

NCLT, KOCHI BENCH

Daily Orders – Draft

Date: 15th Sept 2021

In the Bench of: **Hon'ble Shri Ashok Kumar Borah, Member (Judicial) & Hon'ble Shri Rajesh Sharma, Member (Technical)**

1 IA(IBC)/134/KOB/2021 IN IBA/22/KOB/2020 & IBA/23/KOB/2020

Learned counsel for RP Shri Akhil Suresh appeared through VC. Learned RP Shri Renahan Vamakesan also appeared through VC.

This is an application filed by the RP for dissolution of the company under Section 54(1) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016.

While arguing the case, the RP as well as his counsel submitted before the Bench that there is no asset with the Company as the respective secured creditors have taken recourse of the assets of the company as well as properties which were mortgaged by the company have already taken into possession by the bank and other financial institutions. It is seen that the Bank has not proceeded with initiation of proceedings against the guarantors of the Corporate Debtor. The learned counsel as well as the RP could not reply in this regard and submitted that they will be taken up the matter with the CoC. Accordingly, CoC is directed to file a reply as to why personal guarantors of the CD have not been proceeded as per the procedure of IBC.

List on 21.10.2021.

RP is directed to provide the email ID of the CoC Members immediately to this Tribunal.

Registry is directed to issue copy of this order to the Resolution Professional as well as the CoC members through Email.

2 IA(IBC)/135/KOB/2021 IN IBA/21/KOB/2019

Shri Jasin Jose, learned liquidator of M/s Churakulam Tea Estate Private Limited under liquidation filed this application under Section 60(5) read with Rule 11 for a direction to the ex-members of the CoC to release the amount of Rs. 1 Crore lying in the account of CoC of Churakulam Tea Estate (Private) Limited on account of invocation of bank guarantee of the Resolution Applicant.

As per the provisions of IBC, once a company is ordered for liquidation, there exists no Committee of Creditors and the entire assets of the company rests with the Liquidator of the Company. Accordingly, this Bench orders the South Indian Bank to transfer an amount of Rupees One Crore from the account No. 0805073000000261 to the account of the Liquidator of M/s.Churakulam Tea Estate Pvt Ltd. This Order must be complied by the South Indian Bank within 15 days and compliance report be filed within that period.

IA(IBC)/135/KOB/2021 IN IBA/21/KOB/2019 stands disposed of accordingly.

Registry is directed to issue copy of this Order to South Indian Bank Ltd. through email.

3 IA(IBC)/128/KOB/2021 IN MA/05/KOB/2020 IN TIBA/1/KOB/2019

Learned liquidator Shri Shawn Jeff Christopher appeared in person through VC.

This is an IA filed by the liquidator under Section 54(2) & 60(5) of IBC 2016 read with Regulation 44 of IBBI (Liquidation Process) Regulations 2016 and Rule 11 of NCLT Rules seeking the order of dissolution of the Corporate Debtor M/s. Achariya Techno Solutions (India) Pvt Ltd.

After making submissions for some time, the learned liquidator sought time to amend this IA. Two weeks' time is granted to file the amended IA.

List on 22.10.2021.

4 IA(IBC)/51/KOB/2021 IN MA/05/KOB/2020 IN TIBA/1/KOB/2019

Learned liquidator Shri Shawn Jeff Christopher as well as learned counsel for R1-R3 and R5 Shri Simod Sivan appeared through VC.

The liquidator submitted that he has filed a report (Report No.77/KOB/2021) before the registry yesterday. The learned counsel for respondents stated that he has not received a copy of the aforesaid report.

Since this report has been filed in compliance with an order of this Tribunal, the liquidator is directed to serve copy of the above report to the learned counsel of R1-R3 and R5 within a week. The learned counsel of R1-R3 and R5 may file his objections, if any, against the above report of the liquidator, on or before 11.10.2021.

Report No.77/KOB/2021 is taken on record. Registry is directed to place it on proper record.

