

NCLT, KOCHI BENCH

Daily **Orders** – For reference purpose only

Date 2nd FEB 2022

Coram: **Shri Anil Kumar B.**
Hon'ble Member (Technical)

Shri Ashok Kumar Borah
Hon'ble Member (Judicial)

1 CP(IB)/41/KOB/2021

Learned IRP Shri Mohanan T.S. appeared in person through VC.

IRP has already filed an IA under Section 12A of the IBC, 2016 for withdrawal of the CIR Process, which is posted for hearing on 09.02.2022.

In view of the above, list this CP(IB)/41/KOB/2021 on 09.02.2022.

1 IA(IBC)/19/KOB/2022 in CP(IB)/41/KOB/2021

This IA has been filed under Section 12A of the IBC, 2016 and Regulation 30A of the IBBI (Insolvency Resolution Process for corporate Persons) Regulations, 2016 by the Interim Resolution Professional seeking withdrawal of CIR Process against the Corporate Debtor.

Learned IRP Shri Mohanan T.S. appeared in person through VC along with his learned PCS Shri Vinu Thomas.

After hearing the IRP, the Bench directed him to file the following within 3 days:

1. Copy of paper publication stated to be issued by him;
2. Split up details for the expenditure of Rs.2,55,000/- showing the fee payable to the IRP for the duties performed by him from the date of receipt of copy of the admission order till the filing of this IA..

List on 09.02.2022 for hearing.

2 IA(IBC)/20/KOB/2022

This IA has been filed under Section 60(5) & 53 read with 35(n) of the IBC, 2016 by the liquidator to pass an order directing M/s. Bharat Petroleum Corporation Ltd. Kochi Refinery, represented by its Executive Director, Ambalamugal P.O Ernakulam

District Kerala State Pin 682 302 Kerala to transfer Rs. 25,13,38,078/- deposited by way of Fixed Deposit and Rs.5,46,08,871.37/- retained by the respondent pursuant to the direction of this Tribunal to the account of the Liquidator mentioned in Annexure A-4, Account No. 4271002110005708 maintained in the Punjab National Bank at Market Road Branch having IFSC Code: PUNB0427100 for utilizing the said amount for the distribution of assets in accordance with Section 53 of the Code.

Learned liquidator Shri Vinod Balachandran appeared in person through VC along with his counsel Shri Arunkumar. Shri Arunkumar stated that since BPCL has not been made as respondent in this IA, he wants to withdraw this IA.

In view of the above submission of the learned counsel for the Liquidator, **IA(IBC)/20/KOB/2022 stands dismissed as withdrawn.**

3 REPORT/20/KOB/2022 in IBA/11/KOB/2020

This report has been filed under Section 21 (6A) (b) of the IBC, 2016 READ WITH Regulation 2(1)(aa), 4A, 12(1), 16a of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in the matter of CIR process against the Corporate Debtor MIR Realtors Pvt Ltd.

Learned IRP Shri P.T.Joy appeared in person through VC.

List this Report on 14.02.2022 along with IA(IBC)/17/KOB/2022.

4 REPORT/21/KOB/2022 in TIBA/14/KOB/2019

This report has been filed under Regulation 15(1) (a) of the IBBI (Liquidation Process) Regulations, 2016 by the Liquidator for the Quarter ended 31.12.2021 in the matter of Liquidation Process against the Corporate Debtor India Techs Limited.

Learned Liquidator Shri Sasitharan Ramaswamy appeared in person through VC.

Perused the report. Report is taken on record. Registry is directed to place the report in TIBA/14/KOB/2019.

5 CP(IB)/33/KOB/2021

This Petition has been filed by the Financial Creditor Phoenix Arc Pvt Ltd (Trustee of Phoenix Trust FY 17-8) against the Corporate Debtor, Kerala Chambers of Commerce and Industries Ltd, under Section 7 of the IBC, 2016 read with Rule 4 of the IB(AAA) Rules, 2016.

This is a part heard case. Since the NCLT-Kochi Bench has been re-constituted from 28.01.2021 the case is released from Part Heard.

Learned counsel for the Petitioner Shri A.V. Thomas as well as learned counsel for the Corporate Debtor Smt. Marian GM Tharakan appeared through VC.

Learned counsel for both the parties argued afresh and concluded their submissions.

Heard and perused the records.

Reserved for Orders.

Learned counsel for the CD Smt Marian GM Tharakan is directed to produce the MoA of the CD Company within 7 days.

Learned counsel for both the parties may submit their written submissions in brief (limiting 3-4 pages) within 7 days.

6 CP(IB)/46/KOB/2021

This Petition has been filed under Section 8 and 9 of the IBC, 2016 by the Operational Creditor D.J. Laboratories Pvt Ltd for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor Kerala Medical Services Corporation Ltd.

Learned counsel for the Operational Creditor Shri Pranav Jain appeared through VC. Adv Shri M.Ajay appeared through VC stating that he represents the Corporate Debtor and that the Vakalat would be filed during the course of the day. His submission is recorded.

The Corporate Debtor is directed to file the Reply Statement on or before 10.02.2022

List on 15.02.2022 for hearing.

