

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

### **Daily Orders – Draft**

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

**Date: 6<sup>th</sup> Nov 2020**

**1 MA/9/(KOB)/19 IN CP(IB)/689/17(CHENNAI BENCH)**

Learned Counsel for the parties Shri Ramalingam, Shri Mohammed Fazil (GP) and Shri Shaji (for Shri Benjamin Paul) appeared through VC. Orders pronounced. **MA/9/KOB/2019 stands disposed of as allowed.**

**2 MA/12/KOB/2020 IN CP(IB)/689/17(CHENNAI BENCH)**

Orders pronounced. **MA/12/KOB/2020 stands disposed of as rejected.**

**3 MA/16/KOB/2020 IN CP(IB)/689/2017 (CHENNAI BENCH)**

Learned Counsel for the parties Shri Mohammed Fazil (GP) and Shri Ramalingam, appeared through VC. Orders pronounced. **MA/16/KOB/2020 stands disposed of as rejected.**

**4 MA/17/KOB/2020 IN CP(IB)/689/2017(CHENNAI BENCH)**

Learned Counsel for the parties Shri Mohammed Fazil (GP) and Shri Ramalingam, appeared through VC. Orders pronounced. **MA/17/KOB/2020 stands disposed of as rejected.**

**5 MA/18/KOB/2020 IN CP(IB)/689/2017(CHENNAI BENCH)**

Learned Counsel for the parties Shri Mohammed Fazil (GP) and Shri Ramalingam, appeared through VC. Orders pronounced. **MA/18/KOB/2020 stands disposed of as rejected.**

**6 MA/19/KOB/2020 IN CP(IB)/689/2017(CHENNAI BENCH)**

Learned Counsel for the parties Shri Mohammed Fazil (GP) and Shri Ramalingam, appeared through VC. Orders pronounced. **MA/19/KOB/2020 stands disposed of as rejected.**

#### 7 CA/66/KOB/2020

Learned counsel for the Appellant Shri Vinod PV appeared through VC. Order pronounced. **CA/66/KOB/2020 is disposed of vide separate order.**

#### 8 CA/73/KOB/2020

Learned counsel for the Appellant Shri John Vadassery appeared through VC. Order pronounced. **CA/73/KOB/2020 is disposed of vide separate order.**

#### 9 CP/40/KOB/2020

Learned counsel for the Petitioner Shri Yogindunath S appeared through VC. Learned counsel for R2 to R3 Shri Rajesh Narayanan also appeared through VC. Shri Rajesh Narayanan submitted that he represents R4 also. But he has not filed the Vakkalath for R4.

This is an application filed under Section 241 & 242 of the Companies Act, 2013 alleging oppression and mismanagement of R4 Company by R1 to R4. The brief facts of the case are that R1 approached the petitioner and husband of Petitioner during the year 2018 and put forward a proposal of investment in the R4 Company and made the petitioner to believe that he was conducting several businesses under the brand name of Vijaya Hospitality and Resorts Ltd with the assistance of his wife R2 and R3. The respondents also made the petitioner to believe that they are running chains of star hotels and resorts in various places in Kerala and they were executing a Hotel project as a four-star hotel located at Kannadikadu near Maradu Municipality, Ernakulam and the project was being executed through R4 Company and an investment opportunity for the Petitioner.

The Petitioner believing the representation and submissions made by R1 regarding the R4 Company being an investment opportunity, the husband of Petitioner entered into a Memorandum of Understanding dated 08 day of October 2018 with R4 Company represented by R1 as Managing Director.

The Petitioner believing the assurance and promises given by the respondents R1 to R3, advanced an amount of Rs 7,00,00,000/ (Rupees Seven Crores) and further amount of Rs 446,04,000- (Rupees Four Crore Forty Six Lakhs Four Thousand) thus totalling to Rs.11,46,04,000/-(Eleven crore forty six lakhs four thousand only) paid by the petitioner through bank and by cash in lucid intervals.

Respondents R2 and R3 vide their email sent to the Petitioner created a false Minutes of Meeting of Board of Directors on December 30, 2019 whereas there

was no such meeting held on the said date. Not auditing the books of the Company for the Financial Year 2018-2019 and not filing the same with the Registrar of Companies shows the mala fide intention of the Respondents R1 to R3. The Respondents R2 and R3 supplied unaudited accounts of the R4 Company for the financial year ended 31st March 2019, vide their email dated July 4, 2020 after one year and three months of the close of relevant financial year which strengthened the suspicion.

Petitioner came to know that the amount advanced by the petitioner was used by the Respondents R2 and R3 with the assistance of R1, not for the completion of the hotel project, but misappropriated by the Respondents for their personal gains. The Audited Annual Accounts for the Financial Years 2018-2019 was not audited nor filed with Ministry of Corporate Affairs, Govt Of India and the accounts for the year 2019-2020 was not completed as on date. R2 & R3 has not convened any Meeting of the Board of Directors of the R4 Company after the date of appointment of Petitioner as Director of the Company and the Petitioner has been kept in dark about the management and affairs of the Company.

Though R1 has officially resigned from the post of Director on 16<sup>th</sup> September 2018, he being the husband of R2 is actively associated with the activities of the Company R4 and making representations and claims that the Company is owned and managed by him.

Even being a director of the Company, the Petitioner is not permitted to be engaged in the management and affairs of the Company and hence kept in dark regarding the payments to Employees, Vendors, Statutory Liabilities and other expenses as well as legal and compliance status of the R4 Company. And more over when requested to have discussions and meetings, the Board meetings are not convened and conducted as per the provisions of Companies Act, 2013.

