

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 2 Nov 2020

1 IA/174/KOB/2020 IN TIBA/11/KOB/2019

Learned RP Shri Bijoy P. Pulipra appeared through VC. Order pronounced. **IA/174/KOB/2020 is disposed of vide separate order.**

2 CA(CAA)5/KOB/2020

Learned PCS for the applicant Shri Gokul RI appeared through VC. This case is posted today for pronouncement of orders. However, the Bench observed that the affidavits submitted along with the application are less than 90% of the aggregated value of the Unsecured Creditors of the Transferee Company and hence convening their meeting cannot be dispensed with. The learned PCS for the applicant prayed that he may be allowed to scrutinise the value of the unsecured creditors in the transferee company and submit the shortfall of consent affidavits so as to fulfil the consent affidavits of 90% of the unsecured creditors of the transferee company as stipulated under the Act. Allowed. **Released from reserved for orders List on 19.11.2020 for hearing.**

3 IA/172/KOB/2020 IN CP/117/KOB/2019

No response from the learned counsel for the applicant in the IA. Moreover, as suggested in the earlier order, the applicant has not carried out the corrections. Learned counsel for respondents intimated his willingness to appear through VC. But no counter filed in the IA. List on **10.11.2020** along with the main CP for hearing.

4 IBA/21/KOB/2020

Learned counsel for the Operational Creditor Shri Jerin Asher Sojan as well as learned counsel for the Corporate Debtor Shri Vishnu Hari K appeared through VC. Heard both the parties. Orders reserved. List **for pronouncement of orders on 23.11.2020.**

5 IA/23(KOB)/2020 IN TCP/49/KOB/19

No response from the learned counsel for the appellant. Learned counsel for Respondents 7&8 intimated their willingness to appear through VC. List for hearing on **25th January, 2021**.

6 TCP/49/KOB/19 WITH CA/13/2009(CLB)

No appearance for the petitioner. Even though sufficient time was granted to the petitioner to either appear by person or through an advocate, it is seen that no steps taken by the petitioner. If the petitioner is interested to prosecute the matter, he shall make arrangements for appearance before the next date fixed. Learned counsel for R6, R.5,13&16 intimated their willingness to appear through VC. No response from other respondents. List on **25th January, 2021**. Registry is directed to communicate this order to the petitioner through email.

7 TCAA/4&5/KOB/19

Learned counsel for the Applicant M/s. Poulouse Abraham with Pranoy Harilal appeared through VC. Shri Poulouse Abraham submitted that in the report filed by RoC dated 5.1.2017 nowhere he has made any objection about the Scheme of Amalgamation.

According to the report dated 5.1.2017 of ROC, both the companies have received unsecured loans from a number of individuals and it is not clear whether the companies have complied with the provisions of Section 73 and 74 read with Companies (Acceptance of Deposits) Rules, 2014 (Clause viii) which exempts only the amount of deposits or loans received from the directors and their relatives. Further Rule 3 (3) of the said Rules also restricts the company from accepting deposits (unsecured loans) from its members together with other deposits which should not exceed 25% of the paid-up capital and its reserves. Both the companies are having paid up capital and the reserves and surplus is in the negative. The Transferor Company has received an unsecured loan of Rs.14.59 crores (paid up capital Rs.2.51 crores and Reserves and surplus is Negative) and the Transferee Company received unsecured loan of Rs.16.14 crores as on 31.03.2015 paid up capital Rs.4.27 crores and Reserves and surplus is in the Negative). Hence the companies prima facie have violated the provisions of Section 73 and 74 of the Act read with the rules framed thereunder.

Thereafter in the subsequent report submitted by ROC on 17.09.2020. In this report it is submitted that the Transferor Company has accepted Rs.17,50,000/- from Shri Mohammed Kasim Varikkodan, a Director of the Transferor Company during the year 2014-15. The Transferor Company has also accepted Rs.15, 00,000/-from Sri. Ibrahim Kutty, a director of the Transferor Company during the year 2015-16. As per the provisions of Rule 2 (1) (c) (vii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received from the Directors will be exempted only if a

declaration is given by such Director to the Company that the amounts so given were not borrowed from 3rd parties (others) and that such disclosure along with details of money so collected is made in the Board's Report. However, a perusal of the Board's Report for 2014-15 and 2015-16 reveals that such a disclosure was not made rendering acceptance of deposits of Rs.17,50,000/- and Rs.15,00,000/- from the said Directors to be in violation of the provisions of Section 73 of the Companies Act, 2013.

The ROC also stated in the said report that the Transferor Company had as much as Rs.10,53,48,389/- as outstanding deposits as on 31.03.2013 from the Directors and members which had gone up to Rs.14,44,85,889/- as on 31.03.2014. The new provisions of Sections 73 to 76A have been notified to be effective from 01.04.2014 which prohibited the Private Limited Companies from accepting or renewing any deposits from shareholders in excess of the aggregate of the paid-up capital, free reserves and securities premium amount. It is not in dispute that the outstanding deposits as on 31.03.2014 were far in excess of such limits from shareholders.

