

NCLT, KOCHI BENCH

Daily **Orders** – Draft

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

Date: 23rd Nov 2020

1 IBA/21/KOB/2020

Learned counsel for the IB Applicant Shri Sojan James appeared through VC. Orders pronounced. **IBA/21/KOB/2020 is Admitted vide separate order. IRP APPOINTED.**

2 CA/69/KOB/2020

Learned counsel for the Appellant Shri Shameed Ahmed appeared through VC. Orders pronounced. **CA/69/KOB/2020 is disposed of vide separate order.**

3 CA/96/KOB/2020

Learned counsel for the Appellant Shri Yogindunath appeared through VC. This is an Appeal filed by the Appellant for restoring the name of the Appellant Company in the Register of ROC. The documents submitted by the Appellant in his Appeal include the following:

- (i) Master Data
- (ii) Memorandum of Association and Articles of Association
- (iii) Latest Income Tax Return acknowledgement
- (iv) Financial Statements from 2014-15 upto 2018-19

Registry is directed to issue notice to ROC through special messenger for his report. **List on 7.12.2020.**

4 CP/44/KOB/2020

Learned counsel for the Petitioners Smt. Rema Smrithi VK as well as learned PCS for the respondents Shri Dhiren R. Dave appeared through VC.

This is a Company Petition filed under Section 142, 61, 62, 64, 184 (1), 236, 241, 242, 247(1) of the Companies Act, 2013.

The fact of the case in brief according to the petitioner is that the 1st Respondent Company was incorporated in 2013 for the specific purpose of conducting a bio medical facility in Kozhikode, Kerala.

The Government of Kerala had invited tenders for starting such facilities all over Kerala pursuant to the National Green Tribunal's directive to set up such facilities for safe disposal of bio medical waste. It was seen that in Kerala there existed only such facility and therefore it was imperative to start more for the safety of the people and the environment.

The Petitioners submitted that they were the founder directors of the respondent company holding amongst themselves 5,000 shares of Rs 10 each. The first respondent being the chemical engineer brought in the expertise to the company while the 2nd petitioner was the face of the company doing all the work as required in implementing the bio medical waste project in Kerala. The 2nd and 3rd respondents who are from Surat in Gujarat later asked to be inducted as shareholders in 2015 and the same was done and they were also made Directors of the Company.

According to the petitioners, from the moment the 2nd & 3rd respondents entered the company they realized the first respondent company was upto a good start and they started making plans to usurp the company and take it away from the Petitioners. The 1st petitioner who was the employee of 2nd and 3d respondents Companies in Gujarat was forced to quit her position in those companies due to the harassment meted out to her by the 2nd and 3rd respondents.

The Petitioners realizing the intention of the 2nd & 3rd respondents then decided to remove them as Directors of the Company and requisition notice was send to them for the same on 18.9.2017.

The 2nd & 3rd respondents in keeping with their plans to take over the 1st respondent company started holding illegal meetings in Surat, Gujarat misusing their position as Directors. They sent out notices of Board meeting and EOGM on 3.10.2017, 10.10.2017 purportedly to increase the capital and allot shares by private placement. The notice sent for Board meeting dated 3.10.2017 was received on 5.10.2017 and the meeting was to be held in Gujarat on the 10th. Further, the said notice was incomplete and had no agenda papers or anything as such. The petitioners therefore asked that the said notice being per se illegal the meeting cannot be held on the 10th of October, 2017. But to no avail the respondents again send a notice dated 10.10.2017 stating that an EGM will be held in Gujarat again on the 20th of October, 2017 for enhancing capital of the company to 16,0000/- lakhs and shares via private placement will be given to the 2nd and 3rd respondents. It was a strangest notice since, firstly it was sent to the petitioners via email only on the 16th and the meeting sought to enhance capital and on the same day allot shares to the respondents 2 and 3 without even going through any basic process of valuation or offer of shares or anything of that sort. The petitioners therefore strongly opposed this meeting and

send out letters to the 6th Respondent. They even cast ballot with the 1st respondent company dissenting from any such capital enhancement or share allotment.

