

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 14th Oct 2020

1 CP/37/KOB/2020

Learned counsel for the petitioner Shri K. Biju appeared through VC. This is a petition filed under Section 241 of the Companies Act 2013 by Shri K.J.Vitalis against M/s. Meander Tour and Travel Services Pvt Ltd and another. The petitioner in his petition submitted that the R1 Company was jointly started by the Petitioner and R2 along with 15 other members. The petitioner is a partner and former Finance Director of the R1 Company for the period from 25.2.2010 to 30.9.2015. R2 is the present Managing Director of R1 Company. The petitioner has given Rs.5,50,000/- as loan amount at an interest rate of 10% during the period 29.12.2014 to 24.3.2015. An additional loan amount for Rs.4,15,024/- was also given to R1 Company by the petitioner during the Audit Period 2016-2017. The petitioner alleged that when the petitioner requested to return back the loan amount, the 2nd respondent did not repay the said amount and evaded the payment on one or other excuses. According to the petitioner the entire assets of the company is under the control of the R2 and there is no positive action from the part of R2 in order to settle the debts owed towards the petitioner. Hence this petition.

Registry is directed to issue notice to the Respondents through email in addition to normal procedure. The petitioner is also directed to issue fresh notice to the respondents by Registered post with A/D and submit proof of service with an affidavit before the next date fixed. List on **14.12.2020**.

2 IA/162/KOB/2020 IN CA/78/KOB/2020

Learned counsel for the Appellant Shri Aswin Gopakumar appeared through VC. This is an IA filed along with the main CA. The prayer in the IA is to dispense with the requirement advertisement of the appeal as mandated by Rule 70(2) of the NCLT Rules. Since notice has been ordered in the CA/78/KOB/2020, let this IA be posted on 15.12.2020.

3 CA/78/KOB/2020

Learned counsel for the Appellant Shri Aswin Gopakumar appeared through VC. This is an Appeal filed by Mathai K.M. against Green Garden Herbals and Fruits Private Limited and 4 others under Section 58(3) of the Companies Act, 2013. The submission of the appellant is that when the R1 Company was first incorporated, as per the MoA and AoA of the Company, the 2nd respondent being the Managing Director held 750 equity shares and the daughter of the Appellant, late Smt. Bindu Mathew being the other director held 250 equity shares of the Company worth Rs.100 each. Smt. Bindu Mathew was a qualified professional and she used to work in the capacity of a Tender Manager in a limited liability company under the name and style of 'Bond Trading Co. LLP' incorporated in Abu Dhabi, UAE. R2 and Bindu Mathew knew each other from their time in Abu Dhabi. In the year 2010, R2 approached Bindu Mathew to discuss a potential partnership plan entailing acquiring and developing land having an extent of 98.48 ares in Re-Survey No.10/2 of Marayoor Village, Idukki for the purpose of doing a business in herbals and fruit farming. R2 requested Bindu Mathew to invest in the business and be a director of the proposed company to be incorporated.

R2 and late Smt. Bindu Mathew alone constituted the Board of Directors for the entire period till Bindu Mathew passed away intestate on 4.10.2019.

The Appellant submitted that after the death of Smt. Bindu Mathew pursuant to a long period of treatment for cancer, R2 approached the appellant and other family members agreeing to purchase two properties belonging to late Bindu Mathew and also the 250 shares of hers in the Company, but the same did not materialize due to the default on payment on the part of R2. The appellant further submitted that after the demise of Bindu Mathew, R2 on 30.1.2020 illegally and fraudulently appointed two new independent directors, ie. R3 and R4 to the Board of Directors. Seeing the inability of R2 and his appointees to run the affairs of the company, the appellant preferred an application under section 56 of Companies Act, 2013 for transmission of shares which was sent to R2 being the MD of the R1 Company on 19.3.2020 along with the death certificate of deceased, share certificate and also succession/legal heirship certificate for the purpose of transferring the ownership of 250 equity shares in the Company held by Late Bindu Mathew to the Appellant's name. The request of the Appellant was rejected by R1 vide communication dated 6.7.2020.

Therefore, the appellant has filed this Appeal with five numbers of main prayers along with five numbers of interim reliefs.

On perusal of the appeal and documents and also on hearing of the learned counsel for the Appellant, I am of the view that it is not justified to pass any interim order without hearing the respondents. **However, to secure the ends of justice, I direct the respondents to maintain status quo as of today, in regard to all the properties, assets, shares, authorised share capital and financial transactions of R1 Company until further orders.**

Registry is directed to issue notice to the respondents through email in addition to normal procedure. The appellant is directed to issue fresh notice to the respondents by Registered post with A/D and submit proof of service with an affidavit before the next date fixed. Respondents are directed to file their counter within three weeks with copy served to the appellant. Thereafter, the appellant may also file his rejoinder, if any. **List on 15.12.2020** for hearing.

