

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 19th Oct 2020

1 CA/80/KOB/2020

Learned counsel for the Appellant Shri Sandeep Jayachandran 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) Master Data
- (ii) Memorandum of Association and Articles of Association
- (iii) Income Tax Return acknowledgement for 2019-2020
- (iv) Audit Report and Financial Statements

Registry is directed to issue notice to ROC through special messenger for his report.
List on 17.11.2020.

2 CA/81/KOB/2020

Learned counsel for the Appellant Shri Fayiz Mohammed Kassim appeared in the 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) Master Data
- (ii) Memorandum of Association and Articles of Association
- (iii) Latest Income Tax Return acknowledgement
- (iv) Annual Reports and Financial Statements for pending for filing

Registry is directed to issue notice to ROC through special messenger for his report.
List on 17.11.2020.

3 CP(CAA)/06/KOB/2020

Since the CA/CAA/19 & 20/KOB/2020 have not been disposed of, list this CP(CAA)/06/KOB/2020 on **9.12.2020** for further orders.

4 CA(CAA)/19/KOB/2019

Learned PCS for the Petitioner Shri Gokul RI appeared through VC. It is seen from the statement filed by the Official Liquidator that M/s. JVR Associates, the Chartered Accountant firm, who are entrusted with the work of scrutinizing the books and records of the transferor Company has intimated the OL that they have not received the document from the transferor company so far and they need minimum two weeks time to complete the work once the documents are completely shared by the Company. Hence, the OL requested this Tribunal to direct the Company to hand over the books and records of the Company immediately to the Chartered Accountant firm engaged by the OL for completing the work and to grant some more time for OL to file his report before this Tribunal.

The Transferor Company is directed to hand over the required documents to the above Chartered Accountant firm immediately to enable them to scrutinize the books and records of the Company. Thereafter CA may file his report to OL without delay. OL may file his report before the next date fixed. List **on 9.12.2020**.

5 CA(CAA)/20/KOB/2019

Learned PCS for the Petitioner Shri Gokul RI appeared through VC. It is seen from the statement filed by the Official Liquidator that M/s. JVR Associates, the Chartered Accountant firm, who are entrusted with the work of scrutinizing the books and records of the transferor Company has intimated the OL that the they have not received the document from the transferor company so far and they need minimum two weeks time to complete the work once the documents are completely shared by the Company. Hence, the OL requested this Tribunal to direct the Company to hand over the books and records of the Company immediately to the Chartered Accountant firm engaged by the OL for completing the work and to grant some more time for OL to file his report before this Tribunal.

The Transferor Company is directed to hand over the required documents to the above Chartered Accountant firm immediately to enable them to scrutinize the books and records of the Company. Thereafter CA may file his report to OL without delay. OL may file his report before the next date fixed. List on 9.12.2020.

6 MA/76/KOB/2020 IN IBA/240/2019/CB

Learned Liquidator Shri Mahaligam Suresh Kumar appeared along with his learned counsel Shri A.G. Sathyanarayana through VC. Learned Counsel for R1 Shri Manoj Ramaswamy and Learned counsel for R2 Shri Shinu J. Pillai also appeared through V C. Heard both the parties for some time. **List on 5.11.2020 for further hearing as Part Heard.**

7 MA/151/KOB/2020 IN IBA/240/2019/CB

Learned counsel for applicant Sri Mohd.Fazil appeared through VC. Learned Liquidator Shri Mahaligam Suresh Kumar along with his learned counsel Shri A.G. Sathyanarayana also appeared through VC. Heard both the parties for some time. Learned counsel for the liquidator submitted that he has submitted counter in the MA through email. But registry is not able to download the said counter due to some network error. Therefore, the learned counsel may file hard copy of his counter within a day or two.

The learned counsel for the Liquidator vehemently opposed the application submitted by the Collector stating that the application itself is not maintainable. He submitted that there are several potential buyers to take over the hospital as an ongoing concern. They are ready to revive the Corporate Debtor. Besides, there are 300 employees in this hospital. Their wages are to be paid uninterruptedly. Moreover, the interests of the stake holders will also be adversely affected if the hospital is given to the District Administration for Covid 19 purpose.

