

NCLT, KOCHI

Daily Orders – Draft

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

Date: 29th Sept 2020

1 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 appeared in the VC. This matter is listed for pronouncement of orders today. While going through the case file, it was noticed that there is a prayer for issue of summons to the erstwhile Managing Director/Additional Director & Director of the CD. The learned counsel for the liquidator is directed to produce the address of the erstwhile Managing Director/Addl. Director and Director through mail today itself. Registry is directed to issue notice to them directing to file their counter and appear through video conferencing on 19.10.2020. List on 19.10.2020.

2 MA/96/KOB/2020 IN IBA/44/KOB/2019

Learned Resolution Professional Shri K.P.Dileep Kumar appeared in the VC. Orders pronounced. **MA/96/KOB/2020 is disposed of vide separate order.**

3 CA/46/KOB/2020

Learned PCS for the Appellants Shri Abhilash Nediyaalil Abraham appeared in the VC. Orders pronounced. **CA/46/KOB/2020 is disposed of vide separate order.**

4 IBA/35/KOB/2020

Learned counsel for the IB Applicant/Operational Creditor Shri Maninder Singh appeared in the VC. This is an application filed under Section 9 of IBC 2016 and Rule 6 of IB(AAA) Rules 2016. Learned counsel for the Operational Creditor submitted that the amount claimed to be in default works out to be USD \$ 1,13,500/- inclusive of principal amount of US \$ 1,00,000/- plus interest @ 18%. I have heard the learned counsel of the Operational Creditor and thoroughly perused the records including the documents attached along with the IB Application. The Operational Creditor is directed to issue fresh notice to the Corporate Debtor through email and Registered post with A/D and submit proof of service with an affidavit before the next date fixed. Registry is also directed to issue notice to the CD through email in addition to normal procedure. The Corporate Debtor may file his counter within two weeks and the Operational Creditor may file his rejoinder, if any, before the next date fixed. List on **16.10.2020**.

5 CA/66/KOB/2020

This is an appeal filed under Section 252(3) of the Companies Act 2013 seeking restoration of the name of the Company M/s. Phos Infrastructure and Power Solutions Private Ltd maintained by the Registrar of Companies. I have thoroughly perused the appeal including the documents attached along with the appeal. Registry is directed to issue notice to ROC through special messenger for his report. List **on 8.10.2020.**

6 REPORT NO.95/KOB/2020 IN TCP/59/KOB/2019

This is the Progress Report filed by the Liquidator under Regulation 15 of the I&B BOI (Liquidation Process) Regulation 2016. The Liquidator has requested to condone the delay in submitting the Asset Memorandum (Annexure-5). The delay is condoned. **Progress Report is accepted and taken on record.** Registry is directed to place the report in the appropriate file.

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MA/145/KOB/2020 IN TIBA/01/KOB/2019

Learned Liquidator Shri Shawn Jeff Christopher appeared in the VC. This MA is filed by the liquidator with a prayer (i) to direct the suspended directors of the board of the CD (Mr. Reji Sivankutty and Mr. Tinu Jose) under Sections 35(1)(n) & 60(5) of Insolvency and Bankruptcy Code, 2016 and Regulation 9 of the IBBI (Liquidation Process) Regulations, 2016 to provide and make available to the Liquidator the complete set of books of accounts of the CD for the past 4 years from the liquidation commencement date, ie. 19.2.2020 at the earliest to discharge the duties of the liquidator and (ii) to direct the board of directors (Mr. Reji Sivankutty, Mr. Anil Roy, Mr. Revathy Radhakrishnan and Mr. Tinu Jose) of Sabkaa Payments Limited to provide and make available to the Liquidator the complete set of books of accounts of the subsidiary Sabkaa Payments Limited for the financial year 2016-17 and 2018-19 at the earliest.

It appears from records that neither the exact address nor the email ID of the suspended directors have been furnished by the Liquidator in his application. Therefore, the Liquidator is directed to submit the exact address and email ID of the suspended directors of the CD to this Registry through email immediately. Learned liquidator submitted through VC that he will submit the exact address and email ID of the suspended directors within a day or two. Registry is directed to issue notice to the suspended directors of the CD through email in addition to normal procedure. List on 21.10.2020.

8 MA/146/KOB/2020 IN TIBA/34/KOB/2019

Learned Resolution Professional Shri Sathiq Buhari appeared in the VC. This MA is filed by the RP with a prayer to grant sanction from this Tribunal to file the liquidation application under Section 33(2) of IBC, 2016. The learned liquidator submitted that in the light of the decision of NCLAT in *Suo Moto – Company Appeal (AT) (Insolvency) No.01 of 2020* dated 30.3.2020 the lock down period was excluded from CIRP time limit and there is no delay in preferring the application for liquidation. However, this MA is filed to seek formal sanction of this Tribunal to file the liquidation application. The prayer of the RP is allowed. **MA/146/KOB/2020 is disposed of accordingly.**

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

Learned Resolution Professional Shri Sathiq Buhari appeared in the VC. This MA is filed by the RP with a prayer to withdraw the fees from the bank accounts of the Corporate Debtor as decided by the CoC in its 4th meeting held on 7.3.2020. Heard and perused the records. List for hearing on 14.10.2020 along with the related cases.

10 MA/22/KOB/2020 IN TIBA/14/KOB/2019

Learned counsel for the applicant in the MA sought an adjournment through email. Learned RP sent a mail intimating his willingness to appear through VC. Adjourned to 6.11.2020.

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

This MA is filed by the Liquidator against the Respondents (1) Union Bank of India and (2) Meenachil East Urban Co-operative Bank Limited with a prayer to handover the physical possession of the mortgaged leasehold land of the Corporate Debtor (both Express lease and Implied lease lands used by the Corporate Debtor). Learned Liquidator Shri Mahalingam Suresh Kumar appeared in the VC along with his learned counsel Shri A.G.Sathyanarayana. Learned counsel for R1 Shri Manoj Ramaswamy also appeared in the VC.

