

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 19th Nov 2020

1 MA/110/KOB/2020 IN MA/10/KOB/2019 IN CP(IB)/689/17(CHENNAI BENCH)

Learned counsel for the Applicant Shri Krishnan Unni as well as learned counsel for R1 Shri Ravi Rajagopalan appeared through VC. Orders pronounced. **MA/110/KOB/2020 IN MA/10/KOB/2019 IN CP(IB)/689/17(CHENNAI BENCH) is disposed of vide separate order.**

2 CP/43/KOB/2020

Learned counsel for the petitioner Shri Shinu J. Pillai appeared through VC.

The Petitioner submitted that he is a shareholder and former Director of the R1 Company. The 1st Respondent Company is a private limited company incorporated in the year 2015 with an authorized share capital of Rs. 10,00,000 (Rupees Ten Lakhs only). The 2nd and 3d Respondents are the majority shareholders of the 1st Respondent Company and they constitute the present Board of Directors. According to the petitioner, from the very inception of the Company, the 2nd and 3rd Directors imposed their unilateral decisions upon other stakeholders which paved the way to the exit of other Promoters. The Petitioner trusting upon the representations of the 2nd Respondent stood along with the interest of the Company so as to avoid collapse and for saving his money and efforts. However, the internal communications revealed that the 2nd and 3rd Respondents with the assistance of the 4th Respondent conducting illegal business including hawala money transfer under the veil of the company, which prompted the Petitioner hereinto move out of the Board by placing his resignation.

The petitioner further submitted that after placing his resignation, the Petitioner requested for the return of money he advanced as Director Loan and expressed his intentions for exit from the Company so as to safe himself from the malfeasances and illegal activities of the delinquent Respondents under the corporate veil.

However, the Respondents under several pretexts evading the refund and continuing with illegal activities including the trading of shares; as discernible from the documents produced herewith. Furthermore, the Respondents are defaulting the statutory filings on time and concocting the documents and meeting particulars for filing purposes. From the MCA records, it is revealed that the Respondents even manipulated the attendance of this Petitioner for constituting quorum without even

sending any notice to this Petitioner. The Respondents flouting the entire mandatory compliances prescribed by the Companies Act for the personal benefits of the 2nd and 3rd Respondents and also covering up their hawala activities.

Hence the petitioner filed this petition under Sections 213, 241 and 242, read with Section 244 of the Companies Act 2013 alleging that the operation of the Company in the hands of the 2nd and 3rd Respondents is highly detrimental to the interests of the Shareholders as well as the public.

Along with the main relief, the petitioner has sought certain interim reliefs. I have heard the learned counsel for the petitioner and perused the whole records. Considering the materials on record, I think that it will not be justified to pass any interim order as sought by the petitioner without hearing the respondents. **However, this Tribunal directs that status quo as of today be maintained in regard to the selling, disposing of or otherwise dealing with the personal properties and assets of 1st respondent company including money or other movables until further orders.**

The petitioner is therefore directed to issue fresh notice to the respondents 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 the respondents through email.

List on 8.1.2021 for hearing.

3 MA/168/KOB/2020 IN TIBA/31/KOB/2019 & TIBA/10/KOB/2019

Learned RP Shri P.D. Vincent as well as learned Authorised Representative for R1 Shri Parameswaran Nair appeared through VC.

The RP submitted that CIRP cost amounting to Rs.52,96,243/- is due for payment as on 1.9.2020 and the RP is not in a position to exercise his duties under the CIRP as the CoC is taking contradictory decisions and is not making payments towards the CIRP cost. Few Debenture holders has approached the Hon'ble High Court of Kerala for investigation by the Central Bureau of Investigation (CBI) against the Corporate Debtor. An advocate was engaged in the said case to represent the RP. An amount of Rs.25,000/- is also due to the said Advocate.

According to the RP, since the year 2016, there are no proper books of accounts maintained by the Corporate Debtor and many of them are under Police Custody and with various Courts. The RP had filed application for retrieving the records and books from the police custody before the Court, however the Court observed that since the investigation was in preliminary stage the same could not be handed over. The properties of the Corporate Debtor are attached by various Courts on suits filed by the NCD holders.

The RP further submitted that the Financial Creditors in Class - NCD Holders of the corporate debtor, constituting majority of the CoC are not supporting the Resolution Professional in exercising his duties and they are interested only repayment of their deposits.

The RP also added that the CIRP period will expire on 24th November 2020. The CoC has not fixed the eligibility criteria for invitation of expression of interest as the same was defeated twice on placing before the CoC. The liquidation proposals placed before the CoC was also rejected. Some NCD holders expressed their interest in the SEBI recovery proceedings, however was not ready to withdraw the CIRP proceedings. Hence RP is facing difficulties in continuing the CIRP of the Corporate Debtor.

R1 in their counter submitted that the CIRP cost is in no way justifiable and creditors do not agree to be accountable for the exorbitant CIRP expenses. Creditors do not support payment of the RPs claim unless their dues are cleared. The RP may submit the detailed list of total CIRP expenses and the details of his claim amount of Rs.52,96,243/- along with the total receipt and payments from the commencement of CIRP. All the creditors are unsecured and it is impractical to collect this amount from the creditors. The Creditors are further submitted that the CIRP process is stayed by NCLAT also.