Any way the matter will be considered after receipt of the hard copy of the counter. The applicant may file his rejoinder, if any, before the next date fixed positively. **List on 5.11.2020 for further hearing as Part Heard.**

8 REPORT NO.99/KOB/2020 IN CA(CAA)/06/KOB/2020

Learned counsel for the Applicant Shri Ameerul Millath appeared through VC. He submitted that he has already submitted the Auditors report upto 31st October 2019. Meanwhile the Official Liquidator has filed a report praying before this Tribunal to permit him to engage the Services of Shri Razee Moideen, Chartered Accountant, Ernakulam who is on the panel of Insolvency and Bankruptcy Board of India for taking up the scrutiny of the books of accounts, statutory registers and other relevant records and papers relating to the transferor company. He has also prayed to direct the petitioner company to pay the fees that may be payable to the CA for the above work. Learned counsel for the Applicant submitted that the scheme in no way prejudicial to the transferor company. The registered Chartered Accountant viz: M/s. Varma & Varma have already audited the accounts upto 31.10.2019. However, if the OL is insisting for further scrutiny of the records, he has no objection in doing so.

After hearing the learned counsel for the applicant and on perusal of records, the prayer of OL is allowed. The Official Liquidator is directed to submit his report within two weeks. Registry is directed to issue a copy of this order to the OL through Email and by hand. **The Report of OL is disposed of accordingly.**

9 MA/163/KOB/2020 IN IBA/23/KOB/2019

Learned senior counsel for the Applicant Shri Joseph Kodianthara, learned counsel for the Resolution Professional Shri Vinod PV and learned counsel for the Financial Creditor Shri Vijay V. Paul appeared through VC. Learned counsel for the Union

Bank of India filed vakalath and sought permission to appear through VC. Even though link was provided, due to some technical problem, he informed that he could not appear today.

This MA is filed under section 60 of the IBC, 2016 with the prayer to direct the RP to place the Resolution Plan submitted by the Applicant for consideration by the CoC and also to restrain the RP from proceeding with any further/fresh invitation of Resolution Plan.

This Tribunal vide order dated 13.09.2019 has admitted the CIR Process against the Corporate Debtor M/s. Dewa Projects Private Limited based on an IB Application filed under Section 7 of IBC 2016 by the Financial Creditors who are also home buyers of the CD. RP was appointed and the RP constituted the Committee of Creditors, which mainly comprised of the Banks and Home Buyers. The RP issued Form 'G' invitation of Expression of Interest from prospective Resolution Applicants, prescribing eligibility conditions and giving other details vide paper publications. According to the learned Senior Counsel for the applicant, except the applicant, no other person/party has put forth any Resolution Plan. As per the meeting held on 11.8.2020 the last date for submission of the Resolution Proposal was 28.8.2020. However, the Information Memorandum was shared to the applicant only on 6.9.2020. The applicant, therefore, was constrained to issue a letter dated 15.09.2020 seeking extension of time for submitting its Resolution Proposal. The learned Senior Counsel for the applicant submitted that the said request was placed before the CoC and the CoC in the said meeting agreed that the last date of submission of the Resolution Proposal would be extended to 30.9.2020. While the Resolution Plan of the applicant was before the consideration of the CoC, the RP published another Invitation for Expression of Interest to submit Resolution Plan for the Corporate Debtor vide Annexure A16 notification dated 12.10.2020.

The applicant submitted that he has invested substantial human, financial and other resources in preparing and submitting the Resolution Application. An amount of Rs.5,00,00,000/- (Rupees Five Crores only) was deposited as EMD and provisions for a further amount of Rs.1,05,00,00,000/- (Rupees one hundred and five crores only) was made by the applicant for the purpose of implementing the Resolution Plan of the CD.

Along with the main relief, the applicant has submitted 9 numbers of interim reliefs, which include the prayers to stay Annexure A16 notification, direct the RP to permit the applicant to participate in the meeting of CoC and explain his Resolution Plan in detail, etc.

To fortify the argument, the learned senior counsel for the applicant cited the observation made by the Hon'ble Supreme Court in CoC of Essar Steel India Ltd through Authorized signatory Vs. Satish Kumar Gupta reported in 2019(8) MLJ 524.