7 TCP/21/KOB/2019

Learned counsel for the Petitioners Shri A.C.Venugopal appeared through VC. Learned counsel for the Administrator Shri Philip Mathew and learned Auditor Shri Babu Kallivayalil appeared through VC.

Shri Philip Mathew submitted that since there is difference of opinion between the Auditor and the Administrator, and also the fact that the Auditor has already submitted his resignation, the Administrator may be permitted to appoint a new Auditor in place of the existing Auditor.

Shri Babu Kallivayalil submitted that he will relinquish his charges provided the fee of the Auditors be ordered to be paid before appointing a new Auditor.

It appears that the Auditors in their report dated 31.07.2021 have prayed before this Tribunal to direct the Company to compensate them for the professional services rendered till date at least to the extent of fifty percent of the cost of Rs.44.47 lakhs as per the details given or such other amount this Tribunal may deem fit.

Heard both sides. After perusal of the records, we are of the view that the fee of the Auditors is to be paid before appointing a new Auditor.

Therefore, the request of the Auditor for resignation is allowed and the R1 Company is directed to pay fifty percent of the cost of Rs.44.47 lakhs to the Auditor M/s. Babu A. Kallivayilil & Company, as his full payment for the duties performed by him, within two weeks from today.

Shri Philip Mathew stated that he will consult with the Administrator and suggest a panel of 3 Auditors from which this Tribunal may appoint an Auditor. He may do so within two weeks.

Asst ROC Shri Ramesh appeared through VC and submitted that an appeal has already been filed before NCLAT, with respect to the SFIO report and the same is yet to be listed.

List this TCP on 04.03.2022.

Registry is directed to issue copy of this Order to both the parties through email immediately.

7 IVNP/2/KOB/2022 in TCP/21/KOB/2019

This Intervention Petition has been filed under Rule 11 of the NCLT Rules, 2016 by the applicants (members of the R4 Company) with the prayer to permit them to be heard on being impleaded as party respondents in TCP/21/KOB/2019.

Adv Shri Arjun R. Naik appeared through VC stating that he represents the learned counsel for the Intervening Petitioners Shri Ashok B. Shenoy. Learned counsel for the Respondents 1-3 Shri A.C.Venugopal and learned Administrator Shri Philip Mathew appeared through VC.

Vide Order dated 04.01.2022 the Intervening Petitioners were directed to issue notice enclosing a copy of the application to all the respondents who have not appeared on that date and produce proof of service (AD Card/Postal Track report) with an affidavit within two weeks. It appears from records that the Intervening Petitioners have not yet produced the proof of service till date.

The Intervening Petitioners are directed to file the Proof of service on or before 17.02.2022. The Respondents are directed to submit their Counter within two weeks of receipt of notice.

List on 04.03.2022 for hearing.

7 IVNP/1/KOB/2022 in TCP/21/KOB/2019

This IVNP has been filed under Rule 11 of the NCLT Rules, 2016 by the applicants/intervenors against the Respondents (Petitioners and Respondents in TCP/21/KOB/2019) seeking direction to conduct due election of the Board of Directors of R4 Company and entrust the Management of the R4 Company to the Board of Directors so elected.

Adv Shri Arjun R. Naik appeared through VC stating that he represents the learned counsel for the Intervening Petitioners Shri Ashok B. Shenoy.

Learned counsel for the Respondents 1-3 Shri A.C.Venugopal and learned Administrator Shri Philip Mathew appeared through VC.

Vide Order dated 04.01.2022 the Intervening Petitioners were directed to issue notice enclosing a copy of the application to all the respondents who have not appeared on that date and produce proof of service (AD Card/Postal Track report) with an affidavit within two weeks. It appears from records that the Intervening Petitioners have not yet produced the proof of service till date.

The Intervening Petitioners are directed to file the Proof of service on or before 17.02.2022. The Respondents are directed to submit their Counter within two weeks of receipt of notice.

List on 04.03.2022 for hearing.

8 CP/35/KOB/2021

This Company Petition is filed under Section 340 read with Section 246 of the Companies Act, 2013 by the Petitioner Shri PM. Johny against the respondents Shri K.J. Paul and 3 others alleging loss or damage to the R4 Company to the tune of Rs.50,01,49,418/- by the mismanagement of respondents.

Adv Smt Maju Raj represented the learned counsel for the Petitioner Shri Mohan Pulickkal and sought an adjournment to enable her senior to argue the matter. Learned senior counsel Shri Joseph Kodianthara appeared for R1 through VC.

Pleadings are complete.

At the request of the learned counsel for the Petitioner, the case is adjourned to 08.03.2022.

8 COMP.APPLN/106/KOB/2021 IN CP/35/KOB/2021

This CA has been filed by the applicants (R1 to R3 in the CP) against the Respondents (Petitioner and R4 in the CP) with the prayer to dismiss CP/35/KOB/2021 as not maintainable.

Learned senior counsel Shri Joseph Kodianthara appeared through VC for the applicants.

Smt. Manju Raj, who appeared for R1, sought an adjournment to enable her senior to argue the case. **At her request, the case is adjourned to 08.03.2022.**