The petitioners thereafter sought to remove the respondents from the company and issued notice dated 7.10.2017 based on requisition send earlier by a shareholder to the company to hold a Board meeting on 17.10.2017. At the said meeting it was resolved to remove the 2nd and 3rd respondents as Directors of the Company. Though DIR 12 was uploaded on 17.10.2017 itself the 6th respondent send out letter asking for explanation as the 2nd and 3rd respondents had objected to the same. The petitioner thereafter sent a letter to the ROC explaining the circumstances and attached all the relevant documents relating to the removal of the 2nd and 3rd respondents dated 31.10.2017. In spite of this letter the ROC did not allow the DIR 12 to be uploaded.

The petitioners thereafter in 2018 had following all the processes of law sought to enhance the capital of the 1st respondent company and had held meetings after due notices send to all the Directors on 10.3.2019 resolved to offer shares by right issues as per the procedure laid down in law. The NCLT, Chennai Bench on the application of the respondent 2nd and 3rd thereafter issued status quo to the meeting mentioned above.

The petitioner further submitted that the 2nd respondent knowing that all his efforts were in vain approached the Hon'ble NCLT, Chennai Bench to try and get an order in his favour. But apart from giving interim orders allowing for meetings to be held the respondents were directed to maintain status quo vide orders dated 16.11.2017 & 16.3.2017, thereby neither the respondents nor the petitioners could change the status of the company till pendency of the case. This resulted in having none of the plans of the respondents worked in their favour and hence they withdrew the case on 10.7.2019 on the pretext that they would settle the matter out of court.

The Petitioners alleged that the respondents thereafter in complete violation of the NCLT orders and their submissions before the NCLT filed Form 7 in 2019 with backdated dates of meetings held in 2017 for capital enhancement and for issue of shares by private placements along with approvals and resolutions made purportedly by the 1st respondent company board. It is extremely to note that the 6th respondent allowed the 2 & 3 respondents to file this form without realising any query regarding the validity of the submissions made when a similar Form 7 filed by the Petitioners was pending before it. The petitioners therefore submitted that this entire exercise is couched in illegality and the reeks of misconduct.

The 2nd and 3rd respondents thereafter sent a notice dated 8.7.2019 u/s 236 of the Companies Act purportedly to buy the minority shares from the Petitioners at an amount which was fixed by themselves and did not seem to be valued by any registered valuer.

Hence this petition.

Learned PCS for the Respondents 1 to 3 submitted that besides the petition is barred by limitation, the petitioners are neither shareholders nor directors of the R1 Company and hence the petition is prima facie not maintainable.

I have heard both sides. After thoroughly perusing the records including both volumes, I think it would not be justified to pass any order without perusing the counter of the respondents. Therefore, respondents are directed to file their counter within two weeks. Registry reported that the learned PCS has submitted an email stating that he represents R1 to R3. He is directed to submit the original Memo of Appearance, as per rules, before the next date fixed. The petitioners are directed to issue fresh notice to respondents 4 to 6 through email and Registered Post with A/D and submit proof of service with an affidavit before the next date fixed. Registry is also directed to issue notice to Respondents 4 to 6 through email.

Next date fixed for hearing. List on 22.1.2021.

5 REPORT NO.119/KOB/2020 IN CP(IB)/54/KOB/2019

Learned counsel for the RP Shri Vinod PV appeared through VC. The Report submitted by the RP is **accepted and taken on record**. Registry is directed to place the report in the appropriate file.

6 IA/198/KOB/2020 IN CP/21/KOB/2020

Learned counsel for the applicant Shri Pranav appeared through VC. Learned counsel for R2 to R7, R9 & R10 Shri V.Ajakumar, learned counsel for R8 and R16 Shri Saji Varghese and learned counsel for R12 and R13 Shri Mohammed Fazil appeared through VC. This is an application filed under Rule 32 of NCLT Rules 2016. The respondents are directed to file their counter within two weeks. List on 25.1.2021.

