

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

### **Daily Orders – Draft**

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

**Date: 5<sup>th</sup> Oct 2020**

**1 CA/56/KOB/2020**

**Orders pronounced. CA/56/KOB/2020 is disposed of vide separate order.**

**2 CA(CAA)/06/KOB/2020**

**Learned counsel for the Applicants Shri Ameerul Milath appeared in the VC. Orders pronounced. CA(CAA)/06/KOB/2020 is disposed of vide separate order.**

**3 CP/34/KOB/2020**

Learned counsel for the Petitioner Shri S.Krishnamoorthy appeared in the VC. This is a petition filed under section 241, 242, 244, 246 and 272 of the Companies Act, 2013.

According to the petitioner, the first respondent company was incorporated in 2011 with the objective of carrying on the business of manufacture and sale of SRL Curry powder. The original promoters of the company were respondent Nos 2 & 3 along with one Mr. Rajeev and one Mr. Madhukumar, who were also the first directors of the Company. Since the company was facing shortage of funds, the company through its directors had approached the Petitioner, who was involved in the business of export of curry powder from India, to invest in the Company on the assurance that he will be appointed as a director of the company and will have a say in the management of the Company. On the basis of this assurance, the petitioner had initially advanced a sum of Rs.10 lakhs to the Company towards equity share capital and loan and he was appointed as director in the company based on his investment.

At the request of the other directors for further investment in the company, the petitioner had further extended an unsecured loan of Rs.50 lakhs to the company on the assurance that the loan will be repaid on demand and he will be a director of the company until his entire investment is repaid. The petitioner had further advanced a sum of Rs.4 lakhs to the first respondent company for purchase of machinery from Anakkara, another concern engaged in the same line of business and for acquiring the shares of Mr. Madhukumar who wanted to exit from the Company. However, the respondent company and respondents 2 to 4 have neither acquired the machinery nor accounted the loan given to the company, or they issued shares for the amount. After collecting a sum of Rs.14 lakhs onwards from the petitioner, the majority shareholders and Executive Management of the company comprising of respondents

2 & 3 did not issue shares for the said value to the petitioner nor was the amount accounted in the books of the company. The petitioner has till date been issued shares worth Rs.1,00,000/- only. Accordingly, the petitioner now holds 20% of the fully paid up equity shares of the company and is a director along with Respondents 2 to 4. The petitioner further stated that since the petitioner was permanently residing at Kolkata, the majority shareholders who are all based at Kerala, were acting in concert with each other have been continuously abusing their position in the company and mismanaging the affairs of the Company keeping the petitioner in the dark. The Company has been closed for more than 7 months now and no maintenance is being carried out for machinery and other assets of the company. The situation was so dire that the Directors of the Company have passed a Resolution at the Board meeting held on 15<sup>th</sup> February 2020 to wind up the Company. Despite the decision of the Board of the Company to wind up the company and the present precarious financial position of the company, the majority shareholders are now fraudulently and malafidely conspiring to remove the petitioner from the Board of the Company so that they can continue their illegal designs of further raising finance and encumbering the assets of the company and siphon of the funds.

The learned counsel for the petitioner further alleged that an extra-ordinary general body meeting was held on 3.10.2020 without giving 21 clear days' notice to all members as mandated under the provisions of the Act.

Hence the petitioner filed this petition. Along with the main prayers in the petition, the petitioner has sought 12 interim reliefs, out of which the learned counsel for the petitioner insisted the interim relief(c) praying to stay the operation of any resolution passed by the 1<sup>st</sup> respondent company removing the petitioner from the office of the Director of the 1<sup>st</sup> Respondent Company.

I have heard the learned counsel for the petitioner and have perused the documents. After meticulously going through the whole case records, I direct the Respondents not to implement the decisions, which would adversely affect the interests of the Petitioner, taken in the Extra Ordinary General Body Meeting held on 3.10.2020 until further orders.

Shri Yogindunath Sreenivas, learned PCS has submitted an email stating that he is representing all the respondents in this case and ready to appear today through VC. But he has not filed Vakalath/Memo of Appearance. His submission in the mail that he will appear for all respondents is taken on record. He may file the Vakalath/Memo of appearance before the next date fixed. All respondents are directed to file their counter within 3 weeks. The Petitioner may file his rejoinder, if any, before the next date fixed. List **on 25.11.2020 for hearing**.

#### 4 CA/69/KOB/2020

Learned counsel for the Appellant Shri Shameed Ahmed appeared in the VC. This is an appeal under Section 252 of the Companies Act, 2013 against strike off of the name of the Company "Plastopol Polymers Private Limited" by the ROC from the

Register of Companies. I have heard the learned counsel for the appellant and perused all the documents attached with the Appeal. It appears that along with the Appeal the appellant has submitted copy of following documents:

- (a) Certificate of Incorporation dated 2.9.2010
- (b) Memorandum of Association & Articles of Association
- (c) Master Data of the Company
- (d) FormNo.STK-7 dated 16.6.2017 issued by ROC
- (e) KVAT Registration certificate
- (f) GST Registration certificate
- (g) Bank Statements
- (h) Financial Statements as on date of this appeal, etc, etc.

Registry is directed to issue notice to ROC through special messenger for his report. List on 13.10.2020.

#### **5 CA/70/KOB/2020**

Learned PCSI for the Appellant Shri Abhilash Nediyaalil Abraham appeared in the VC. This is an appeal under Section 252(3) of the Companies Act, 2013 for restoring the name of Espanio Events India Private Limited in the Register of the Registrar of Companies. I have heard the learned PCS for the appellant and perused all the documents attached with the Appeal. It appears that along with the Appeal the appellant has submitted copy of following documents:

- (a) Certificate of Incorporation
- (b) Memorandum of Association & Articles of Association
- (c) Master Data of the Company
- (d) Relevant pages of Order dated 19.10.2019 by ROC
- (e) IT Return up to 2019-20
- (f) Financial Statements up to 2018-19, etc, etc.