List on 22.10.2021.

5 IVNP/4/KOB/2021 IN IA(IBA)/87/KOB/2021 IN IBA/23/KOB/2019

Learned counsel for the intervening applicants Shri Santhosh Mathew as well as learned RP Shri Vinod PV appeared through VC.

This is an IA filed by the applicants/interveners under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules praying to intervene in IA(IBC)/87/KOB/2021.

Shri Vinod PV sought time to file reply against this IVNP. He may file the reply on or before 20.09.2021.

List on 23.09.2021.

6 IA(IBC)/122/KOB/2021 IN IA(IBA)/87/KOB/2021 IN IBA/23/KOB/2019

Learned RP Shri Vinod PV appeared in person through VC.

This is an IA filed under Rule 11 of NCLT Rules, 2016 read with Section 5 of the Liquidation Act for condonation of delay in filing the liquidation application.

It is observed that the period of delay has not been mentioned in the IA. The RP sought permission to incorporate the period of delay in the IA within three days. Registry is directed to permit the RP to correct the IA.

List on 23.09.2021.

7 IA(IBC)/87/KOB/2021 IN IBA/23/KOB/2019

RP Shri Vinod Padinhare Veetil appeared through VC.

This is an application filed by the RP under Section 33(1)(a) of IBC 2016 for liquidation of the CD.

This IA will be heard along with the related IAs.

List on 23.09.2021.

8 IA(IBC)92/KOB/2021 IN IBA/23/KOB/2019

Learned counsel for the Applicant/OC Shri Santhosh Mathew as well as learned RP Shri Vinod PV appeared through VC.

This IA has been filed by the OC seeking the following reliefs:

- (a) Direct the Resolution Professional to grant the Applicants access to all the documents submitted by the Financial Creditors pertaining to claim made before the Resolution Professional;
- (b) Direct the conduct of a forensic audit by an independent third-party auditor into the amounts that have been lent by Respondents 4 to 13 to the Corporate Debtor and the amounts recovered.

- (c) Stay further proceedings in the Corporate Insolvency Resolution Process of the Corporate Debtor till such time the forensic audit is complete.
- (d) Restrain the 3rd Respondent Resolution Professional from acting as the Resolution Professional or the liquidator.
- (e) Pass such further orders in the interests of justice and equity.

This IA will be heard along with related IAs.

List on 23.09.2021.

9 IA(IBC)100/KOB/2021 IN IBA/25/KOB/2020

Learned counsel for the Applicant Shri Divakar Maheshwari as well as learned IRP Shri Sathiq Buhari appeared through VC.

This IA will be heard along with the related IAs. **List on 29.09.2021 for hearing (High on Board).**

10 IA(IBC)/105/KOB/2021 IN IBA/25/KOB/2020

Learned IRP Shri Sathiq Buhari appeared through VC. Learned Senior Counsel Shri Joseph Kodianthara and learned counsel for Dhanalakhmi Bank also appeared through VC.

This is an application filed by the RP on behalf of CoC for appointment of the IRP as RP under Section 22(3)(a) of IBC, 2016.

This IA will be heard along with the related IAs. **List on 29.09.2021 for hearing (High on Board).**

11 IVNP/5/KOB/2021 IN IA(IBC)/109/KOB/2021 IN IBA/25/KOB/2020

Learned senior counsel for the Intervening Petitioner Shri Joseph Kodianthara as well as learned IRP Shri Sathiq Buhari appeared through VC.

This is an IA filed by the applicant seeking the following reliefs:

- A. Permit the applicant to intervene in IA(IBC)/109/KOB/2021;
- B. Set aside the decision of the CoC dated 18.05.2021 to liquidate the CD on account of the same being illegal;
- C. Direct 1st Respondent/IRP to call for Resolution Applicants in accordance with Section 30 of the IBC, 2016 Aand permit the Applicant to participate in the same as a resolution applicant.