7 IA/200/KOB/2020 IN CP/21/KOB/2020

Learned counsel for the applicants Shri V .Ajakumar appeared through VC. Learned counsel for the Respondents R1 to R8 Shri Pranav, learned counsel for R10 and R16 Shri Saji Varghese and learned counsel for R12 and R13 Shri Mohammed Fazil MP also appeared through VC.

This is an application filed under Rule 41 of NCLT Rules 2016 with the prayer to extend the time for filing reply statement/counter to the petition by R2 to R7, R9 and R10 for a further period of 4 weeks from 21.11.2020. The applicants have also prayed for direction to R1, 411, R14, R18 to R20 and R22 to file their reply/counter statement, if any, to the CP within 3 weeks from 21.11.2020 with copy to the applicants (R2 to R7, R9 and R10 in the CP) in order to effectively defend the Company Petition No.21/KOB/2020.

I have heard both the parties. It appears that CP was filed by the petitioner on 29.6.2020. By the order dated 20th August 2020, after hearing both the parties, respondents were directed to maintain status quo in regard to the share capital of R1, R6 and R7, R8, R9 and R10 as of 20.8.2020 till the next date of posting, ie. 21.9.2020. **The respondents were also directed to file their counter on or before 21.9.2020.** Thereafter, vide order dated 23rd Sept 2020, besides the status quo was extended until further orders, the respondents were also directed to maintain status quo as of 23.9.2020 in regard to alienation of the shares, assets, tangible as well as intangible with respect to R1, R6, R7, R8, R9 and R10 companies until further orders. On 23.9.2020 Respondents filed an IA 147/KOB/2020 with the prayer to extend the time for filing counter to the CP for a further period of 6 weeks. **The said IA/147/KOB/2020 was disposed of by this Tribunal vide order dated 23.9.2020 granting 4 weeks' time to file the counter to the CP.**

As such, it appears that sufficient time has already been granted to the respondents to file their counter in the CP. Therefore, the present IA seeking another four weeks time to submit the counter to the CP is unjustifiable. However, **as a last chance, all contesting respondents are directed to file their Counter** in the CP within three weeks from today, failing which law will take its own course. **IA/200/KOB/2020 is disposed of with the above direction.**

8 IA/197/KOB/2020 IN CONTEMPT PETITION/09/KOB/2020 IN CP/21/KOB/2020

Learned counsel for the applicant Shri Pranav appeared through VC. Learned counsel for R2 to R7, R9 & R10 Shri V.Ajakumar, learned counsel for R8 and R16 Shri Saji Varghese and learned counsel for R12 and R13 Shri Mohammed Fazil appeared through VC. This is an application by the Contempt Petitioner to advance the date of hearing of the Company Petition and Contempt Petition. Heard both the parties. The hearing of the Contempt Petition/09/KOB/2020 in CP/21/KOB/2020 is hereby advanced to 15.12.2020. **IA/197/KOB/2020 is disposed of accordingly. List the CONTEMPT PETITION/09/KOB/2020 IN CP/21/KOB/2020 on 15.12.2020.**

9 IA/199/KOB/2020 IN CONTEMPT PETITION/09/KOB/2020 IN CP/21/KOB/2020

Learned counsel for the applicant Shri Pranav appeared through VC. Learned counsel for R2 to R7, R9 & R10 Shri V.Ajakumar, learned counsel for R8 and R16 Shri Saji Varghese and learned counsel for R12 and R13 Shri Mohammed Fazil appeared through VC. This is an application by the Applicants/Petitioners for modification of the prayer in the Contempt Petition No. 09/KOB/2020 In CP/21/KOB/2020. Heard both the parties. **The respondents are directed to file Counter to this IA within two weeks positively. List on 15.12.2020 for hearing.**

10 CP/21/KOB/2020

Learned counsel for the applicant Shri Pranav appeared through VC. Learned counsel for R2 to R7, R9 & R10 Shri V.Ajakumar, learned counsel for R8 and R16 Shri Saji Varghese and learned counsel for R12 and R13 Shri Mohammed Fazil appeared through VC.

