

## ***NCLT, KOCHI BENCH***

### **Daily Orders – Draft**

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

Date: 4<sup>th</sup> Nov 2020

#### **1 MA/116/KOB/2020 IN TCP/25/KOB/2019**

Learned PCS for the applicant Shri Bijoy P. Pulipra as well as learned counsel for the Respondents Ms. Telma Raju appeared through VC. **Orders pronounced. MA/117/KOB/2020 is disposed of vide separate order.**

#### **2 MA/140/KOB/2020 IN TIBA/11/KOB/2019 Connected with IBA/28/KOB/2019**

Learned GP for the applicant Shri Mohammed Fazil as well as learned RP Sri Bijoy P. Pulipra appeared through VC. **Orders pronounced. MA/140/KOB/2020 is disposed of vide separate order.**

#### **3 CA/87/KOOB/2020**

Learned Counsel for the Appellant Shri Nikhil George Pinto 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) Memorandum of Association and Articles of Association
- (ii) Latest Income Tax Return acknowledgement
- (iii) Financial Statements pending for filing

Registry is directed to issue notice to ROC through special messenger for his report. **List on 16.11.2020.**

#### **4 CA/88/KOB/2020**

Learned Counsel for the Appellant Ms Lakshmi Krishnadas 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) Memorandum of Association and Articles of Association

- (ii) Copy of Master Data
- (iii) Latest Income Tax Return acknowledgement
- (iv) Financial Statements pending for filing

Registry is directed to issue notice to ROC through special messenger for his report. **List on 16.11.2020.**

#### **5 MA/164/KOB/2020 IN IBA/55/KOB/2019**

Learned RP Shri Shankar P. Panicker appeared through V C. This is an application filed by the RP seeking directions under Section 12A, read with regulation 30A of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations 2016 along with Rule 11 of NCLT Rules 2016. Heard and perused the records. Orders pronounced. **MA/164/KOB/2020 and IBA/55/KOB/2019 are disposed of vide separate sheets.**

#### **6 IA/180/KOB/2020 IN MA/9/(KOB)/2019 IN CP(IB)/689/17(CHENNAI BENCH)**

Learned counsel for the Applicant in Shri P. Benjamin Paul and learned counsel for R1 Shri Ramalingam appeared through VC. It appears from records that R7 to R9 (applicants in this IA) were set ex parte vide order of this Tribunal dated 11.12.2019 in view of their absence or non-appearance.

This IA/180/KOB/2020 is filed under Rule 49(2) of the NCLT Rules 2016 read with Order IX, Rule 7 of CPC with the prayer to set aside the above ex parte order passed by this Tribunal on 11.12.2019 in MA/09/KOB/2019 after excusing the delay of 291 days that occurred in filing this IA and to permit them to participate in the further proceedings before this Tribunal.

The applicants submitted that when MA/9/KOB/2019 came up for hearing on 11.12.2019, the Respondent No.8 and representing the Respondents No.7 and 9 was personally present before this Tribunal and Vakkalath filed on the same day. The applicants were under the bonafide impression that they being represented by their counsel in the future proceedings. However, this Tribunal had set R7 to R9 ex parte as per order passed on 11.12.2019.

The applicants further submitted that due to the inner re-organization and re-arrangement and consequent division of work in the Applicants' offices, the file pertaining to the above case got misplaced and was not easily traceable and after much search, the required file was retrieved only thereafter and the reply was accordingly filed. Even though the case was finally heard on 28.9.2020 and was posted for orders on 22.10.2010, the applicants on enquiry came to know on 12.10.2020 that R7 to R9 were already declared ex parte as stated above in spite of the fact that the reply was filed. The contact between the Applicants and the Counsel in respect of this case was lost due to inadvertent oversight on the part of the Applicants. Hence, there occurred delay of 291 days in filing this IA to set aside

the order of ex parte against the applicants passed by this Tribunal on 11.12.2019. The applicants submitted that there is no wilful or deliberate laches or negligence on the part of the Applicants herein in prosecuting their case pertaining to their claim against the CD before this Tribunal.

I have heard the learned counsel of both the parties. It appears that the reasons stated in the application are sufficient cause to set aside the above ex parte order. The law is well settled that a party cannot be suffered by way of fault of the Advocate. **With the aforesaid view, the ex parte order passed by this Tribunal on 11.12.2019 against the applicants in this IA, ie. R7 to R9, is hereby set aside and they are permitted to participate in the further proceedings in MA/9/KOB/2019 in CP(IB)/689/2017. IA/180/KOB/2020 IN MA/9/(KOB)/2019 is disposed of accordingly.**

Meanwhile it appears that the aforesaid R7 to R9 have already filed counter on 29.1.2020 in MA/9/KOB/2019 in CP(IB)/689/2017. The said counter is taken on record.

The learned counsel for the applicants submitted that R7 to R9, who represent the Kerala Water Authority, is a Government Authority. The KWA is running shortage of funds even in paying salary to its employees and contractors. Hence their legitimate dues are to be considered while disposing of the MA.

Heard the arguments of the learned counsel for the Respondents 7 to 9 in MA/9/KOB/2019 and their arguments have been noted for consideration while disposing of MA/9/KOB/2019.

