

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 15th Oct 2020

1 IBA/01(KOB)/2020

Learned counsel for the Financial Creditor Shri C.P.Anil Raj as well as learned counsel for the Corporate Debtor Shri P.V.George appeared through VC. Orders pronounced. **IBA/01/KOB/2020 is Admitted vide separate order.**

2 CP/38/KOB/2020

Learned counsel for the petitioners Shri Philip Mathew as well as learned counsel for the respondent No.1 Shri Zibi Jose appeared through VC. This is a petition filed under Section 97(1) of the Companies Act, 2013 read with Rule 74 of the NCLT Rules, 2016 for calling and holding of the 32nd and 33rd Annual General Meetings of the R1 Company.

Learned counsel for the petitioners submitted that the petitioners are shareholders of the R1 Company. According to him, the Board of the R1 company has got a consistently shabby and dubious record of conducting the AGMS and other General Meetings in an irregular and improper manner. The R1 through its Board of directors without any legal right or power caused compulsory transfer of 1650 shares belonging to 12 shareholders of the R1 Company in order to create artificial majority for the directors of the Company to continue on the Board. The shareholders including the petitioners who illegally and wrongfully ceased to be the members of the Company successfully challenged the same and by order passed by this Tribunal on 5.3.2020, their names were restored in the Share Register of the Company by re-entry as it existed prior to 8.2.2019.

This Company Petition is filed for an order by this Tribunal invoking its powers under Section 97(1) of the Companies Act, 2013 directing the Company for convening of the Annual General Meeting for the year 2018-19 which got invalidated and the Annual General Meeting for the year 2019-20 which has now become due by appointing a Chairman by this Hon'ble Tribunal with such ancillary and consequential directions in compliance of the relevant provisions of the Companies Act, 2013 and of the Companies (Management and Administration) Rules, 2014 read with Secretarial Standards on General Meetings framed by the Institute of Company Secretaries of India under Section 118(10) of the Companies Act, 2013.

The learned counsel for R1 vehemently opposed the reliefs sought in the Company Petition stating that the petition itself is not prima facie maintainable. He pointed out

that the list of shareholders have already been filed by the petitioner himself in his petition.

Heard both sides. Considering the material on records and on hearing the parties, it would not be justified to dismiss the petition without examining the counter of the respondents. Respondents are therefore directed to file their counter within 2 weeks. Thereafter the petitioner may file his rejoinder, if any. Registry is directed to issue notice to R2 to R7 through email in addition to normal procedure. Petitioner is also directed to issue fresh notice to R2 to R7 by Registered post with A/D and submit proof of service with an affidavit before the next date fixed. List on **29.12.2020**.

3 IA/160/KOB/2020 IN TIBA/08/KOB/2019

Learned counsel for the Applicant Shri Jerrin Asher Sojan appeared through VC. Heard and perused the records. Orders pronounced. **IA/160/KOB/2020 in TIBA/08/KOB/2019 is disposed of vide separate order.**

4 IA/161/KOB/2020 IN TIBA/08/KOB/2019

Learned counsel for the Applicant Shri Jerrin Asher Sojan appeared through VC. Heard and perused the records. Orders pronounced. **IA/161/KOB/2020 in TIBA/08/KOB/2019 is disposed of vide separate order.**

5 IA/143/KOB/2020 IN TIBA/19/KOB/2019

No response from the R.P. who filed the IA. List on **26.11.2020**

6 IA/124/KOB/2020 IN IBA/16/KOB/2020

Learned counsel for the Operational Creditor Ms Sethulakshmi appeared through VC. Learned IRP Shri Jasin Jose also appeared in the VC. Learned counsel for the OC submitted that her client is in Haryana and hence sought 3 weeks' time to file the Form FA Settlement. Allowed.

