared through VC. The following points are observed from the Application:

1. Applicants have produced Balance Sheet as on 31.3.2020 and list of creditors as on 05.02.2021. Since the application has been filed on 22.02.2021, the petitioners are directed to file the provisional balance sheet as on 30.09.2020 or 30.12.2020 so that the same is within 6 months.
2. The applicants have declared that there are no Secured and Unsecured Creditors in the Transferor Company. But these declarations have not been certified the Chartered Accountant. This is to be complied.
3. When there are no Secured or Unsecured Creditors, why the applicants pray for the direction from this Tribunal for convening the meeting of the Creditors?
4. The Transferee Company is having only one Secured Creditor. If so, instead of convening the meeting, the applicants may obtain a No objection affidavit from the said Secured Creditor.

5. Similarly, the Transferee Company is having only 6 unsecured Creditors. Instead of convening the meeting, the applicants may obtain No objection affidavits from the Unsecured Creditors.
6. There are only 6 shareholders in the Transferor Company, out of whom 2 are directors. Instead of convening the meeting of shareholders, the applicants may submit No Objection affidavits from the shareholders for the merger of the applicant companies.
7. There are only 4 shareholders in the Transferee Company, out of whom 2 are directors. Instead of convening the meeting of shareholders, the applicants may submit No Objection affidavits from the shareholders for the merger of the applicant companies.

The learned PCS for the applicants, during the hearing, submitted that he shall file affidavits as mentioned above. He may do so before the next date fixed.

List on 29.04.2021.

17 CA/31/KOB/2021 IN TCP/42/KOB/2019

Both the parties expressed willingness to appear through VC. But due to paucity of time adjourned to 30.04.2021.

18 TIA/2/KOB/2019 (IA183/2019) IN TCP/42/KOB/2019

Both the parties expressed willingness to appear through VC. But due to paucity of time adjourned to 30.04.2021

19 TCP/42/KOB/2019

Both the parties expressed willingness to appear through VC. But due to paucity of time adjourned to 30.04.2021

20 CP/30/KOB/2020

Both the parties expressed willingness to appear through VC. But due to paucity of time adjourned to 21.05.2021.

21 CA/22/KOB/2021 IN CP/05/KOB/2020

Learned counsel for the applicant Shri Sukumar Nainan Oommen appeared through VC. None has appeared for R1 to R5. Adjourned to 27.05.2021.

22 IA/163/KOB/2020 IN CP/05/KOB/2020

Learned counsel for the applicant Shri Sukumar Nainan Oommen appeared through VC. None has appeared for R1 to R5. Adjourned to **27.05.2021**.

23 CP/05/KOB/2020

Learned counsel for the Petitioner Shri Sukumar Nainan Oommen appeared through VC. It appears from the proceedings dated 20.01.2021 that Shri CS Manu filed the Vakkalath for R1 and R2 upon relinquishing the Vakkalath by Advocate E.M.Joseph. But Advocate CS Manu sought adjournments on 5.02.2021 and 10.03.2021 stating personal inconvenience. No response from him today. It is noted that R1 to R4 have already filed the counter. None has appeared for R5. **Hence R5 is hereby set ex-parte.**

Vide order dated 14.08.2020 the respondents were directed to produce the account statements of the Bank accounts maintained by the R1 Company including but not limited to Kodak Mahindra Bank and Axis Bank before this Tribunal with copy served to the petitioner. Learned counsel for the petitioner submitted he has received the Bank statements other than Axis Bank. He also submitted that he could file the rejoinder only after getting the bank statements of Axis Bank also.

The respondents are therefore directed to file before this Tribunal all Bank statements including Axis Bank within two weeks positively, failing which law will take its own course. A copy of Bank Statement pertaining to Axis Bank may also be served to the learned counsel of the petitioner within two weeks.

List on 27.05.2021.

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