It appears from records that based on an application submitted before this Tribunal by the District Collector, this Tribunal vide order dated 15.5.2020 directed the Liquidator to hand over the premises to the District Collector for the purpose of using the building of the CD as a quarantine centre under Covid 19. It was also ordered that the District collector will return the premises to the Liquidator within two months (60 days) from the date of taking over the premises from the Liquidator and in case the purpose for which the premises taken by the District Collector is not completed,

the District Collector may approach before this Bench for further orders. It was also ordered that the premises shall be used only for quarantine of NRIs under Covid 19 as requested by the District Collector and that it should not be used for any other purposes, whatsoever.

The District Collector vide his letter dated 28.9.2020 addressed to this Tribunal stated that policies of State Government changed with the reduced inflow of passengers and increase in the number of Covid-19 positive cases, they have resorted to home quarantine for those who have proper quarantine facility as insisted by Government, at home. Since then, the requirement was for more hospital/ treatment facilities. However, though the RIMS hospital had all the facilities, the District Administration was not in a position to use the RIMS Hospital to the limited quarantine of NRI passengers.

The District Collector further stated that the cumulative number of Covid patients in the District is 9921 and the number of patients under treatment as on date is 3752. At present the number of positive cases in the District are on a rise and the District has witnessed above 400 cases a day. To tackle the worsening situation, more covid treatment facilities are to be made functional. The District has done everything within its capacity to get the Covid First Line Treatment Centres ready for the treatment of asymptomatic patients. Despite the earnest efforts of the administration, the infrastructure capacities required to treat symptomatic category B and C patients in the District is fast dwindling. It is highly essential that this facilities need be improved to save precious lives. The District collector also added that the hospital was not taken over physically by his office at any stage due to the stricture of this Tribunal that it can be used only for the purpose of quarantining NRIs and not for any other purpose. The building can be converted to a Covid Hospital without any structural changes but, with minor minimal repairs to make it functional, which would only be an added support to the otherwise dysfunctional hospital. The District Administration therefore requested this Tribunal to permit them to utilise the property as a Covid hospital for Covid patients.

Learned Liquidator as well as his counsel vehemently opposed the request made by the District Collector. The liquidator submitted that this is not a Government Hospital. There are 300 persons employed in this hospital and the interests of these employees as well as the interests of the stake holders of the hospital are to be protected. Learned Liquidator therefore submitted that this MA may be allowed with a direction to the Government of Kerala to return the premises to the Liquidator to enable him to complete the liquidation process within the time limit.

Shri Shinu J. Pillai, Advocate appeared for R2. He supported the arguments of the Liquidator and submitted that only 3 months are left to complete the liquidation process.

Heard the parties and perused the whole records. As stated above, the District Administration was permitted to use the premises of the Corporate Debtor for the purpose of quarantine of NRIs under Covid 19 and that it should not be used for any other purposes, whatsoever. It was also ordered that the District collector will return the premises to the Liquidator within two months (60 days) from the date of taking over the premises from the Liquidator.

It appears that the District Collector has not submitted any specific prayer to utilise the hospital of the Corporate Debtor for the purpose of Covid Hospital for patients other than NRIs. In the absence of filing any petition with specific reasons and request before this Tribunal, I think it would be just and proper to hand over the premises back to the Liquidator to enable the Liquidator to complete the liquidation process. Moreover, the machines and equipment in the hospital may be dysfunctional due its non-operation for a prolonged period.

Registry is therefore directed to issue notice to the District Collector, Kottayam with a copy of this order. **List the case for hearing on 8.10.2020 at 2.30 PM.**

12 IA/63/KOB/2020 IN IBA/240/2019/CB

Learned counsel for the Applicants/Interveners Shri S.Easwaran appeared in the VC. Learned Liquidator Shri Mahalingam Suresh Kumar appeared in the VC along with his learned counsel Shri A.G.Sathyanarayana. This IA is filed by the Interveners with a prayer to direct the liquidator appointed in IBA/240/2019 not to take any proceedings against the schedule of properties including the sale of the assets scheduled in the application attached. The Liquidator has already filed his counter. List on 16.10.2020 for hearing.

13 TCP/6/KOB/ 2019

Learned counsel for the petitioner through email intimated her willingness to appear through VC. No response from the respondents. Due to paucity of time adjourned to 4.12.2020.

14 TCP/89/KOB/2019 (CP/03/2009)

Learned counsel for the petitioner and Respondents 3&4 intimated their willingness to appear through VC. No response from other respondents. Due to paucity of time adjourned to 7.12.2020.

15 CP/122/KOB/2019

Learned counsel for the petitioner and the senior counsel for respondents sought an adjournment through email. List on 14.12.2020.

16 CA/61/KOB/2020

Learned counsel for the appellant intimated his readiness to appear through VC. ROC filed its report. However, due to paucity of time, this matter is adjourned to 30.09.2020 immediately after the admission matters.

17 CA(CAA)/04/KOB/2020

Learned PCS for the applicant informed through mail his willingness to appear through VC. However, due to paucity of time, adjourned to 20.11.2020.

18 IBA/04(KOB)/2020

Learned counsel for the Financial Creditor Shri V.A.Ajaikumar as well as learned counsel for the CD Shri P.V.George appeared in the VC. Heard both the parties partly. Due to network problem the hearing is adjourned. Meanwhile the CD is directed to submit the Financial Statements for the year 2014-15 before the next date fixed. List on 9.10.2020 at 2.30 for further hearing as **part heard.**