Learned RP submitted that the RP has not yet received the fee of Rs.90,000/- fixed by this Tribunal vide order dated 21st September 2020. The learned counsel appearing for the OC Ms.Sethulakshmi stated that before filing the FA, they will settle the fee of the R.P. This submission is recorded.**List on 10.11.2020.**

7 IA/125/KOB/2020 IN IBA/16/KOB/2020

Learned counsel for the Operational Creditor Ms Sethulakshmi appeared through VC. Learned RP Shri Jasin Jose also appeared in the VC. Learned counsel for the OC submitted that her client is in Haryana and hence sought 3 weeks' time to file the Form FA Settlement. Allowed. **List on 10.11.2020.**

8 IBA/25/KOB/2020

Learned counsel for the Corporate Debtor Shri Jithin Saji Issac appeared through VC. Today the case is posted for hearing. It appears from records that vide our order dated 24.9.2020 the CD was directed to file their counter within 2 weeks from that date positively. But CD has not filed the counter till date. Learned counsel for the CD submitted that counter is being filed today. Financial Creditor may file their rejoinder, if any, before the next date fixed. **List on 4.12.2020.**

9 IA/21(KOB)/2020 IN CP/107/(KOB)/2019

Learned counsel for the Petitioners Shri Vijay V. Paul as well as learned PCS for R5 Shri Sherin Mathew appeared through VC. Shri Vijay V. Paul, learned counsel for petitioner stated that Shri M.Sreekumar, who filed vakalth for R2 will appear for R3 also. It appears from records that vide our order dated 11th Feb 2020 it was decided that these IAs as well as main CP will be heard along with the main CP. Learned counsel for the petitioners submitted that R1 and R2 are the major respondents in this case and they have already filed their counter. He also submitted that R5 is supporting the petitioner in this CP.

Learned counsel for the petitioners submitted that in accordance with the order of this Tribunal, R1 has provided the mail ID of all the shareholders/respondents, who reside abroad. Accordingly, he has issued notice to all of them through email. Registry is directed to send notice to R4, R6 to R11 through email.

Learned counsel for the petitioners also submitted that though this Tribunal decided to hear the IAs along with the main CP, the matter of impleadment petition filed through IA/22/KOB/2020 requires to be disposed of at an early date since the directors mentioned in the said IA are necessary parties in this case. According to him without their presence it would not be justified to dispose the main CP.

The learned counsel for both the parties are directed to appear through VC in the next date fixed. **List on 17.12.2020.**

10 IA/22(KOB)/2020 IN CP/107/(KOB)/2019

Learned counsel for the Petitioners Shri Vijay V. Paul as well as learned PCS for R5 Shri Sherin Mathew appeared through VC. Shri Vijay V. Paul, learned counsel for petitioner stated that Shri M.Sreekumar, who filed vakalth for R2 will appear for R3 also. It appears from records that vide our order dated 11th Feb 2020 it was decided that these IAs as well as main CP will be heard along with the main CP. Learned counsel for the petitioners submitted that R1 and R2 are the major respondents in this case and they have already filed their counter. He also submitted that R5 is supporting the petitioner in this CP.

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The learned counsel for both the parties are directed to appear through VC in the next date fixed. **List on 17.12.2020.**

11 CP/107/(KOB)/2019

Learned counsel for the Petitioners Shri Vijay V. Paul as well as learned PCS for R5 Shri Sherin Mathew appeared through VC. Shri Vijay V. Paul, learned counsel for petitioner stated that Shri M.Sreekumar, who filed vakalth for R2 will appear for R3 also. It appears from records that vide our order dated 11th Feb 2020 it was decided that these IAs as well as main CP will be heard along with the main CP. Learned counsel for the petitioners submitted that R1 and R2 are the major respondents in this case and they have already filed their counter. He also submitted that R5 is supporting the petitioner in this CP.

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Learned counsel for the petitioners also submitted that though this Tribunal decided to hear the IAs along with the main CP, the matter of impleadment petition filed through IA/22/KOB/2020 requires to be disposed of at an early date since the directors mentioned in the said IA are necessary parties in this case. According to him without their presence it would not be justified to dispose the main CP.