Apart from the above, the Transferor Company retaining such amounts raised purportedly from the shareholders without repaying them within a period of 3 years as prescribed in Section 74 of the Act or on the due dates as per the terms of acceptance, whichever is earlier, would result in violation of Section 74 (1) (b) of the Companies Act, 2013.

ROC has also submitted that the Transferor Company has filed the one-time DPT-3 and also for the year ended 31.03.2019 wherein it is observed that the Transferor Company has not furnished the required information especially in respect of the deposits received and retained by the Transferor Company from the shareholders since 01.04.2014 to 31.03.2019.

Hence, the ROC vehemently objected for the approval of the Scheme of Amalgamation.

The counter filed by the Applicants inter alia stated that between 1.4.2014 and 31.3.2015, the transferor company only took an unsecured loan of Rs.17,50,000/- from Mr. Mohammed Kasim V on 29.05.2014, who was a director of the transferor Company at the concerned point in time. No other unsecured loans were availed from any other person during the concerned period. Mr. Mohammed Kasim V was appointed as a director of the transferor company on 8.5.2014. Thereafter, he has continued as a director of the transferor company, without any interruption, till date. In view of the above, there is no illegality whatsoever with respect to availing unsecured loan of Rs. 17,50,000/- from Mr. Mohammed Kasim V and there is no violation of section 73 or 74 of the Companies Act, 2013 or of Rule 3(3) or any other Rule of the Companies (Acceptance of Deposits) Rules, 2014.

I have heard the learned counsel for the applicant and perused the records. It is noted that the Counter filed by the applicant is silent regarding the allegation of acceptance of Rs.15,00,000/- from Shri Ibrahim Kutty, a Director of the Transferor Company during 2015-16.

Therefore, the applicant may file an additional counter explaining all the allegations raised by ROC in his report filed on 17.9.2020.

Next date fixed for hearing. List on **3.12.2020** before that date the applicant is directed to file his additional counter.

8. TCP/(CAA)/04/KOB/2020 (CA/337/CAA/2019/CB)

Learned counsel for the petitioner Shri J.Ravikumar appeared through VC. Regional Director through ROC has filed a report on 1st October 2020. The Official Liquidator has also filed his report on 7.2.2020.

In the report of OL, it is stated that the MoA of the Transferor Company allows the transferor company to be amalgamated with only such company or firm having objects altogether or in part similar to the company. The transferor company's objects are into infrastructure field and the Transferee Company's objects are running training academy in the areas of televisions, print media, etc. Therefore, the OL submitted that the applicant companies may be asked to convince this Tribunal that the Transferor company has duly altered its Memorandum under the Companies Act, 1956/2013. Subject to the above, the OL is of the opinion that the affairs of the transferor companies involved in the above scheme of amalgamation have not been conducted in a manner prejudicial to the interests of its members or to public interest.

The RD in his report stated that the Central Government has decided not to make any objection to the scheme of amalgamation except for a direction to the transferee company to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 and to change the appointed date from the present 01.04.2017 to 01.04.2019 as agreed by the Company in its letter to the Directorate's letter dated 14.7.2020. The RD has also submitted that the transferee company may be directed to file the amended MoA and AoA with the ROC for its records.

The Petitioners are directed to comply the points raised by RD and OL.

The Petitioners are also directed to notify the date of hearing of this Petition in the Trivandrum Edition of Deccan Chronical (English) and in the Trivandrum Edition of Janmabhoomi (Malayalam) newspapers within two weeks from the date of this order.

List on 1.12.2020 for final hearing.

9 IBA/22/KOB/2020

No response from the learned counsel for the operational creditor. It is noticed from the earlier orders, the notice sent by this Registry to the Corporate Debtor has been returned with the postal remarks "shop permanently closed." The operational creditor has not filed proof of service with affidavit to show that the notice has been served. In such circumstances, it is advised to issue paper publication. The operational creditor is directed to make paper publication in two news papers one each in English and Malayalam newspapers widely published where the Corporate Debtor operates and produce proof of publication before the next date fixed. List on **14.12.2020**.

10 IBA/23/KOB/2020

No response from the learned counsel for the operational creditor. It is noticed from the earlier orders, the notice sent by this Registry to the Corporate Debtor has been returned with the postal remarks "shop permanently closed." The operational creditor has not filed proof of service with affidavit to show that the notice has been served. In such circumstances, it is advised to issue paper publication. The operational creditor is directed to make paper publication in two news papers one each in English and Malayalam newspapers widely published where the Corporate Debtor operates and produce proof of publication before the next date fixed. List on **14.12.2020**.

11 CP/04/KOB/2020 WITH IA/96/KOB/2020

This case is posted today for hearing at 2.30 pm. In view of the constitution of the Special Bench for NCLT, Bengaluru Bench with this Bench, with effect from 1.10.2020, the case stands adjourned to 17.11.2020 at 2.30 pm for final hearing.