

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 24th Nov 2020

1 CA/70/KOB/2020

Learned PCS for the Appellants Shri Abhilash Nediyaalil Abraham appeared through VC. **Orders pronounced. CA/70/KOB/2020 is disposed of vide separate order.**

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

Learned counsel for the Applicant Shri B.K. Gopalakrishnan as well as learned counsel for R2 to R5 Shri Santhosh Mathew appeared through VC. **IA disposed of. Orders pronounced vide separate order.**

3 CP/45/KOB/2020

Learned counsel for the Petitioner Shri Renjith Rajappan appeared through VC. Learned counsel for R1 to R4 Shri Rajesh Narayan Iyer and learned PCS for R5 Shri Gokul RI also appeared through VC.

This petition is filed by the Petitioner under Section 241, 242 & 244 of the Companies Act, 2013 read with sections 59 and other relevant provisions of the Companies Act, 2013 alleging oppression and mismanagement against R2 to R5 in R1 Company.

The fact in brief in this case according to the petitioner is that the 2nd respondent is the elder brother of the petitioner. The 3rd respondent is the wife of the 2nd respondent and the 4th respondent is the wife of another elder brother of the petitioner who is no more. The Company is presently having a Director Board constituting 3 members in which the 3rd, 4th and 5th respondents are presently included.

The Petitioner submitted that he is one out of the four shareholders of the company, constituting more than 1/10th of the total shareholders of the company. Thus the Petitioner can very well maintain a petition against oppression and mismanagement as against the majority shareholders of the company as envisaged under Section 244(1)(a) of the Companies Act, 2013.

According to the Petitioner, Respondent Nos. 2 to 4 are directors who are declared as disqualified by the ROC in the year 2017 and as such they are not permitted to act as directors of any other company except the Company in which they are declared as disqualified for a period of 5 years from 01.11.2017. A case is still pending before the Hon'ble High Court of Kerala in W.P.(C.) No 41664 of 2018 in this regard.

The 3rd respondent convened a meeting of directors and notice was issued in her capacity as Director of the 1st respondent company on 05.09.2018. In the said Board meeting the agenda items includes the change of the name of the company from Statice Hotels and Resorts Private Limited to Zest Hotels and Resorts Private Limited or Lokanta Hotels and Resorts Private Limited. Moreover another decision was taken to appoint the 5th respondent as an additional director of the company with effect from 16.09.2018. The 2nd respondent tendered his resignation from the Director Board in the said meeting. The Board also adopted a resolution which recommends transfer of 281350 equity shares from 2nd respondent to the 5th respondent and transfer of 273075 equity shares from the 2nd respondent to the 3rd respondent and transfer of 273075 equity shares from the 2nd respondent to the 4th respondent at a face value of Rs.10/- each. The total consideration received from the 5th respondent is shown as Rs 28,13,500/-. The 2nd respondent has transferred the above equity shares clandestinely to the respondents 3 to 5 with a definite intention to maintain control over the company as well as to obtain monetary benefits from the 5th respondent.

Consequently the 5th respondent was appointed as an independent director of the R1 Company.

The Petitioner alleged that the entire procedure adopted by the company in appointing the 5th respondent as the additional director of the company is vitiated by procedural infirmities and irregularities.

The petitioner further alleged that in the Board Meeting of the 1st respondent company held on 30.12.2019 at the registered office of the company, respondent Nos. 3, 4 and 5 have participated and R3 acted as Chairman of the meeting. Pursuant to the meeting of the Board of Directors, notice of Extraordinary General Meeting was issued by the 3rd respondent. In the case of respondents 2 to 4, they have acted as the directors of 1st respondent company even without waiting for appropriate orders from The Honourable High Court of Kerala where they have preferred the Writ Petition challenging the notification declaring them as disqualified directors. Even as per the interim order passed by the Honourable High Court of Kerala, the Petitioners therein were only granted with limited reliefs enabling them to file the annual returns and financial statements of the active companies in which they are directors.

According to the petitioner, the 5th respondent is now attempting to get control of the company by pressurizing the other party respondents. The 5th respondent already filed a criminal complaint before the Station House Officer, Maradu Police Station and upon which Crime No 606 of 2020 of Maradu Police Station dated 03.10.2020 was registered. The 2nd respondent was taken into custody by the police in relation to the above crime and now he was remanded in judicial custody. The respondents 3 and 4 are also arrayed as accused in the above crime. Hijacking the company upon personal interests are activities forbidden by law and any such efforts without considering the interest of the company shall be prevented.

The petitioner further submitted that the respondents 2 to 5 have miserably failed to protect the best interest of the company and being the perpetrators of fraud played on the company they could not be allowed to earn further benefit from their own wrong doings.

Hence this petition.

Learned counsel for the Respondents vehemently opposed the petition stating that in a similar matter filed by R5, this Tribunal vide order dated 6.11.2020 in CP/40/2020 has already ordered to maintain status quo with regard to the disposal of any of the assets of R1 Company M/s. Lokanta Hotels and Resorts Private Ltd. The learned counsel for the respondents submitted that they shall file counter in the CP. They prayed not to grant any of the interim reliefs sought by the petitioner before perusing their Counter in the CP.