It appears that CP was filed by the petitioner on 29.6.2020. By the order dated 20th August 2020, after hearing both the parties, respondents were directed to maintain status quo in regard to the share capital of R1, R6 and R7, R8, R9 and R10 as of 20.8.2020 till the next date of posting, ie. 21.9.2020. The respondents were also directed to file their counter on or before 21.9.2020. Thereafter, vide order dated 23rd Sept 2020, besides the status quo was extended until further orders, the respondents were also directed to maintain status quo as of 23.9.2020 in regard to alienation of the shares, assets, tangible as well as intangible with respect to R1, R6, R7, R8, R9 and R10 companies until further orders. On 23.9.2020 Respondents filed IA/147/KB/2020 with the prayer to extend the time for filing counter to the CP for a further period of 6 weeks from 21.9.2020. The said IA/147 was disposed of by this Tribunal vide order dated 23.9.2020 granting 4 weeks' time to file the counter to the CP.

As such, it appears that sufficient time has already been granted to the respondents to file their counter in the CP. **However, as a last chance, all the contesting respondents are directed to file their Counter in the CP within three weeks from today, failing which law will take its own course. List on 25.1.2021 for hearing.**

11 MA/99/KOB/2020 IN IBA/48/KOB/20

No information from the Applicants. Adv. Terry v. James has submitted an email stating that he is proposed to appear on behalf of the respondents and that a Vakalath will be filed today. Adjourned to 5.1.2021.

12 MA/162/KOB/2020 IN IBA/52/KOB/2019

Learned counsel for the applicant sent an email requesting for an adjournment to file a rejoinder to the reply filed by the respondents. Request is allowed. List on 7.1.2021.

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

Learned RP Shri PD Vincent as well as learned Authorised Representative for R1 Shri Parameswaran Nair appeared through VC. The RP submitted that the period of CIR Process in this case will be expiring on 24.11.2020. He also submitted an affidavit stating that the appeal filed by SEBI before NCLAT against the orders

passed by this Tribunal in IA/3/KOB/2020 and IA/4//KOB/2020 is posted on 11.12.2020.

The Authorised Representative of CoC (R1) submitted that the meeting of the Committee of Creditors held on 22.11.2020 unanimously decided that the recovery proceedings by SEBI shall be more effective and serve the best interests of the Financial Creditors than proceedings under CIRP since transactions involving Multistate ramifications, money laundering, etc. is involved. He has also submitted that the COC did not recommend for liquidation at any cost under CIRP/IBC 2016.

It appears from records that CIR Process was initiated against the CD on 18.09.2019 directing the IRP/RP to complete the CIRP proceedings or before 16.3.2020. Thereafter 30 days extension was also granted by this Tribunal to RP, so as to complete the process on or before 16.4.2020. Based on the request of the RP, the lock down period from 23.3.2020 to 31.10.2020 was also excluded by this Tribunal from the CIR Process.

Proviso to Section 12 of IBC 2016 as amended in 2019 states that “*CIR process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of CIR Process granted under this section and the time taken in legal proceedings in relation to such resolution process of the CD*”.

Learned Authorised Representative for the CoC submitted that the CIRP cost is exorbitantly high and no action has been taken by the RP to vacate the unwanted branch offices of the CD. The Authorised representative may file IA, if he wants any relief in this regard.

Considering the above provision and the fact that the appeal preferred by SEBI is pending before NCLT, I am of the view that the matter needs to be considered only after a decision comes from NCLAT.

List on 18.1.2021.

14 TCP/38/KOB/2019 (TCP/794/2018)

Even though sufficient time was granted for the appearance of the petitioner, today also none appeared for the petitioner. Learned counsel for R21 and 22 through email sought an adjournment. Since there is no representation for the petitioner for the last so many postings, the case is **dismissed for default and non-prosecution vide separate order.**