

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 18th Nov 2020

1 CA/67/KOB/2020

Learned counsel for the Appellant Shri Georgekutty Kurian appeared through VC. Orders pronounced. **CA/67/KOB/2020 is disposed of vide separate order.**

2 CA/75/KOB/2020

Learned counsel for the Appellant Shri Georgekutty Kurian appeared through VC. Orders pronounced. **CA/75/KOB/2020 is disposed of vide separate order.**

3 IBA/37/KOB/2020

Learned counsel for the Financial Creditor M/s. Aditya V. Singh and Thomas Kurivilla appeared through VC. This is an IB Application filed by M/s. BMW India Financial Services Pvt Ltd against the Corporate Debtor M/s. Koyenco Autos Pvt Ltd for realisation of Rs.24,20,59,951/- The FC is directed to issue fresh notice to the CD through email in addition to Registered post with A/D and submit proof of service before the next date fixed. Registry is also directed to issue notice to CD through email. List on **15.12.2020**.

4 CP/42/KOB/2020 WITH CAVEAT NO.18/KOB/2020

Learned counsel for the Petitioners Shri Sunil Sankar as well as learned counsel for the Caveator Shri A.N.Rajan Babu appeared through VC.

This is a Petition filed under Section 241 & 244 of the Companies Act, 2013.

The Petitioners have submitted that they are members of the R1 Company. The Petitioners have submitted that the 1st Respondent was an existing company within the meaning of Sec. 2(2) of Kerala Non-Trading Companies Act, 1961 (Act 42 of 1961) which came into effect from 1.3.1962. The 1st Respondent is governed by the provisions of the said Act, the Kerala Non-Trading Companies General Rules framed

in 1968 and The Kerala Non-Trading Companies Regulations framed in 1968. By virtue of Secs. 3, 4 and 5 of the Kerala Non-Trading Companies Act, 1961, the provisions of the Companies Act, 1956 and presently Companies Act, 2013 will apply to the 1 Respondent. The competent authority under the Act is the Inspector General of Registration. By virtue of the application of the provisions of the Companies Act, 2013 (and prior to that the Companies Act, 1956), the statutory compliances provided for under the Companies Act, 2013 (and prior to that the Companies Act, 1956) are to be fulfilled by the 1st Respondent.

The petitioners have alleged that the Respondents 2 to 5 were managing the 1st Respondent Company in a highly oppressive manner by not furnishing information or annual financial statements or any such details pertaining to the Company. The 1st Respondent Company has not filed financial statements or Annual Returns as required under the Companies Act from 2006 onwards.

It is further submitted that the very appointment and continuance of Respondents 2 to 5 as Directors is also ex facie illegal and void. Respondents 2 to 5 have not been allotted Director Identification Number under Sec. 154 of the Companies Act, 2013. Sec. 152(3) of the Act prohibits a person who does not have Director Identification Number from being appointed as a Director. Further, Sec. 164(1)(h) stipulates that a person shall not be eligible for appointment as a Director, if he has not complied with Section 152(3).

The petitioners have also submitted that the 6th respondent is the competent authority under Section 2(3) of the Kerala Non-Trading Companies Act, 1961. The 2nd Petitioner herein had sought for details regarding filing of Annual returns of the 1st Respondent from the 6th Respondent under the Right to Information Act. The 6th Respondent vide letter dated 10.2.2020 has confirmed that the annual returns for the period 2006 to 2019 has not been filed. In view of the non-filing of the annual returns for the period from 2006 till date, according to the petitioners, respondents 2 to 5 who are the office bearers of the 1st respondent Company are disqualified under Section 164 (2) of the Companies Act, 2013. However, despite the disqualification for being reappointed, the said office bearers have been reappointed and are continuing illegally.

The petitioners have also alleged that Respondents 2 to 5 are presently making attempts to influence the 6th Respondent, and the adjudicating officer appointed by him, to ensure that the annual returns and financial statements are accepted.

The Petitioners have also stated in their application that the 1st respondent administers more than 40 schools and 4 colleges. The respondents 2 to 5 are making appointments illegally. They are also making amendments to byelaws without prior sanction of the government as required under the Kerala Non-Trading Companies Regulations, 1968. They have been appointing and dismissing local branches and unions of the 1st Respondent with an intention to continue in the present posts illegally.

