

NCLT, KOCHI BENCH

Daily Orders – Draft

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

Date: 20th Oct 2020

1 CP/3(KOB)/2020

Learned counsel for the petitioners Shri John Vadassery as well as learned counsel for R1 & R3 Shri N.R.Krishnan Unni appeared through VC. **Orders pronounced. CP/3/KOB/2020 is dismissed vide separate order.**

2 CA/82/KOB/2020

Learned PCS for the Appellant Shri Fayiz Mohammed Kassim 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) Latest Income Tax Return acknowledgement
- (iv) Audit Report and Financial Statements pending for filing

Registry is directed to issue notice to ROC through special messenger for his report. **List on 13.11.2020.**

3 CA/83/KOB/2020

Learned PCS for the Appellant Shri Fayiz Mohammed Kassim appeared through VC. This is an Appeal filed by the Appellant for restoring the name of the Appellant Company in the Register of ROC. Report of ROC is on record. **Reserved for orders. List for pronouncement of orders on 13.11.2020.**

4 CA/84/KOB/2020

Learned PCS for the Applicant Shri PP Zibi Jose appeared through VC. This CA is filed under Section 59(1) of the Companies Act, 2013 for the rectification of the Register of Members. The applicant submitted that he is a coparcener of RBG HUF in which Radha Ballabh Gupta in his capacity as RBG HUF Karta was holding 4102 shares of INR 1000/- each constituting 20.61% of the total paid up share capital of the Company. The said company is one among seven companies owned by the family and known as RBG Group of companies. Applicant and R2 to R5, R7 and other members of the family are all shareholders in the group of companies and members of RBG HUF.

R2 is one of the promoters of R1 Company and as on 31.3.2016 holds 2,296 shares in his personal name and another 4102 shares as Karta of Radha Ballabh Gupta HUF Comprising of R2, his wife and children who are all parties in this Company Application. There exists a serious dispute in the HUF Family that has affected the running of the companies because the R3 managed to fill the ears of the father-R2 so much that he has turned against his two elder sons, ie. the Applicant and R4. Because of this, there are nine company cases filed before this Tribunal against the three companies being managed by the Applicant herein that are pending.

Meanwhile, the applicant shockingly discovered that the R2 and R3 have in active connivance with each other transferred 4,102 shares of the HUF held by the Respondent No.2 in his capacity as the RBG HUF Karta. The Applicant has not given his consent for any such transfer and to his knowledge none of the coparceners have given consent for such transfer.

According to the applicant, Radha Ballabh Gupta (HUF) consists of the following coparceners:

1. Mr. Radha Ballabh Gupta, Karta and R2
2. Mrs. Sulochana Gupta, Wife of R2
3. Mr. Rajkumar Gupta, Son of R2
4. Mr. Vishnukant Gupta, Son of R2 (Company applicant)
5. Mr. Mahesh Kumar Gupta, Son of R2 and MD of R1 Company
6. Mrs. Pinky Goyal, Daughter of R2.

On account of the above unauthorised transfer of 4,102 shares on 29.12.2016 originally held by him in his capacity as Karta of RBG (HUF) the shareholding of R2 in his individual capacity has been artificially increased by 20.61% and the shares held by the Karta of RBG HUF ceased to exist as a shareholder. The Applicant submitted that the above share transfer of 4102 shares from HUF Capacity to his individual name is unauthorised and illegal and amounts to personal enrichment as none of the coparceners have given their consent for such transfer.

Learned PCS for the applicant submitted that according to Section 4(1) of Kerala Joint Hindu Family System (Abolition) Act, 1975 which was introduced with the intention of abolishment of Joint Family System amongst Hindus in the State of Kerala, all members of an undivided Hindu Family holding any coparcenary property on the day this Act comes into force shall, with effect from that day ie. 01.12.1976 be deemed to hold it as tenants-in-common as if a partition had taken place amongst the members of that undivided Hindu family with respect to such property and as if each one of them holding his or her share separately as full owner thereof. Therefore, it has become necessary to rectify the Register of members to incorporate the changes to the extent of effecting the cancellation of the transfer of 4,102 shares held by R2 in his capacity as the Karta of HUF and in its place the names of the coparceners should be entered. Therefore, it has become necessary to rectify the Register of Members to incorporate the changes to the extent of effecting the cancellation of the transfer of 4,102 shares held by R2 in his capacity as the Karta of HUF and in its place the names of coparceners should be entered. The applicant further submitted that this rectification assumes greater importance on

account of the ongoing family dispute due to the difference of opinion among family members regarding partition of RBG family properties and assets.

The learned PCS for the applicant also pointed that on account of the family disputes with respect to family held assets there is an MoU dated 15.09.2016 which is signed by the family members on the division of the family assets. R4 and elder brother of the Applicant herein has also approached the Munsiff Court, Kochi for partition of family assets as per MoU dated 15.9.2016 which is pending for disposal. The applicant also submitted that the unauthorised transfer of shares took place on 29.12.2016 immediately after the MoU was signed on 15.9.2016 without consent of the coparceners which goes against the MoU signed by the parties for partition of RBG HUF assets.

The reliefs sought in the CA are to cancel the transfer of 4,102 shares and the subject shares be equally distributed amongst the coparceners of the HUF and to direct R1 Company to enter the names of the coparceners in the Register of Members.

Along with the main relief, the applicant has prayed for three numbers of interim reliefs, which include the prayer to suspend the voting power and all other rights attached to the said 4,102 shares until disposal of the CA.