This IVNP will be heard along with other IAs in IBA/25/KOB/2020. **List on 29.09.2021(High on Board).**

12 IA(IBC)/109/KOB/2021 IN IBA/25/KOB/2020

This application has been filed by the IRP/RP for liquidation of the Company as per the decision taken in the 3rd CoC meeting held on 18.05.2021.

It is on record that CIRP was initiated on 08.03.2021. The Bench has observed that within a period of two months and 10 days of the CIRP period, the CoC has taken a decision to liquidate the Company. It is understood that the Company is having sufficient assets and solvency to take care of the entire dues of the Financial Creditors. There is every possibility to revive the Company through Resolution instead of liquidation. The entire underlined idea of IBC is to resolve the problems of the company and not liquidation. In the light of the above observation, the CoC members are directed to be present on the next date of hearing through video conferencing.

The IRP is directed to immediately provide the email ID of the CoC members before this Tribunal. Registry is directed to communicate this order to all the CoC members.

List on 29.09.2021 for hearing (High on Board).

13 CP(IBC)/25/KOB/2021

Learned counsel for the Operational Creditor Shri Pramodh kumar as well as learned counsel for the CD Ms Telma Raju appeared through VC.

Ms Telma Raju sought an adjournment stating that she has received the rejoinder filed by the petitioner only yesterday. Registry reported that the hard copy of the rejoinder has not yet been filed. OC is directed to file the hard copy immediately.

List on 17.09.2021 for final hearing.

14 IA/15/KOB/2020 IN TCP/01(KOB)/2020 (CP/20/1985/HC)

Learned counsel for the Applicant Smt Sindhu Lekshmi as well as learned counsel for R1-R3 Shri Joseph Antony and learned counsel for R4 and R5 Shri Rohith R. Shenoy appeared through VC. This IA will be taken up along with the main TCP.

List on 05.10.2021.

15 TCP/01(KOB)/2020 (CP/20/1985/HC)

Learned counsel for the Petitioners Shri Joseph Antony as well as learned counsel for R1 & R2 Shri Rohith R. Shenoy and learned counsel for R3 Smt. Sindhu Lekshmi appeared through VC. Though notice was duly served to the impleaded four legal heirs of deceased R4, they neither filed the counter nor appeared today.

This case was filed on 23.09.1985 before the Hon'ble High Court of Kerala and on transfer to this Tribunal, first posting was held in this Bench on 20.01.2020. In the hearing held on 31.03.2021 the learned counsel for the Petitioners submitted that since the cause of action had occurred 36 years ago and the fact that some of the prayers in the CP have already been infructuous, he wants to get instructions from his clients whether to proceed with the case or not.

It appears from record that the learned counsel for the petitioner himself sought various adjournments from January 2020 without any valid reason.

The learned counsel for the petitioner is therefore directed to file an affidavit of the petitioner stating whether the petitioner wants to proceed with the case or not, on or before 30.09.2021, failing which the case will be dismissed.

Registry is directed to issue copy of this order to the learned counsel of the respective parties through Email.

List on 05.10.2021.

16 CP/22/KOB/2020

Due to paucity of time, adjourned to 23.09.2021.

17 CA/30/KOB/2021 IN CP/33/KOB/2020

Due to paucity of time, adjourned to 22.10.2021.

18 CP/33/KOB/2020

Due to paucity of time, adjourned to 22.10.2021.

19 CP/34/KOB/2020

Due to paucity of time, adjourned to 5.10.2021.

20 IA(C/ACT)/12/KOB/2021 IN CP/08/KOB/2021

Due to paucity of time, adjourned to 25.10.2021.

21 CP/08/KOB/2021

Due to paucity of time, adjourned to 25.10.2021.

22 CP(CA)/33/KOB/2021

Due to paucity of time, adjourned to 25.10.2021.

23 CA(CAA)/01/KOB/2021

Due to paucity of time, adjourned to 04.10.2021.