#### **7 IA/181/KOB/2020 IN MA/9/(KOB)/2019 IN CP(IB)/689/17(CHENNAI BENCH)**

Learned counsel for the Applicant in IA/181/KOB/2020 Shri P. Benjamin Paul and learned counsel for R1 Shri Ramalingam appeared through VC. It appears from records that R7 to R9 (applicants in this IA) were set ex parte vide order of this Tribunal dated 11.12.2019 in view of their absence on that date. Vide order dated 4.11.2020 this Tribunal has already set aside the said ex parte order and the applicants in this IA (R7 to R9) are permitted to participate in the further proceedings in **MA/9/KOB/2019 in CP(IB)/689/2017.**

This application is filed under Rule 11 of NCLT Rules, 2016 to advance the case and the applicants be heard in **MA/9/(KOB)/2019 IN CP(IB)/689/17.** Since this Tribunal vide order dated 4.11.2019 in IA/180/KOB/2020 in MA/9/KOB/2019 in CP(IB)/689/17 has already permitted the applicants to participate in the proceedings in MA/9/KOB/2019 in CP(IB)/689/2017 and heard the arguments of the learned counsel for R7 to R9, this IA/181/KOB/2010 has become infructuous. **IA/81/KOB/2020 is therefore disposed of as infructuous.**

8 **TMA/42/KOB/19 (MA/ 450/IB/18(C.B.) ) IN  
CP/689/IB/2017/(C.B.) WITH REPORT NO.93/KOB/2020**

Learned counsel for the RP Shri T. Ravichandran appeared through V C. This is an application filed under Section 43(1) and Section 66 of the IBC 2016 in the matter of CIR Process of Merchem Limited under the provisions of IBC 2016. It appears that none has appeared for the Respondent or even none has sought any link to appear through VC. So, the matter is adjourned to another date.

**Report No.93/KOB/2020 is taken on record. Registry is directed to place the report in the appropriate file.**

**List on 4.12.2020.** Registry is directed to issue copy of this order to both the parties through email directing the parties to co-operate for an early disposal of the matter.

9 **MA/114/KOB/2020 IN MA/515/2019/CHENNAI BENCH IN  
CP(IB)/315/2019 IN CP(IB)/689/2017**

Learned counsel for the parties Shri N.R.Krishnan Unni, Shri P.V.Vinod, Shri NPS Choula and Shri Ravichandran appeared through VC. Heard all the parties. All the parties are directed to submit their written arguments within 2 weeks. **Reserved for orders. List for pronouncement of orders on 4.12.2020.**

10 **MA/115/KOB/2020 IN MA/515/2019/CHENNAI BENCH IN  
CP(IB)/315/2019 IN CP(IB)/689/2017**

Learned counsel for the parties Shri N.R.Krishnan Unni, Shri P.V.Vinod, Shri NPS Choula and Shri Ravichandran appeared through VC. Heard all the parties. All the parties are directed to submit their written arguments within 2 weeks. **Reserved for orders. List for pronouncement of orders on 4.12.2020.**

11 **IBA/24/KOB/2020**

Learned counsel for the IB Applicant Shri Thomas Kuruvilla appeared through VC. Even after paper publication, the Corporate Debtor did not respond. Heard the learned counsel for the IB Applicant. **Reserved for orders. List for pronouncement of orders on 26.11.2020.**

12 **IA/182/KOB/2020 IN CP/02/KOB/2020**

Learned PCS in the IA/182/KOB/2020 Shri K.S.Ravichandran as well as learned senior counsel for the respondent Shri Aravind Pandian appeared through VC.

Learned senior counsel for the respondent/applicant in the CP submitted that in spite of giving many opportunities the applicant/respondent in the CP is not making any interest in filing the counter. Learned counsel for the respondent in the CP submitted that counter in the CP is being filed today before the Registry. Copy of the counter has been sent to the petitioner. Learned counsel for the respondent in CP also submitted that he has preferred an appeal against the order of this Tribunal in IA/44/KOB/2020 before NCLAT and the same is pending, but no stay order is granted. Therefore, the respondent filed this IA/182/KOB/2020 to adjourn the proceedings of this Tribunal to any date after the Hon'ble NCLAT concludes hearing of the appeal. Heard both the parties. **The request for adjournment is partially allowed.** List the CP on 2.12.2020 for final hearing. **IA/182/KOB/2020 disposed of accordingly.**

### 13 CP/02(KOB)/2020

Learned senior counsel for the Petitioner Shri Aravind Pandian as well as learned PCS for the respondent K.S.Ravi Chandran appeared through VC.

Learned counsel for the respondent in the CP submitted that counter in the CP is being filed today before the Registry. Copy of the counter is also being sent to the petitioners today. Therefore, the Petitioner is directed to file his rejoinder within two weeks. The respondent may file his sur-rejoinder, if any, before the next date fixed positively.

Registry is directed to issue copy of this order to both the parties through email. **Both the parties may please bear in mind that there shall be no further adjournment in this case. List on 2.12.2020 for final hearing.**

### 14 CP(CAA)/01/(KOB)/2020

Learned counsel for the Appellant Shri Anil D. Nair submitted an email stating his willingness to appear through VC. It appears from records that RD/ROC has not yet filed their report. Hence adjourned **to 3.12.2020.**

### 15 CP(CAA)/02/(KOB)/2020

Learned counsel for the Appellant Shri Anil D. Nair submitted an email stating his willingness to appear through VC. It appears from records that RD/ROC has not yet filed their report. Hence adjourned **to 3.12.2020.**