I have heard the learned PCS for the applicant. I have also thoroughly perused the whole case records. After perusing the whole records, I am of the view that it is not justified to pass orders on interim relief sought by the Applicant at this stage without hearing the opposite parties. Registry is therefore directed to issue notice to the respondents through email in addition to normal procedure. The applicant is also directed to issue fresh notice to the respondents and submit proof of service with an affidavit before the next date fixed. Respondents are also directed to submit their counter within three weeks with a copy to the applicant and thereafter the applicant may file his rejoinder, if any. Next date fixed for hearing. List **on 4.1.2021**.

5 CP/98/KOB/2019

Learned counsel for the Petitioner Shri Philip Mathew, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R4 Shri PP Zibi Jose and learned PCS for R3 Shri Sumit Agarwal appeared through VC. **List for hearing on 28.12.2020.**

6 CONTEMPT PETITION/08/KOB/2020 IN CP/99/KOB/2019

Learned counsel for the Contempt Petitioner Shri Sukumar Oommen and learned counsel for respondent Shri Sanjay appeared through VC. **List for hearing on 28.12.2020.**

7 CP/99/KOB/2019

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. **List for hearing on 28.12.2020.**

8 CP/100/KOB/2019

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R4 Shri PP Zibi Jose and learned PCS for R3 Shri Sumit Agarwal appeared through VC. **List for hearing on 28.12.2020.**

9 CP/101/KOB/2019

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay and learned PCS for R3 Shri PP Zibi Jose appeared through VC. **List for hearing on 28.12.2020.**

10 CP/102/KOB/2019

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. **List for hearing on 28.12.2020.**

11 CP/103/KOB/2019

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay and learned PCS for R3 Shri PP Zibi Jose appeared through VC. **List for hearing on 28.12.2020.**

12 IA/169/KOB/2020 IN CP/114/KOB/2019

Learned counsel for the Petitioner Shri P. Sanjay, learned counsel for R1 & R2 Shri Sukumar Oommen, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. This is an application filed under Rules 120 & 121 of NCLT Rules read with Rule 33 of Standards of Professional conduct and Etiquette of the Bar Council of India. Respondents sought time to file counter. Two weeks' time is granted. Thereafter, the applicants may file rejoinder, if any. List on **8.12.2020** for hearing.

13 IA/58/KOB/2019 IN CP/114/KOB/2019

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. List on **11.12.2020** along with connected CP.

14 **IA 83/KOB/2020 IN CP/114/KOB/2019**

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. **List on 11.12.2020** along with connected CP.

15 **IA/87/KOB/2020 IN CP/114/KOB/2019**

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. **List on 11.12.2020** along with connected CP.

16 **IA/95/KOB/2020 IN CP/114/KOB/2019**

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. **List on 11.12.2020** along with connected CP.

17 **CP/114/KOB/2019**

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. **List on 11.12.2020**.

18 **IA/170/KOB/2020 IN CP/119/KOB/2019**

Learned counsel for the Petitioner Shri P. Sanjay, learned counsel for R1 & R2 Shri Sukumar Oommen, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. This is an application filed under Rules 120 & 121 of NCLT Rules read with Rule 33 of Standards of Professional conduct and Etiquette of the Bar Council of India. Respondents sought time to file counter. Two weeks' time is granted. Thereafter, the applicants may file rejoinder, if any. List on **8.12.2020** for hearing.

19 **IA/65/KOB/2019 IN CP/119/KOB/2019**

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. **List on 11.12.2020** along with connected CP.

20 **IA/84/KOB/2020 IN CP/119/KOB/2019**

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. **List on 11.12.2020** along with connected CP.

21 IA/86/KOB/2020 IN CP/119/KOB/2019

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. List on **11.12.2020** along with connected CP.

22 IA/93/KOB/2020 IN CP/119/KOB/2019

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. List on **11.12.2020** along with connected CP.

23 CP/119/KOB/2019

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. List on **11.12.2020** for hearing.

24 IA/171/KOB/2020 IN CP/125/KOB/2019

Learned counsel for the Petitioner Shri P. Sanjay, learned counsel for R1 & R2 Shri Sukumar Oommen, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. This is an application filed under Rules 120 & 121 of NCLT Rules read with Rule 33 of Standards of Professional conduct and Etiquette of the Bar Council of India. Respondents sought time to file counter. Two weeks' time is granted. Thereafter, the applicants may file rejoinder, if any. List on **8.12.2020** for hearing.

25 IA/85/KOB/2020 IN CP/125/KOB/2019

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. List on **11.12.2020** along with connected CP.

26 IA/88/KOB/2020 IN CP/125/KOB/2019

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. List on **11.12.2020** along with connected CP.

27 IA/94/KOB/2020 IN CP/125/KOB/2019

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. List on **11.12.2020** along with connected CP.

28 CP/125/KOB/2019

Learned counsel for the Petitioner Shri Sukumar Oommen, learned counsel for R1 & R2 Shri Sanjay, learned PCS for R3 Shri PP Zibi Jose and learned PCS for R4 Shri Sumit Agarwal appeared through VC. List on **11.12.2020** for hearing

29 CP/25/KOB/2020

Learned counsel for the Petitioners Shri PP Zibi Jose and learned counsel for R2, R4 & R5 Shri Sukumar Oommen and learned counsel for R1 & R3 Shri P. Sanjay appeared through VC. Adjourned **to 28.12.2020**.

30 CP/26/KOB/2020

Learned counsel for the Petitioners Shri PP Zibi Jose and learned counsel for R2, R4 & R5 Shri Sukumar Oommen and learned counsel for R1 & R3 Shri P. Sanjay appeared through VC. Adjourned to **28.12.2020**.

31 CP/27/KOB/2020

Learned counsel for the Petitioners Shri PP Zibi Jose and learned counsel for R2, R4 & R5 Shri Sukumar Oommen and learned counsel for R1 & R3 Shri P. Sanjay appeared through VC. Adjourned to **28.12.2020**.