Registry is directed to issue notice to ROC through special messenger for his report. List on 13.10.2020.

#### **6 IBA/24/KOB/2020**

No response from both the parties. It appears from records that the Operational Creditor has made paper publication as ordered by this Tribunal and submitted the proof of Publication in the Newspapers in Indian Express in English and Deepika in Malayalam. Even after the said publication, the CD is still absent. List on 4.11.2020 for further proceedings.

#### **7 IBA/27/KOB/2020**

Learned counsel for the IB Applicant Shri Rony Jose appeared in the VC. I have heard and perused the records. Today the case is posted for hearing. It appears from records that notice to CD was duly served. The CD acknowledged the receipt of notice through the A/d card by putting the signature and seal. But the CD has not

appeared. Meanwhile Advocate Sri Nath V submitted an email stating that he is appearing for the respondents in this case, but no Vakalat has been filed. His submission is taken on record. He may file Vakalat before the next date fixed. Corporate Debtor is granted two weeks' time to file his counter. The OC may file his rejoinder, if any, before the next date fixed. List on **3.11.2020**.

**8 IBA/28/KOB/2020**

Learned counsel for the Operational Creditor Shri Nidhi Sam John appeared in the VC. Heard and perused the records. It appears from records that notice was duly served to the Corporate Debtor. Meanwhile Shri Harikrishnan R Nair, PCS submitted an email stating that he is appearing for the Corporate Debtor in this case. He has also submitted the Memo of Appearance. The Corporate Debtor is directed to file their counter within two weeks with a copy served to the OC. The Operational Creditor may file his rejoinder, if any, before the next date fixed. List on **3.11.2020**

**9 IA/126/KOB/2020 IN CP/16/KOB/2020**

Learned counsel for both the parties viz: Shri Sukumar Nainan Oommen, Shri Philip Mathew, Shri Jomy George and Shri Thomas Geevarghese appeared in the VC. The Bench observed that pleadings are complete in the main CP, hence decided to hear the arguments in the main CP instead of hearing the IAs. It appears from records that vide our order dated 11.9.2020 both the parties were directed to file their synopsis of arguments before today. But none of the parties have filed their written arguments. Both the parties are directed to submit their written arguments in the main CP before the end of this month positively. List on 27.11.2020 for final hearing.

**10 IA/127/KOB/2020 & IA/128/KOB/2020 IN CP/16/KOB/2020**

Learned counsel for both the parties viz: Shri Sukumar Nainan Oommen, Shri Philip Mathew, Shri Jomy George and Shri Thomas Geevarghese appeared in the VC. The Bench observed that pleadings are complete in the main CP, hence decided to hear the arguments in the main CP instead of hearing the IA. It appears from records that vide our order dated 11.9.2020 both the parties were directed to file their synopsis of arguments before today. But none of the parties have filed their written arguments. Both the parties are directed to submit their written arguments in the main CP before the end of this month positively. List on 27.11.2020 for final hearing.

**11 CONTEMPT PETITION/06/KOB/2020 IN CP/16/KOB/2020**

Learned counsel for both the parties viz: Shri Sukumar Nainan Oommen, Shri Philip Mathew, Shri Jomy George and Shri Thomas Geevarghese appeared in the VC. The Bench observed that pleadings are complete in the main CP, hence decided to hear the arguments in the main CP instead of hearing the IA. It appears from records that vide our order dated 11.9.2020 both the parties were directed to file their synopsis of arguments before today. But none of the parties have filed their written arguments. Both the parties are directed to submit their written arguments in the main CP before the end of this month positively. List on 27.11.2020 for final hearing.

**12 IA/91/KOB/2020 IN CP/16/KOB/2020**

Learned counsel for both the parties viz: Shri P.Thomas Gheevarghese, Shri Sukumar Nainan Oommen and Shri Philip Mathew, appeared in the VC. The Bench observed that pleadings are complete in the main CP, hence decided to hear the arguments in the main CP instead of hearing the IA. It appears from records that vide our order dated 11.9.2020 both the parties were directed to file their synopsis of arguments before today. But none of the parties have filed their written arguments. Both the parties are directed to submit their written arguments in the main CP before the end of this month positively. List on 27.11.2020 for final hearing.

**13 CP/16/KOB/2020**

Learned counsel for both the parties viz: Shri Sukumar Nainan Oommen, Shri Philip Mathew, Shri Jomy George and Shri Thomas Geevarghese appeared in the VC. The Bench observed that pleadings are complete in the main CP, hence decided to hear the arguments in the main CP instead of hearing the IA. It appears from records that vide our order dated 11.9.2020 both the parties were directed to file their synopsis of arguments before today. But none of the parties have filed their written arguments. Both the parties are directed to submit their written arguments in the main CP before the end of this month positively. List on 27.11.2020 for final hearing.

**14 IA//80/KOB/2019 IN IBA/46/KOB/2019**

This case is posted today for hearing at 2.30 pm. In view of the constitution of the Special Bench for NCLT, Bengaluru Bench with this Bench, with effect from 1.10.2020 to 14.10.2020, the case stands adjourned to **16.10.2020 at 2.30.pm.**

**15 IBA/46/KOB/2019**

This case is posted today for hearing at 2.30. In view of the constitution of the Special Bench for NCLT, Bengaluru Bench with this Bench, with effect from 1.10.2020 to 14.10.2020, the case stands adjourned to **16.10.2020 at 2.30.pm.**