Hence this petition. Along with the main petition, the petitioner has sought several interim reliefs.

I have heard the learned counsel for the petitioner as well as learned counsel for R1 to R3. Learned counsel for R1 to R3 submitted that the allegations raised by the petitioner against the respondents are totally false. Even, the petitioner has also filed several criminal cases against the Respondents. In fact, after the lock down period the hotel business has suffered some setbacks, which, according to the respondents, can overcome after some period. Hence the learned counsel for the respondents prayed for not to allow any interim relief at this stage.

Upon hearing of the parties and meticulous perusal of records, it appears that it will not be justified to pass any interim order without perusal of the Counter. Therefore, respondents are directed to file their counter within three weeks from today. However, the respondents are directed to maintain status quo with regard to the disposal of any of the assets of R4 Company until further orders. Next date fixed for hearing. **List on 7.1.2021.**

10 CA/89/KOB/2020

Learned counsel for the Appellant Shri Abid Millath appeared through VC. Report of ROC is on record. Reserved for orders. **List for pronouncement of orders on 11.11.2020.**

11 REPORT NO.111/KOB/2020 IN MA/05/KOB/2020 IN TIBA/01/KOB/2019

Perused the report of the Liquidator. Report is accepted and taken on record. Registry is directed to place the report at the appropriate file.

12 IA/176/KOB/2020 IN MA/05/KOB/2020 IN TIBA/01/KOB/2019

Learned Liquidator submitted an email stating willingness to attend the case through VC. However, due to paucity of time adjourned to 27.11.2020.

13 MA/170/KOB/2020 IN TIBA/14/KOB/2019

Learned RP Shri Sasitaran Ramaswamy appeared through VC. This is an application filed by the RP with the prayer to exclude the period from 23.3.2020 to 31.10.2020 (222 days) from the period of CIR Process and to extend the period of CIRP upto 30.11.2020. Heard the arguments made by the RP. Orders passed. **MA/170/KOB/2020 in TIBA/14/KOB/2019 is disposed of vide separate sheets.**

14 MA/22/KOB/2020 IN TIBA/14/KOB/2019

Learned counsel for the applicant submitted an email stating that on account of personal inconvenience he is unable to attend through VC today and sought an adjournment. Meanwhile the learned RP Shri Sasitaran Ramaswamy appeared through VC. He submitted that he has filed Report No.56/KOB/2020 in this case and prayed to take the said report as counter in this MA. But, later on, he submitted that he wants some time to file the counter. The RP may file his counter within 2 weeks. Registry is directed to issue a copy of this order to both the parties through email. **List on 17.12.2020 for hearing.**

15 TIBA/33/KOB/2020

Learned counsel for the IB Applicant Ms Nidhi Sam John submitted an email stating that the matter stands settled and the outstanding amount is paid by CD to the full satisfaction of the petitioner/FC. Memo to withdraw the application is being filed.

Both the parties are directed to file the settlement memo before the next date fixed. Registry is directed to issue copy of this order to both the parties through email. List on 13.11.2020.

16 IA/163/KOB/2020 IN CP/05/KOB/2020

Learned counsel for the applicant Shri Gokul Asok submitted an email stating his willingness to appear through VC. Learned counsel for the Respondents Shri E.M.Joseph also submitted an email stating willingness to appear through VC. But

he stated that he wants to file counter affidavit for which two weeks time is required and hence sought an adjournment. The respondents are directed to file their counter within two weeks with copy served to the learned counsel for the Applicant. The applicant may file his rejoinder, if any, before the next date fixed. Next date fixed for hearing. Registry is directed to issue a copy of this order to both the parties through email. List on 20.1.2021.

**17 CP/05/KOB/2020**

Learned counsel for the Petitioner Shri Gokul Asok submitted an email stating his willingness to appear through VC. Learned counsel for the Respondents Shri E.M.Joseph also submitted an email stating willingness to appear through VC. But he stated that he wants to file counter affidavit for which two weeks time is required and hence sought an adjournment. The respondents are directed to file their counter within two weeks with copy served to the learned counsel for the Petitioner. The Petitioner may file his rejoinder, if any, before the next date fixed. Next date fixed for hearing. Registry is directed to issue copy of this order to both the parties through email. List on 20.1.2021.

**18 CA/65/KOB/2020**

Learned counsel for the appellant Shri R.Krishna Kumar appeared through VC. Report of ROC is on record. Reserved for orders. **List for pronouncement of orders on 13.11.2020.**

**19 CA/67/KOB/2020**

Report of ROC is on record. Since no response from the Appellant, **adjourned to 11.11.2020**

**20 TCA/68/KOB/2020**

Learned PCS for the Appellant Shri Mohammed Hazeem appeared through VC. The report of ROC dated 6.5.2019 which was filed before NCLT Chennai is on record. Vide our order dated 1<sup>st</sup> October 2020 ROC was directed to authenticate the said report or submit the original report to this Bench. But no such authentication or original report has been submitted by ROC till date. **Registry is directed to take steps to get authentication on report dated 6.5.2019 from ROC or get the original report from ROC through special messenger.** Next date fixed for hearing. **List on 19.11.2020**

21 IBA/35/KOB/2020

This case is posted today for hearing. 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 **19.11.2020 at 2.30 PM.**