I have heard both the parties and after perusal of the records, I direct the Respondents to maintain **status quo** as regard to the shareholding pattern of the R1 Company until further orders. Respondents are directed to file their counter within three weeks. Petitioner is directed to issue fresh notice to R6 and submit proof of service with an affidavit before the next date fixed. Registry is also directed to issue notice to R6 through special messenger for his report.

List on 7.1.2021 for hearing.

4 IBA/28/KOB/2020

Learned counsel for the IB Applicant Shri Nidhi Sam John as well as learned PCS for the CD Shri Harikrishnan Nair appeared through VC. Settlement memo filed by the petitioner is taken on record. **Orders pronounced. IBA/28/KOB/2020 is disposed of vide separate order.**

5 MA/145/KOB/2020 IN MA/05/KOB/2020 IN TIBA/01/KOB/2019

Learned Liquidator Shri Shawn Jeff Christopher and learned counsel representing the suspended Director Shri Jerin Asher Sojan appeared through VC. Shri Jerin Asher Sojan sought an adjournment stating that since the learned counsel for the suspended director is engaged in some other assignments, he is representing him only today. Request for adjournment is Allowed. The respondents are directed to file their counter within a week, failing which the matter will be disposed of based on available records. Registry is directed to issue copy of this order to both the parties through email. List on **2.12.2020**.

6 TCP/51/KOB/2019

Learned counsel for the Petitioners Shri A.M. Sreedharan appeared through VC. None has appeared for the respondents. It appears from records that R13 has already filed the counter to the amended petition. Vide order dated 11.3.2020 R1 and R2 were directed to file their counter to the amended petition on before 22.4.2020. But they have not yet filed their counter.

It appears from records that R1, R2 and R13 are the contesting parties. I am of the view that it is required to issue fresh notice to the contesting respondents. The petitioners are directed to issue fresh notice to the contesting respondents and submit proof of service with an affidavit before the next date fixed. Respondents R1 and R2 are also directed to file their counter in the amended CP within 3 weeks failing which the matter will be proceeded with in accordance with the procedure of law. Since this is a long pending case, it is expected that both the parties will co-operate for an early disposal. Registry is also directed to issue copy of this order to the contesting respondents through email. List **on 27.1.2021 for hearing**. Please bear in mind that there shall be no further adjournment in this matter.

7 CP/32/KOB/2020

Learned counsel for the petitioner Shri Shinu J. Pillai appeared through VC. Learned counsel for R1 Telma Raju, learned counsel for R2 to R7 Shri Abraham Cherian and learned counsel for R10 Shri Mohammed Fazil appeared through VC. R1 and R8 have filed counter and R9 ROC filed his report. R2 to R7 and R10 are directed to file their counter within two weeks. The petitioners may file their rejoinder before the next date fixed. Registry is directed to issue copy of this order to the contesting respondents through email. List for hearing on **15.12.20 at 2.30 pm** for hearing.

8 IA/178/KOB/2020 IN CP/35/KOB/2020

Learned counsel for the Applicant Shri Pratap Pillai appeared through VC. R5 Smt. Rinu Mariam Thomas appeared through VC from the Women's Jail, Trivandrum. **Orders reserved. List for pronouncement of Orders in IA/178/KOB/2020 in CP/35/KOB/2020 on 26.11.2020.**

9 IA/106/KOB/2020 IN CP/19/KOB/2020

Learned counsel for the Applicant Shri B.K. Gopalakrishnan as well as learned counsel for R1 to R3 Shri Santhosh Mathew appeared through VC. **Orders reserved in CP/19/KOB/2020 on 30.12.2020.**

10 IA/132/KOB/2020 IN CP/19/KOB/2020

Learned counsel for the Applicant Shri B.K. Gopalakrishnan as well as learned counsel for R1 to R3 Shri Santhosh Mathew appeared through VC. **Orders reserved in CP/19/KOB/2020 on 30.12.2020.**

11 CP/19/KOB/2020

Learned counsel for the Petitioners Shri Santhosh Mathew as well as learned counsel for Respondents Shri B.K. Gopalakrishnan appeared through VC. **Orders reserved in CP/19/KOB/2020 on 30.12.2020.**

12 IA/97/KOB/2020 IN CP/117/KOB/2019

Learned counsel for the Applicant Shri B.K. Gopalakrishnan as well as learned counsel respondents Shri Santhosh Mathew appeared through VC. **Orders reserved in CP/117/KOB/2020 on 30.12.2020.**

13 IA/133/KOB/2020 IN CP/117/KOB/2019

Learned counsel for the Applicant Shri B.K. Gopalakrishnan as well as learned counsel for R1 to R3 Shri Santhosh Mathew appeared through VC. **Orders reserved in CP/117/KOB/2020 on 30.12.2020.**

14 **CP/117/KOB/2019**

Learned counsel for the Applicant Shri B.K. Gopalakrishnan as well as learned counsel for R1 to R3 Shri Santhosh Mathew appeared through VC. **Orders reserved in CP/117/KOB/2020 on 30.12.2020.**