The learned counsel for both the parties are directed to appear through VC in the next date fixed. **List on 17.12.2020.**

12 CP/115/KOB/2019

Learned counsel for the petitioner Shri E.Narayanan sought link to appear through VC, which has been provided to him. However, he has not appeared. It appears from records that based on the request of the learned counsel for the petitioner, this Bench had given time to the petitioner to file the settlement memo on or before 26.8.2020. But when the case was posted on 28.8.2020, the learned counsel for the petitioner sought an adjournment through email. No settlement memo has also been filed till date. It is noted that the learned counsel for R1 Shri PM Unni Namboodiri has already relinquished the Vakkalath of R1. Registry has duly informed about this to R1. However, R1 is not present today.

Both the parties are directed to appear through VC in the next date fixed positively. Registry is directed to issue a copy of this order to both the parties through email. **List on 7.1.2021.**

13 TCP/120/KOB/19 (CP/41/2018)

Learned counsel for the petitioner Shri Philip Mathew as well as learned counsel for the R1 to R4 Shri A.M.Sreedharan appeared through VC. Learned counsel for the petitioner submitted that settlement talks are still going on and expected to sign the agreement today. Learned counsel for the Respondents, however, submitted that even though settlements talks are going, he is not sure whether a settlement agreement will be arrived or not. Both the parties are directed to file their settlement memo/statement within two weeks. **List on 3.11.2020.**

14 IA/158/KOB/2020 IN CA/44/KOB/2019

Learned counsel for the Applicant Shri Ashok B. Shenoy, learned counsel for the petitioner in the CA Shri A.C.Venugopal, learned counsel for the Administrator Shri Manuel Vivera and learned counsel for R3, R5 to R8, R10, R12 to R17 Shri Arun R Nair appeared in the VC. This is an application filed by R2 and R3 in the CA, who were declared Ex parte, praying to condone the delay in filing the application to set aside the Ex Parte order dated 3.2.2020.

The applicants submitted that they came to be informed of the fact of they being set ex parte on 3.2.2020, only on 7.9.2020, when informed of the same by their counsel who too came to be informed of the same, only on being pointed out the same to him by this Tribunal on 7.9.2020, when he had appeared on behalf of Applicants and represented them before this Tribunal, since having filed Vakkalath and reply statement from their side on 10.8.2020. On 7.9.2020 itself, applicants and their counsel were also informed that the reply statement and Vakkalath filed from their side on 10.8.2020 is returned by the Registry of this Tribunal as defective, on account of the fact that they are set ex parte in the above CA on 3.2.2020 and there is a delay in approaching this Tribunal. The applicants submitted that they could not appear before the Tribunal because they were not in station, having gone out on account of employment. Accordingly, they prayed to condone the delay of 158 days occurred in filing the IA to set aside the ex parte order passed by this Tribunal on 3.2.2020.

The learned counsel for the petitioner in the CA submitted that he has no objection to condone the delay in filing the application to set aside the ex parte order. Accordingly, IA is allowed and the delay of 158 days in filing the IA to set aside the Ex parte order dated 3.2.2020 is hereby condoned. Registry is directed to number the IA to set aside the ex parte order and list it on **8.12.2020 along with the CA..**

15 CA/44/KOB/2019

Learned counsel for the petitioner in the Shri A.C.Venugopal, learned counsel for the Administrator Shri Manuel Vivera and learned counsel for R3, R5 to R8, R10, R12 to

R17 Shri Arun R Nair appeared in the VC. Learned counsel for the Administrator submitted that he wants to file rejoinder in the main CA. He may do so.

Learned counsel for the petitioner submitted that since the condonation petition to restore R2 and R3 in the party array has been allowed, they may be directed to file counter in the CA, as and when their name are restored in the CA. The Bench observed that it would be justified to give direction to R2 and R3 only after completing the restoration process.

List on **8.12.2020** for further hearing.

16 CA/55/KOB/2020

Learned counsel for the petitioner Shri Bijoy P Pulipra, intimated his willingness to appear through VC. Learned counsel for respondents also intimated their willingness to appear through VC for hearing. However, due to paucity of time, this matter could not be taken up today. Adjourned to **29.12.2020**. **Registry is directed to list this matter on 29.12.2020 immediately after the admission matters.**

17 CA/72/KOB/2020

Report of the ROC in this case has not yet received. Registry is directed to remind ROC through special messenger for his report. List on **16.11.2020**.