According to the petitioners, the actions of the respondents 2 to 5 constitute oppression and mismanagement. It is submitted that the affairs of the 1st respondent are being conducted in a manner which is prejudicial to public interest and to the interest of the 1st respondent Company.

Hence this Company Petition is filed by the petitioners under Section 241 and 244 of the Companies Act, 2013. The learned counsel for the petitioners have also cited the Hon'ble Kerala High Court Judgements in K.Manoj & others Vs.SNDP Yogam and Others and Union Christian College Vs. Eapen to fortify the argument that the present CP is maintainable before this Tribunal.

Along with the main reliefs sought in the CP, the petitioners have also sought certain interim reliefs.

On the other hand, learned counsel for R1 (Caveator) vehemently opposed the Company Petition. He submitted that the Companies Act 2013 does not prescribe any authority including NCLT to disqualify the Directors and restrain them on the ground that a Company failed to file financial statement or Annual returns for any continuous period and they vacated the office. Hence, the Company Petition filed by the petitioners are not at all maintainable. He has also submitted that a case with the same relief and very same fact has been filed before the Hon'ble High Court of Kerala as WP(C) No.19266/2020 which stands posted for hearing on 24.11.2020.

I have heard the learned counsel for both the parties and have perused the records.

It appears to me on thorough perusal of the case records and hearing of the learned counsel for both the parties that it will not be justified to pass orders on any of the interim reliefs sought by the petitioners without perusing the counter of the respondents. Learned counsel Shri Rajan Babu stated that he is appearing for Respondents 1 to 5. The Petitioners are directed to issue fresh notice to Respondent 6 and 7 through email and Registered Post with A/D and submit proof of service before the next date fixed. Registry is also directed to issue notice to R6 and R7 through email.

All Respondents are directed to file their counter within three weeks.

The petitioners may file their rejoinder, if any, before the next date fixed.

Since the learned Caveator Shri A.N. Rajan Babu has been heard, the **CAVEAT NO.18/KOB/2020 stands disposed of.**

List on 29.12.2020 for hearing.

5 IA/175/KOB/2020 IN IBA/34/KOB/2020

Learned senior counsel for the Applicant/Corporate Debtor Shri Joseph Kodianthara as well as learned counsel for the respondent/Operational Creditor Shri Akhil Suresh

appeared through VC. Heard both sides. Orders reserved. **List for pronouncement of orders on 1.12.2020.**

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

Learned counsel for the petitioner sought adjournment as the matter pending before the Hon'ble NCLAT is still pending. List on **5.2.2021.**

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

Learned counsel for the petitioner sought adjournment as the matter pending before the Hon'ble NCLAT is still pending. List on **5.2.2021.**

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

Learned counsel for the petitioner sought adjournment as the matter pending before the Hon'ble NCLAT is still pending. List on **5.2.2021.**

9 IA/32/KOB/2019 IN CP/69/KOB/2019

Learned counsel for the applicant and respondents intimated their willingness to appear through VC. Since the NCLAT appeal is still pending, list **on 5.2.2021.;**

10 CP/69/KOB/2019

Learned counsel for petitioner and Respondents 3,4,8, 1.9 to 13&15 intimated their willingness to appear through VC. List on **5.2.2021.**

11 IA/33/KOB/2019 IN CP/71/KOB/2019

Learned counsel for the applicant and respondents intimated their willingness to appear through VC. Since the NCLAT appeal is still pending, list **on 5.2.2021.;**

12 CP/71/KOB/2019

Learned counsel for petitioner and Respondents 3,4,8, 1.9 to 13&15 intimated their willingness to appear through VC. List on **5.2.2021.**

13 IA/34/KOB/2019 IN CP/72/KOB/2019

Learned counsel for the applicant and respondents intimated their willingness to appear through VC. Since the NCLAT appeal is still pending, list **on 5.2.2021.**;

14 CP/72/KOB/2019

Learned counsel for petitioner and Respondents 3,4,1,8 to 13&15 intimated their willingness to appear through VC. List on **5.2.2021.**

15 CA/71/KOB/2020

Learned counsel for the Appellant Shri Biju Varghese Abraham appeared through VC. Report of ROC is on record. Reserved for orders. **List for pronouncement of orders on 8.12.2020.**