On the other hand, the learned counsel for the RP opposed the contentions of the applicants. He submitted that it is the CoC only decided to invite fresh Expression of Interest in the matter since the applicant failed to submit his Resolution Proposal

within the stipulated period prescribed by CoC. The learned counsel for the Financial Creditor has supported the arguments of the Applicant.

I have heard both the parties. After perusal of the records, this Tribunal is of the opinion that it would be justified to pass order on interim reliefs sought by the applicant only after getting the counter from the Respondents. The respondents are therefore directed to file their counter within two weeks positively.

Next date fixed for hearing. List on **11.11.2020**.

10 MA/141/KOB/2020 IN MA/33/KOB/2019 IN MA/12/KOB/2019 IN CP(IB)/91/CB/2018

Learned counsel for the liquidator Smt. Midhuna KC and Smt. Merin Thaliath appeared through VC. It appears from records that notice issued from the Registry has been served to Shri Zacharia John, Managing Director. But the notice issued to Shri Mathew John, Director returned with postal remarks "door locked" and notice issued to another Director Shri John Mathew also returned with the postal remarks "addressee left".

According to the application, the above two directors are necessary parties in this Application. Hence, the liquidator is directed to issue notice to the Directors Shri Mathew John and Shri John Mathew through Registered post with A/d and submit proof of service with an affidavit before the next date fixed.

Though notice was duly served to Shri Zachariah John, Managing Director, who was directed to appear through VC today, he has not appeared today.

List for further proceedings on **14.12.2020**.

11 TIA/2/KOB/2019 (IA183/2019) IN TCP/42/2019/KOB

Learned counsel for both parties intimated their willingness to appear through VC as they are ready for hearing. However, due to paucity of time, this matter is adjourned to 18.1.2021. **List on 18.1.2021 immediately after the admission matters.**

12 TCP/42/KOB/2019

Learned counsel for both parties intimated their willingness to appear through VC as they are ready for hearing. However, due to paucity of time, this matter is adjourned to 18.1.2021. **List on 18.1.2021 immediately after the admission matters.**

13 IA/146/KOB/2020 IN TCP/47/KOB/2019

Learned counsel for applicant/petitioner intimated his willingness to appear through VC. However, learned counsel for the respondents sought time to file counter. **List on 11.1.2021**, before that the respondents may file their counter.

14 TCP/47/KOB/2019

Learned counsel for applicant/petitioner intimated his willingness to appear through VC. However, learned counsel for the respondents sought time to file counter. **List on 11.1.2021**, before that the respondents may file their counter.

15 IA/148/KOB/2020 IN IA/36/KOB/2020 IN TCP/14/KOB/2020

Learned counsel for the applicant/petitioner intimated his willingness to appear through VC. However, learned counsel for the respondents sought time to file counter. It is seen that the ROC has also not filed the report. Respondents may file their reply and ROC to file report well before the next date fixed. List on **12.1.2021**.

16 TCP/14/KOB/2020 (TCP/67/2016(CB))

Learned counsel for the applicant/petitioner intimated his willingness to appear through VC. However, learned counsel for the respondents sought time to file counter. It is seen that the ROC has also not filed the report. Respondents may file their reply and ROC to file report well before the next date fixed. List on 12.1.2021.

17 COMTEMPT PETITION/07/KOB/2020 IN CP/24/KOB/2020

Learned counsel for the Contempt Petitioner Shri Vijay V. Paul as well as learned counsel for the respondent Shri Anil D. Nair appeared through VC. List on 12.11.2020.

18 CP/24/KOB/2020

Learned counsel for the Petitioner Shri Vijay V. Paul as well as learned counsel for the respondent Shri Anil D. Nair appeared through VC. List on 12.11.2020.

19 IA/138/KOB/2020 IN CP/29/KOB/2020

Learned counsel for the applicant Shri Anil D. Nair as well as learned counsel for the respondent Shri Vijay V. Paul appeared through VC. Heard both the parties. **Reserved for orders. List for pronouncement of orders on 12.11.2020.**

20 CP/29/KOB/2020

Learned counsel for the Petitioner Shri Vijay V. Paul as well as learned counsel for the respondent Shri Anil D. Nair appeared through VC. List on 12.11.2020.