4 MA/150/KOB/2020 IN IBA/49/KOB/2019

Learned counsel for the appellants Shri Sharad Kodianthara as well as learned counsel for the Resolution Professional Shri P.V.Vinod appeared through VC. This MA is filed by the applicant with a prayer to direct the RP to release the machinery in possession with the R1 Company / Corporate Debtor and transfer the possession of the same to the applicant. The learned counsel for the RP submitted that he has no objection to release machineries used by the CD as per the lease agreement, but with some conditions and undertakings. RP is directed to submit the written submissions in this regard within two days, with a copy to the applicant, who may file the undertaking required by the RP within one week. **Reserved for orders. List for reserved for orders on 21.10.2020.**

5 IA/90/KOB/2020 IN IBA/49/KOB/2019

Learned counsel for the applicant Shri Mohan Pulickkal sought an adjournment through email stating Covid 19 fumigation and sanitization of his office. Learned counsel for the RP Shri P.V.Vinod sent his willingness to appear through VC. **List on 21.10.2020.**

6 REPORT NO. 28/KOB/2020 IN TIBA/34/KOB/2019

Learned Resolution Professional Shri Sathiq Buhari as well as learned counsel for OC Shri Kalyn Jhabakh appeared through VC. Learned RP submitted that the Hon'ble High Court of Kerala has not yet vacated the stay order against the order passed by this Tribunal dated 13.2.2020. **List on 7.12.2020.**

7 MA/15/KOB/2020 IN TIBA/34/KOB/2019

This MA is filed by the Operational Creditor (claiming to be the sole member of Committee of Creditors) under section 27 and section 70 of the IBC 2016 read with Rule 11 of NCLT Rules, 2016 with a prayer to change the Resolution Professional and refer the case to IBBI for proposing the name of a new RP in place of the Respondent herein.

Heard and perused the records. **List on 7.12.2020** along with related matters.

8 MA/143/KOB/2020 IN TIBA/34/KOB/2019

Learned Resolution Professional Shri Sathiq Buhari as well as learned counsel for Operational Creditor Shri Kalyn Jhabakh appeared through VC. This is an MA filed by the RP under Section 33(2) of IBC 2016 for Liquidation of the CD. Learned counsel for the OC submitted that he has not been provided with a copy of the liquidation application in MA/143/KOB/2020. RP is directed to issue a copy of this MA to the learned counsel for OC within one week positively. Thereafter OC may file their written statement against the said MA. Learned counsel for the OC submitted that the claim amount of OC in the CIR Process is approximately Rs.75,00,000/- (Rupees seventy five lakhs) whereas the claim amount of the alleged Financial Creditor M/s. Bajaj Finance Limited is approximately Rs.2,50,000/- (Rupees two lakhs fifty thousand only).

Heard and perused the records. List on 7.12.2020 for further hearing.

9 MA/144/KOB/2020 IN TIBA/34/KOB/2019

Learned Resolution Professional Shri Sathiq Buhari as well as learned counsel for Operational Creditor Shri Kalyn Jhabakh appeared through VC. RP is directed to issue a copy of this MA to the learned counsel for OC within one week positively. Heard and perused the records. List on 7.12.2020 for further hearing.

10 MA/147/KOB/2020 IN TIBA/34/KOB/2019

Learned Resolution Professional Shri Sathiq Buhari as well as learned counsel for Operational Creditor Shri Kalyn Jhabakh appeared through VC. This MA is filed by the RP with a prayer to withdraw his fees from the Bank accounts of the CD as decided by the CoC in its 4th meeting held on 7.3.2020. Heard both sides. Orders pronounced. **IA/147/KOB/2020 in TIBA/34/KOB/2019 is disposed of vide separate order.**

11 IBA/11/KOB/2020

Learned counsel for the IB Applicant Shri Mohan Jacob George submitted an email stating his willingness to appear through VC. But the Managing Director of the CD Shri Arun Kumar K submitted an email stating that they are now scheduled the registration of the property on 21st October 2020 so as to settle the claim of the Financial Creditor and hence sought an adjournment of the case for 10 days. He also stated that settlement memo will be filed before the next posting date. **List on 19.11.2020. Please bear in mind that there shall be no further adjournment in this case.**

12 CP/17/KOB/2020

Learned counsel for both the parties viz: Shri Philip Mathew, Shri Harikumar G. Nair, Ms Shinu J. Pillai, GP Shri Mohammed Fazil MP and Shri Abhilash Nediyaalil Abraham appeared through VC. It appears from records that notice was duly served to R5. But R5 did not appear in the last date of posting as well as of today. **Therefore, R5 is hereby set ex parte.**

Learned counsel for the Petitioner submitted that the stay order granted by the Hon'ble High Court of Kerala in this matter is valid only upto 15.10.2020, ie. upto tomorrow and hence he stated that the proposed list of former judges of Kerala High Court to be appointed as Administrator in compliance with the order of this Tribunal dated 22.6.2020 may be taken for consideration. He also submitted that he shall submit the copy of the stay order within a day or two.

All the respondents are directed to file their counter within two weeks positively. Thereafter the petitioner may file his rejoinder, if he so desires. Next date fixed for hearing. List on **6.1.2021**. Registry is directed to issue a copy of this order to both the parties through email.

13 CP/23/KOB/2020

Learned counsel for the petitioner Shri Sharan Shahier as well as learned counsel for the respondent Shri Ratheesh PR representing Jojo George Jacob appeared through V C. Shri Jojo George Jacob has filed Vakalat for the respondents. But he has not filed the counter. Respondents are directed to file their counter within two weeks with copy served to the petitioner and thereafter the petitioner may file his rejoinder, if any. List on **17.12.2020**.

14 CA/71/KOB/2020

Learned counsel for the appellant Shri Biju Varghese Abraham submitted an email stating his willingness to appear through VC. Report of ROC has not yet received. Registry is directed to remind ROC through special messenger for his report. List on **18.11.2020**.

15 CA(CAA)5/KOB/2020

Learned counsel for the Appellant Shri Gokul RI appeared through VC. Heard and perused the records. **Orders reserved. List for pronouncement of orders on 2.11.2020.**

16 MA/01(KOB)/2020 IN IBA/145/2019(CB)

This case is posted today for hearing at 2.30 pm. In view of the constitution of the Special Bench for NCLT, Bengalure Bench with this Bench, with effect from 1.10.2020 to 14.10.2020, the case stands adjourned to 3.11.2020 at 2.30 pm for final hearing.