I have heard the learned RP as well as the learned Authorized Representative of the Committee of Creditors (R1). It appears from records that SEBI has preferred appeal before NCLAT against the orders passed by this Tribunal in IA/3/KOB/2020 and IA/4/KOB/2020 dated 12.3.2020. Interim stay order was issued by NCLAT on the said appeal of SEBI, but, according to the RP, no stay order exists as on date.

After hearing both the parties and thoroughly perusing the entire records, the Respondents are directed to conduct the meeting of the Committee of Creditors within 48 hours from today and report the final decision of the CoC in this matter on 23.11.2020. RP is directed file an affidavit before this Tribunal regarding the latest position of the appeal filed by SEBI before NCLAT before the next date fixed.

Registry is directed to issue copy of this order to the learned counsel for both the parties through email. List on 23.11.2020 for hearing.

4 MA/177/KOB/2020 IN TIBA/11/KOB/2019

Learned counsel for the Applicant Shri Dinesh R. Shenoy as well as Learned RP Shri Bijoy P. Pulipra appeared through VC. Counter filed by the RP. The applicant may file his rejoinder, if any within two weeks. Heard both the parties. Orders reserved. **List for pronouncement of orders on 14.12.2020.**

5 IBA/11/KOB/2020

Learned counsel for the Financial Creditor Shri Mohan Jacob George appeared through VC. Learned counsel for the CD Shri Arunkumar also appeared through VC.

Learned counsel for the Financial Creditor submitted an email stating that the CD remitted Rs.50 lakhs on 18.11.2020 and assured to remit further Rs.50 lakhs by this month itself. Considering the same, the FC has no objection upto 30.11.2020 for remittance of Rs.50 lakhs and also to arrive a settlement formula for further payments. The FC, therefore, sought an adjournment.

It appears from records that counter has not yet been filed by the CD. Both the parties are directed to submit their written statement pertaining to the settlement formula for further payments before 15.12.2020. **List on 15.12.2020.** Since this is an IBC matter, this Tribunal cannot prolong the matter and hence please **bear in mind that there shall be no further adjournment in this matter**

6 IA/194/KOB/2020 IN IA/55/KOB/2019 IN TCP/20/KOB/2019

Learned counsel for the Applicant Sri A.M.Sreedharan as well as learned senior counsel for the Respondent Shri Joseph Kodianthara appeared through VC. Learned senior counsel for the respondent sought time to file his counter. Respondent is directed to file his counter within one week. The applicant may file his rejoinder, if any, before the next date fixed, positively. **List on 2.12.2020 for hearing.**

7 TIA/10/KOB/2019 IN TCP/20/KOB/2019

Learned senior counsel for the Applicant Sri Joseph Kodianthara as well as learned counsel for the Respondent Shri A.M.Sreedharan appeared through VC. **List on 2.12.2020 for hearing.**

8 IA/54/KOB/2020 IN TCP/20/KOB/2019

Learned senior counsel for the Applicant Sri Joseph Kodianthara as well as learned r counsel for the Respondent Shri A.M.Sreedharan appeared through VC. **List on 2.12.2020 for hearing.**

9. TCP/20/KOB/2019

Learned counsel for the Petitioner Sri A.M.Sreedharan as well as learned senior counsel for the Respondent Shri Joseph Kodianthara appeared through VC. The Hon'ble High Court of Kerala vide order dated 12.11.2020 in CrI.MC No.457 of 2019 has ordered to inform them the present stage of the proceedings before this Tribunal and as to the reasonable time that is estimated for the final disposal of the case.

Therefore, **the parties may note that there shall be no further adjournment in this matter. List on 2.12.2020 for hearing.**

10 CA(CAA)5/KOB/2020

Learned counsel for the Applicant Shri Gokul RI appeared through VC. He submitted that since the consent affidavit of 90% Unsecured Creditors of the Transferee Company have not been produced, he is not praying for dispensation of the meeting of the Unsecured Creditors of the Transferee Company. He, however, requested to pass order for conducting the meeting of the Unsecured Creditors of the Transferee Company through on-line electronic means. He has further stated that he has submitted an email suggesting the name of Chairman to conduct the meeting. Heard the learned counsel for the Applicant and perused the records. **Orders reserved. List for pronouncement of orders on 1.12.2020.**

11 TCA/68/KOB/2020

Learned counsel for the Appellant Shri Mohammed Hazeem appeared through VC. Report of ROC is on record. **Reserved for orders. List for pronouncement of orders on 16.12.2020**

12 IBA/35/KOB/2020

Learned counsel for the IB applicant Shri Maninder Singh appeared through VC. Learned Counsel for CD Shri Vinod PV also appeared through VC. Shri Vinod PV submitted an email stating that the Director Shri Muraleedharan Pillai, who was authorised by the CD to conduct the case, passed away on 30.10.2020. CD was solely managed by Shri Muraleedharan Pillai. The CD consists of only two directors and another director is his wife. She is not yet recovered from the shock due to the sudden death of her husband. Considering the above, the CD sought two weeks' time to file the counter. Since this is an IBC matter, this Tribunal cannot prolong the matter, hence CD is directed to file the counter within one week. In default, the law will take its own course. The OC may file his rejoinder, if any, before the next date fixed. Registry is directed to issue copy of this order to both the parties through email. **List on 27.11.2020 2.30 pm.**